

# Controller to Controller Agreement

## DEFINITIONS

**Agreement:** means this Controller to Controller Agreement which relates to and shall include the Early Years Provider Agreement currently in force between the parties.

**Council Data:** all **Data** comprised in the Council **Data** from time to time other than the Council **Data**.

**Controller:** has the meaning set out in the UK GDPR and Section 3 of the DPA.

**Processor:** has the meaning set out in the UK GDPR and Section 3 of the DPA.

**DPA:** The Data Protection Act 2018.

**Data Subject:** a living individual who is the subject of Personal Data.

**Data:** any **data** or information, in whatever form, including images, still and moving, and sound recordings relating to the Early Years Provider Agreement Services (wholly or in part), including any Personal Data

**European Economic Area:** means the territories of the member states of the European Union.

**UK GDPR:** The UK variant of the General Data Protection Regulations.

**ICO:** The Information Commissioners Office-UK national regulator for Data Protection compliance

**Joint Data Controller:** has the meaning set out in the UK GDPR.

**Personal Data:** has the meaning set out in the UK GDPR and Section 3 of the DPA and relates only to personal data, or any part of such personal data, of which the Council is the Data Controller and in relation to which the Provider is providing services under this Agreement.

**Personal Data Breach** has the meaning set out in the UK GDPR and the DPA.

**Processing and processor:** have the meaning set out in the UK GDPR and Section 3 of the DPA.

**Special Category Data** has the meaning set out in the UK GDPR

## CLAUSES

### 1. OBLIGATIONS OF THE PROVIDER AND THE COUNCIL

- 1.1 The Council and the Provider acknowledge that for the purposes of the DPA and UK GDPR, the Council and the Provider are Joint Data Controllers in the processing of any Personal Data and Special Category Data.
- 1.2 The Provider and the Council shall process the Personal Data and Special Category Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Early Years Provider Agreement and in accordance with the Council's instructions from time to time and shall not process the Personal Data and Special Category Data for any other purpose. The Provider and the Council will keep a record of any processing of personal data carried out. The Provider and the Council shall also provide assurance that they are taking steps to comply with the requirements of the DPA & GDPR & UK GDPR with regard to their processing of Personal Data and Special Category Data.
- 1.3 The Provider and the Council shall promptly comply with any request from the other party to amend, transfer or delete the Personal Data and Special Category Data at its own expense.
- 1.4 If either party receives ('**Receiving Party**') any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data and Special Personal Data or to either party's compliance with the DPA & GDPR & UK GDPR and the data protection principles set out therein, it shall promptly and in any event within three working days of the Receiving Party becoming aware notify the other party and it shall provide the other party with full co-operation and assistance in relation to any such complaint, notice or communication. Both parties also undertake to investigate and manage breaches of the DPA and UK GDPR.

- 1.5 At the Council's request the Provider shall provide to the Council a copy of all Personal Data and Special Category Data held by it in relation to the Early Years Provider Agreement in the format and on the media reasonably specified by the Council and at no cost to the Council.
- 1.6 Neither party shall transfer the Personal Data and Special Category Data outside the European Economic Area without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 1.7 In the event that one party requests and the other party agrees in accordance with clause 1.6 that Personal Data and Special Category Data can be transferred outside the European Economic Area the party proposing to transfer the Personal Data or Special Category Data
- 1.8 shall provide the agreeing party with evidence that any proposed transfer meets the requirements contained in the UK GDPR.
- 1.9 Each party shall promptly inform the other party if any Personal Data and Special Category Data is lost or destroyed or becomes damaged, corrupted, or unusable. Each party will restore such Personal Data and Special Category Personal Data at its own expense.
- 1.10 Both parties shall comply with all relevant statutory and non-statutory guidance when acting as Processor of all Personal Data and Special Category Data as under the Agreement.
- 1.11 The Provider shall:
- (a) only make copies of the Council Data to the extent reasonably necessary for the purposes of the Early Years Provider Agreement (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Council Data);
  - (b) not extract, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Council Data other than as reasonably required in order to fulfil it's obligations under the Early Years Provider Agreement; and
  - (c) not do anything that may materially damage the reputation of the Council.
- 1.12 Both parties shall take reasonable steps to ensure the reliability of all its employees who have access to the Council Data

## **2. SERVICE PROVIDER'S EMPLOYEES**

- 2.1 The Provider shall ensure that access to the Personal Data is limited to:
- (a) those employees who have been appropriately trained in Data Protection and who need access to the Personal Data and Special Category Data to meet the Provider's obligations under the Early Years Provider Agreement; and
  - (b) in the case of any access by any employee, such part or parts of the Personal Data and Special Category Data as is strictly necessary for performance of that employee's duties.
- 2.2 The Provider shall ensure that all employees:
- (a) are informed of the confidential nature of the Personal Data;
  - (b) have undertaken training in the laws relating to handling Personal Data; and
  - (c) are aware both of the Provider's duties and their personal duties and obligations under such laws and this Agreement.
- 2.3 The Provider shall take reasonable steps to ensure the reliability of any of the Provider's employees who have access to the Personal Data.

### **3. RIGHTS OF THE DATA SUBJECT**

- 3.1 Either party shall notify the other within two working days if it receives a request from a Data Subject for access to that person's Personal Data held by the other party.
- 3.2 Both parties shall fully co-operate with each other and provide assistance in relation to any request made by a Data Subject exercising their rights under the provisions of UK GDPR
- 3.3 The Provider shall not disclose the Personal Data to a third party other than at the request of the Council or as provided for in this Agreement.

### **4. RIGHTS OF THE COUNCIL**

- 4.1 The Council is entitled, on giving at least three days' notice to the Provider, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data and Special Category Data by the Provider.
- 4.2 The requirement under clause 4.1 to give notice will not apply if the Council believes that the Provider is in breach of any of its obligations under this Agreement or the Early Years Provider Agreement.

### **5. WARRANTIES**

- 5.1 The Provider warrants that:
  - (a) it will process the Personal Data and Special Category Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and
  - (b) it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data and Special Category Data to ensure the Council's compliance with the sixth data protection principle.
- 5.2 The Provider shall notify the Council promptly and in any event within two working days of the Provider becoming aware if it becomes aware of:
  - (a) any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data and Special Category Data;
  - (b) any advance in technology and methods of working which mean that the Council should revise the security measures set out in 5.1(b).
  - (c) any intention by the Provider to self-report a Personal Data Breach to the ICO.

### **6. INDEMNITY**

- 6.1 The Provider agrees to indemnify and keep indemnified and defend at its own expense the Council against all costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Provider or its employees or agents to comply with any of its obligations under this Agreement.
- 6.2 The Provider shall take out insurance sufficient to cover any payment that may be required under clause 6.1 and produce the policy and receipt for premium paid, to the Council on request.

### **7. DURATION**

- 7.1 This Agreement shall commence on its date of signing below and shall continue for the duration of the Agreement, including any extension given under it, subject to the parties' rights of termination below and in the Agreement. It shall automatically terminate on completion or termination of the Agreement.

**8. APPOINTMENT OF SUBCONTRACTORS**

8.1 The Provider may only authorise a third party (**sub-contractor**) to process the Personal Data:

- (a) subject to the Council's prior written consent where the Provider has supplied the Council with full details of such sub-contractor;
- (b) provided that the sub-contractor's contract contains terms which are substantially the same as those set out in this Agreement; and
- (c) provided that the Provider ensures that there are robust monitoring arrangements in place in relation to the processing of Personal Data and Special Category Personal Data by the sub-contractor to the reasonable satisfaction of the Council; and
- (d) provided that the sub-contractor's contract terminates automatically on termination of this Agreement and any Council data is promptly returned by the Provider.

9. This Agreement is effective from the date the Provider signs the Declaration and Signature document (Annex A) to the Early Years Provider Agreement - Summer 2023 and will remain effective for the duration of the Early Years Provider Agreement it supports.