

## **Derbyshire County Council**

### **Children's Services / Corporate Services and Transformation Departments**

# **AGREEMENT FOR THE DELIVERY OF EARLY YEARS ENTITLEMENT PLACES FOR CHILDREN UNDER STATUTORY SCHOOL AGE**

## **Early Years' Funding Entitlement**

**This Agreement is Extended from:**

**1 January 2024 – 31 December 2024**

V2

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# PROVIDER AGREEMENT

This **AGREEMENT** is **BETWEEN**:

**DERBYSHIRE COUNTY COUNCIL** whose registered office is at County Hall, Smedley Street, Matlock, Derbyshire DE4 3AG (the “**Local Authority**”), and

(**Registration Name:** ) as the registered person, is registered as the provider of childcare operating as (Provider Name: ) whose principal place of business is at ( ), Company/Charity number ( ), Ofsted Registration / School ID number ( ) (the “**Provider**”);

individually, a “**Party**”, and together, the “**Parties**”.

## BACKGROUND

- A. From 1 January 2024, the Local Authority **must** have regard to the Early Education and Childcare Statutory Guidance for Local Authorities – April 2023 as updated, amended or superseded from time to time (the “**Statutory Guidance**”) and the Early Years Entitlements: Operational Guidance for Local Authorities and Providers – June 2018, as updated, amended or superseded from time to time. The Statutory Guidance replaces the guidance which came into effect from April 2023. The Statutory Guidance shall be incorporated by reference into this Agreement as if such Statutory Guidance were set out in this Agreement in full.
- B. Early years entitlement places are offered in nursery schools, nursery units in schools, and a range of different settings. This document relates to Private, Voluntary, and Independent (PVI) settings, such as private day nurseries, nursery units of independent schools, pre-schools/playgroups, Ofsted registered childminders, academies, out of school clubs on the Ofsted Early Years Register and childminders registered with a childminder agency which is registered with Ofsted.
- C. The Local Authority and the Provider share a clear aim that the early years entitlement of such places within Derbyshire should be of the highest possible quality, and both Parties believe that high quality education is most likely to be evident in those Providers that embrace dialogue, challenge and partnership.
- D. The Provider is willing and able to provide the Services to the Local Authority and the Local Authority wishes to appoint the Provider to provide the Services subject to, and in accordance with the terms of this Agreement.

**Signed for and on behalf of Derbyshire County Council**

Signature:	
<b>Mark Kenyon, Director of Finance and ICT</b>	

Date:	Click or tap to enter a date.
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**Signed for and on behalf of Registered Person**

Provider Name:	Click or tap here to enter text.
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Ofsted URN:	Click or tap here to enter text.
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Signature:	Click or tap here to enter text.	Signature:	Click or tap here to enter text.
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Print Name:	Click or tap here to enter text.	Print Name:	Click or tap here to enter text.
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Designation:	Click or tap here to enter text.	Designation:	Click or tap here to enter text.
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Date:	Click or tap to enter a date.	Date:	Click or tap to enter a date.
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The declaration may be signed electronically or printed off, scanned and signed.

***Failure to obtain the appropriate signatories to the Declaration of Compliance may result in a delay to funding payments.***

**Please return the signed Declaration of Compliance to:**

- [cs.enquiries.groupcare@derbyshire.gov.uk](mailto:cs.enquiries.groupcare@derbyshire.gov.uk)
- [cs.enquiries.childminders@derbyshire.gov.uk](mailto:cs.enquiries.childminders@derbyshire.gov.uk)
- [cs.enquiries.schools@derbyshire.gov.uk](mailto:cs.enquiries.schools@derbyshire.gov.uk)

**Within the allocated timescale.**

## 1. DEFINITIONS

### 1.1.

<b>“Agency Childminder”</b>	means a childminder registered with a Childminder Agency;
<b>“Barred List”</b>	means the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012;
<b>“Child”</b>	means a child or children eligible to receive an early years’ entitlement nursery place funded by the Local Authority;
<b>“Childminder”</b>	means a childminder who is themselves registered on the Ofsted Early Years Register;
<b>“Childminder Agency”</b>	means an early years’ childminder agency which is itself registered on the Ofsted Early Years Register;
<b>“Commencement Date”</b>	means 1 January 2024 or the latest date of signature to this Agreement by the Parties whichever is the later;
<b>“Confidential Information”</b>	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and shall for the avoidance of doubt include, but not be limited to, information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all Personal Data and Sensitive Personal Data;
<b>“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”</b>	take the meaning given in the UK GDPR;
<b>“Criminal Behaviour Order” (“CBO”)</b>	means an order as defined in the Anti-social Behaviour, Crime and Policing Act 2014;
<b>“Data Loss Event”</b>	Means any event that results, or may result, in unauthorised access to Personal Data held by the Local Authority under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
<b>“Data Processing Schedule”</b>	means the ‘Schedule of Processing, Personal Data and Data Subjects’ as set out schedule 2 of this Agreement;
<b>“Data Protection Legislation”</b>	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

<b>“Data Subject Access Request”</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>“Directory Conditions”</b>	means the conditions the Provider shall comply with in order to be appointed to and remain on the Directory of Providers and as more particularly described at Schedule 1, paragraph 1.10
<b>“Directory of Providers”</b>	means a list of Providers contracted with the Local Authority to deliver the Services;
<b>“Disclosure and Barring Scheme”</b>	means the disclosure and barring scheme operated by the Disclosure and Barring Service;
<b>“Disclosure and Barring Service”</b>	means the non-departmental public body established pursuant to the Protection of Freedoms Act 2012;
<b>“DPA 2018”</b>	means the Data Protection Act 2018;
<b>“Early Years Provider”</b>	means a provider of early years and childcare, other than a Childminder or Agency Childminder, who is registered on the Ofsted Early Years Register;
<b>“Eligibility Requirements”</b>	means the requirement that the Provider meets and complies with the Directory Conditions and is either <ul style="list-style-type: none"> <li>a) an Early Years Provider; or</li> <li>b) a Childminder; or</li> <li>c) an Agency Childminder.</li> </ul>
<b>“Eligible”</b>	means that the Provider meets the Eligibility Requirements to be on the Directory of Providers;
<b>“Eligible Child”</b>	Means a child who meets the description of a qualifying child set out in Section 1(2) of the Childcare Act 2016 and Section 7 of Childcare Act 2006;
<b>“EIR”</b>	means 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;
<b>“EYFS Statutory Framework”</b>	means the Statutory Framework for the early years’ foundation stage setting the standards for learning, development and care for children from birth to five, first published by the Department for Education on the 06 March 2017 last updated January 2024 as amended updated or superseded from time to time;
<b>“FOIA”</b>	means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

<b>“Force Majeure Event”</b>	means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, being acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider;
<b>“Funding”</b>	means the funding payable by the Local Authority to the Provider under the terms of this Agreement and more particularly as described in Schedule 1 (Service Specification);
<b>GDPR</b>	means the UK General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> );
<b>“Good Industry Practice”</b>	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Provider) under the same or similar circumstances;
<b>“Intellectual Property Rights”</b>	means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information, the right to sue for passing off, and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Provider for the purposes of providing the Services and/or otherwise for the purposes of this Agreement;
<b>“Law”</b>	means any applicable law, Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, rule of Court or directives or requirements of any competent council, delegated or subordinate legislation with which the Provider or Local Authority is bound to comply;
<b>“LED”</b>	means the Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> );
<b>“Local Authority Personnel”</b>	means all employees, agents or otherwise of the Local Authority who will be involved in the processing of Personal Data under this Agreement at any time;
<b>“Losses”</b>	means all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses;
<b>“Ofsted”</b>	means the Office for Standards in Education, Children’s Services and Skills (or such successor or replacement body or department, or in the absence of such body or department, such other body or department as the Parties may agree most closely resembles Ofsted);



<b>“Ofsted Early Years Register”</b>	means the register held by Ofsted detailing those providers who are registered by Ofsted to deliver early years provision to children in line with the EYFS Statutory Framework;
<b>“Parent”</b>	means the person with responsibility for the Child and includes a parent, guardian, carer or person with whom the child normally resides;
<b>“Prohibited Act”</b>	<p>(a) means offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation the obtaining of execution of the agreement or any other contract with the Local Authority</p> <p>(b) showing, or forbearing to show, favour or disfavour to any person in relation to any person in relation to this Local Authority or any other agreement with the Local Authority or if any like acts shall have been done by any person employed by the Provider, or acting on the Provider’s behalf (whether with or without the knowledge of the Provider)</p> <p>(c) in relation to any contract with the Local Authority the Provider, or any person employed by the Provider, or acting on the Providers behalf commits any offence under the Bribery Act 2010 or any amendment to it</p> <p>(d) gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972</p> <p>(e) paying commission or agreeing to pay any commission to any employee or representative of the Local, or any employee or representative of the Provider doing the same</p> <p>(f) offering, giving or agreeing to give to any employee, office or member of the Local Authority any gift or consideration of any kind as an inducement or reward:</p> <p>(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Local Authority; or</p> <p>(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Local Authority</p> <p>(g) entering into this Agreement or any other contract with the Local Authority in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council</p>

	<p>(h) committing any offence:</p> <p>(i) under Law creating offences in respect of fraudulent acts; or</p> <p>(ii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or</p> <p>defrauding or attempting to defraud or conspiring to defraud the Council;</p>
<b>“Protective Measures”</b>	means appropriate technical and organisational 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 the such measures adopted by it;
<b>“Provider Agreement”</b>	The contract between the Local Authority and the Early Years’ Provider for the delivery of the Early Years’ funded places
<b>“Provider Personnel”</b>	means all employees, volunteers, workers, staff, agents and consultants of the Provider engaged in the provision of the Services at any time;
<b>“Regulated Activity”</b>	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;
<b>“Regulated Activity Provider”</b>	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006;
<b>“Relevant Requirements”</b>	means 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;
<b>“Request for Information”</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR;
<b>“Services”</b>	means the provision of early years entitlement places to eligible children delivered by the Provider under this Agreement and more particularly described in Schedule 1 (Service Specification);
<b>“Service Specification”</b>	means the specification for the Services in Schedule 1;
<b>“Service Suspension”</b>	means a suspension to the Services which is not a force majeure nor a material breach as defined in clause 14.2;
<b>“Setting”</b>	means the Providers premises where the Services are to be performed;

<b>“Statutory Guidance”</b>	means the guidance published by the Department for Education entitled Early Education and Childcare Statutory Guidance for Local Authorities April 2024 as updated, amended or superseded from time to time.
<b>“Sub-processor”</b>	means any third Party appointed to process Personal Data on behalf of the Local Authority related to this Agreement.
<b>“Term”</b>	means as described in clause 2.1;
<b>“Working Day”</b>	means a day other than a Saturday, Sunday or public holiday in England;

In this Agreement, unless the context otherwise requires:

- 1.2. headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Agreement
- 1.3. all references to clauses and Schedules are references to the clauses of and the Schedules to this Agreement unless otherwise stated
- 1.4. the Schedules form part of this Agreement
- 1.5. all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, documents or other instrument as amended, supplemented, substituted, novated or assigned from time to time
- 1.6. all references to any statutory provision including any statutory guidance shall include references to any statute or statutory provisions which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision
- 1.7. words importing the singular include the plural and vice versa
- 1.8. words importing a gender include all genders
- 1.9. "person" includes an individual, partnership, firm, trust, body corporate, government, governmental body, Council, agency or unincorporated body of persons or association
- 1.10. the words "include" and "including" are to be construed without limitation and the rule of construction known as ejusdem generis shall not apply to this Agreement
- 1.11. any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done
- 1.12. any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done
- 1.13. subject to any express provisions of this Agreement to the contrary, the obligations of any Party are to be performed at that Party's own expense
- 1.14. in the event of, and only to the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any other terms and conditions, such conflict or inconsistency shall be resolved in accordance with the following documents:
  - 1.14.1. the clauses of this Agreement
  - 1.14.2. the Service Specification
  - 1.14.3. the Statutory Guidance
  - 1.14.4. the EYFS Statutory Framework; and
  - 1.14.5. the other documents referred to in this Agreement.

## 2. DURATION OF THE AGREEMENT

- 2.1. This Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Agreement shall remain in force until 31 December 2024 (the “**Term**”) whereupon this Agreement shall automatically terminate unless an extension is granted.

## 3. PROVISION OF THE SERVICES

- 3.1. The Provider shall provide the Services during the Term subject to, and in accordance with the terms of this Agreement, including, without limitation, the provisions of the Service Specification and the Statutory Guidance.
- 3.2. Without prejudice to the provisions of the Service Specification and the rest of this Agreement, the Provider shall provide the Services with effect from the Commencement Date.

## 4. STANDARD OF PERFORMANCE

- 4.1. Without prejudice to the generality of clause 4.3 the Provider will at all times ensure that the Services comply with and meet all the requirements of this Agreement, the Service Specification, the Statutory Guidance, the EYFS Statutory Framework and all applicable Local Authority Policies and Law with effect from the Commencement Date.
- 4.2. The Provider shall ensure that at all times the Services are performed by appropriately qualified and trained personnel.
- 4.3. The Provider shall at all times in connection with this Agreement act in:
- 4.3.1. good faith in the best interests of the Local Authority
  - 4.3.2. accordance with Good Industry Practice
  - 4.3.3. accordance with all relevant Law.
- 4.4. The Provider warrants that it is Eligible to be included on the Directory of Providers.
- 4.5. In the event that the Provider ceases to be Eligible, the Provider shall immediately notify the Local Authority and the Local Authority shall have the right to suspend the Provider from the Directory of Providers in accordance with clause 17 and may terminate this Agreement in accordance with clause 14.
- 4.6. Subject to clause 4.8 and unless otherwise permitted by the Local Authority, the Provider shall only deliver the Services:
- 4.6.1. in respect of Children eligible for the two-year-old assessment-based funding
    - (a) where the Provider is an Early Years Provider or a Childminder and is awarded a grade of ‘good’ or higher by Ofsted; or
    - (b) where the Provider registered with a Childminder Agency and the Childminder Agency is judged ‘effective’ by Ofsted,

in the most recent early years provision inspection report published by Ofsted in respect of the Provider/Childminder Agency.
  - 4.6.2. in respect of Children eligible for the universal or working parent entitlements
    - (a) where the Provider is an Early Years Provider or a Childminder and is awarded a grade of ‘requires improvement’ or higher by Ofsted; or

(b) where the Provider is registered with a Childminder Agency and the Childminder Agency is judged 'effective' by Ofsted,

in the most recent early years provision inspection report published by Ofsted in respect of the Provider/Childminder Agency.

4.7. Notwithstanding clause 4.6 where the Provider is an Early Years Provider, Childminder or Agency Childminder who only provides early years childcare exclusively for children at the beginning or end of the school day or in school holiday periods the Provider shall only deliver the Services where the Provider or Childminder Agency as applicable is awarded a grade of 'Met' by Ofsted in the most recent early years provision inspection report published by Ofsted in respect of the Provider or Childminder Agency as applicable.

4.8. Where:

4.8.1. the Provider is an Early Years Provider or a Childminder and is newly registered with Ofsted; or

4.8.2. the Provider is an Agency Childminder and the Childminder Agency and is newly registered with Ofsted,

the Provider shall only deliver the Services in respect of children under statutory school age until the first full Ofsted inspection judgement is published of the Provider or the Childminder Agency as applicable.

4.9. The Provider shall immediately notify the Local Authority if there is any change to the grade awarded by Ofsted to the Provider during the Term.

4.10. In the event that the Providers grade is lower than the grade or grades required under clause 4.6 or 7, the Local Authority shall have the right to terminate this Agreement in accordance with clause 14.

4.11. If during the Term, national registration bodies or requirements change, the Provider is required to ensure compliance with the new standards and respond to changes in any related legislation.

## 5. FUNDING

5.1. In consideration of the Provider's performance of its obligations under this Agreement, the Local Authority shall pay the Provider the Early Years' Entitlement Funding in accordance with the terms of this Agreement.

5.2. The Early Years' Entitlement Funding shall be paid by the Local Authority in accordance with Schedule 1.

5.3. Without prejudice to the Local Authority's other rights and remedies, the Local Authority may, at its absolute discretion, withhold, suspend, withdraw and/or require repayment of all or part of the Early Years' Entitlement Funding:

5.3.1. if the Early Years' Entitlement Funding is no longer available for any reason

5.3.2. if the Provider fails to grant to the Local Authority a right of reasonable access to the setting as and when reasonably required

5.3.3. and undertake a rolling programme of checks to verify the headcount data provided if the Provider has over-claimed Funding from the Local Authority, and fails to remedy the breach within 10 working days of receipt of written notice by the Local Authority

5.3.4. if the Provider fails to submit the claim forms or monitoring information as required by the Local Authority by the date specified by the Local Authority

- 5.3.5. if there are any outstanding payments owed to the Local Authority by the Provider under this Agreement or any other agreement including but not limited to payments in respect of rent and the Provider fails to make payment of the same within 10 working days of written notice by the Local Authority
  - 5.3.6. if the Provider is in breach of any statutory requirement, including but not limited to any breach of the Statutory Guidance, the EYFS Statutory Framework or any other applicable Law
  - 5.3.7. relating to any period of Service Suspension
  - 5.3.8. relating to any period during which the Provider was not Eligible
  - 5.3.9. relating to any period during which the Provider was in breach of the Directory Conditions
  - 5.3.10. relating to any period during which the Provider was suspended from the Early Years Register by Ofsted.
  - 5.3.11 For any reason as expressly set out in Schedule 1 of this Agreement.
- 5.4. If the Local Authority makes an overpayment of funding to the Provider for whatever reason including as a result of an administrative error or otherwise the Provider shall promptly repay such overpayment to the Local Authority upon request.
- 5.5. The Provider is wholly responsible for the accuracy of all claims submitted to the Local Authority for funding and the Local Authority accepts no liability in respect of any Losses incurred by the Provider as result of any failure by the Provider to submit a claim either accurately or at all.
- 5.6. The Local Authority is permitted by DfE to charge providers financial penalties when providing late or incomplete information. However, the Local Authority shall not charge providers disproportionate penalties for providing late or incomplete information leading to additional administration in the processing of funded entitlements. Any charges should be reasonable and proportionate to the inconvenience or costs incurred to the Local Authority as a result of the lateness and local authorities will ensure charges are clearly communicated to providers. The Local Authority shall notify Providers in writing in advance of any charges it proposes to implement for the late or incomplete submission of information.
- 5.7. The Provider shall make any payments due to the Local Authority promptly and without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

## **6. LIABILITY AND INDEMNITY**

- 6.1. Neither Party excludes or limits the liability to the other Party for:
- 6.1.1. death or personal injury caused by its negligence
  - 6.1.2. fraud or fraudulent misinterpretation; or
  - 6.1.3. any claims for which liability may not otherwise lawfully be limited or excluded.
- 6.2. Subject to clause 6.1, in no event shall either Party be liable to the other Party under contract, negligence or otherwise for any direct or indirect losses including:
- 6.2.1. loss of profits
  - 6.2.2. loss of sales
  - 6.2.3. loss of turnover
  - 6.2.4. loss of opportunity
  - 6.2.5. loss of anticipated savings; or
  - 6.2.6. loss of goodwill,
- even if the loss was reasonably foreseeable, or either Party has been advised of the possibility of such damages.

- 6.3. Neither Party shall be liable for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the other Party.
- 6.4. Subject to clauses 6.1, 6.2, 6.3 and 11.19 the Provider shall indemnify and keep indemnified the Local Authority against all claims, proceedings, actions, damages, costs, expenses and all other liabilities which may arise out of, or in consequence of, the supply or delivery, or the late or purported supply or delivery, of the Services or the performance or non-performance by the Provider of its obligations under this Agreement, including in respect of any death or personal injury, loss of or damage to property, or any other loss which is caused directly or indirectly by any act, omission or negligence of the Provider or its employees or agents.
- 6.5. Subject to clauses 6.1, 6.2, 6.3 and 11.19 the Local Authority's total aggregate liability, in addition to its obligation to pay the Funding as and when payment of the Funding shall fall due, shall be limited to one hundred per cent (100%) of the aggregate annual Funding paid, due or which would have been payable under this Agreement in the twelve (12) month period immediately preceding the event giving rise to liability (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months.

## **7. INSURANCE**

- 7.1. The Provider shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adequate to cover its liability under this Agreement, and any other insurances required to comply with the Law for the duration of the Term. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 7.2. The insurances referred to in clause 7.1 shall include but not be limited to the following, in each case for any one occurrence or services of occurrences arising out of one event:
- 7.2.1. Public Liability Insurance to the minimum value of £10,000,000 (ten million);  
and
- 7.2.2. Employers Liability Insurance to the minimum value of £10,000,000 (ten million)
- 7.3. In addition, it is recommended by the Local Authority that the Provider purchases theft by employee cover to the value of £25,000 (twenty-five thousand) per annum.
- 7.4. The Provider shall provide to the Local Authority on request, copies of all insurance policies referred to in this clause 7 or a brokers verification of insurance to demonstrate the appropriate cover is in place, together with receipts or other evidence of payment or the latest premiums due under those policies.
- 7.5. The Provider shall not take any action or fail to take any reasonable action, or permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy referred to in clause 7.1.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1. All Intellectual Property Rights:
- 8.1.1. owned by the Local Authority before the Commencement Date or developed by the Local Authority during the Term shall remain the property of the Local Authority
- 8.1.2. owned by the Provider before the Commencement Date shall remain the property of the Provider; and



- 8.1.3. developed or created by the Provider during the Term that relate to the Services shall belong to the Provider.
- 8.2. Where the Local Authority has provided the Provider with any of its Intellectual Property Rights for use in connection with the Services (including without limitation its name and logo) the Provider shall cease to use such Intellectual Property Rights immediately upon termination of this Agreement and shall either return or destroy such Intellectual Property Rights as requested by the Local Authority.

## 9. CONFIDENTIALITY

- 9.1. In respect of any Confidential Information it may receive from the other Party (“the Discloser”) or which has come to either Party’s knowledge in the course of providing the Services and subject always to the remainder of this clause 9, each Party undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party save for the proper performance of this Agreement or with the Discloser’s prior written consent.
- 9.2. Where disclosure is made by the Provider to any employee, consultant, adviser or agent, it shall be made subject to obligations equivalent to those set out in this Agreement. The Provider shall procure that any such employee, consultant, adviser or agent complies with all those obligations. The Provider shall be responsible to the Local Authority in respect of any disclosure or use of any Confidential Information by a person to whom disclosure is made.
- 9.3. The provisions of clause 9.1 shall not apply to any Confidential Information which:
  - 9.3.1. is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Provider
  - 9.3.2. is obtained by a third party who is lawfully authorised to disclose such information
  - 9.3.3. is authorised for release by the prior written consent of the Discloser
  - 9.3.4. the disclosure of which is required to ensure the compliance of the Local Authority with the Freedom of Information Act 2000 (the “FOIA”) the Environmental Information Regulations 2004 (the “EIR”) or the Local Government Transparency Code 2015; and
  - 9.3.5. the Local Authority may, at its sole discretion, elect to publish this Agreement (including any variations to this Agreement) in its entirety.
- 9.4. Nothing in this clause 9 shall prevent the Provider from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, provided that the information is subject to confidentiality undertakings equivalent to those set out in clause 9.1, to its professional advisors or insurers.

## **10. FREEDOM OF INFORMATION**

- 10.1. The Provider acknowledges that the Local Authority is subject to the requirements of the Code of Practice on Government Information, FOIA and the EIR and shall assist and co-operate with the Local Authority to enable the Local Authority to comply with its information disclosure obligations.
- 10.2. The Provider shall:
  - 10.2.1. transfer to the Local Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) working days of receiving a Request for Information
  - 10.2.2. provide the Local Authority with a copy of all Information in its possession or power (being information held by the Provider on behalf of the Local Authority) in the form that the Local Authority requires within five (5) working days of the Local Authority's request (or such other period as the Local Authority may specify); and
  - 10.2.3. provide all necessary assistance as reasonably requested by the Local Authority to enable the Local Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.
- 10.3. The Local Authority shall be responsible for determining at its absolute discretion whether the Information:
  - 10.3.1. is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or
  - 10.3.2. is to be disclosed in response to a Request for Information.
- 10.4. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Local Authority.
- 10.5. The Provider acknowledges that the Local Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA, be obliged in certain circumstances and/or following consultation with the Provider to disclose information without consulting or obtaining consent from the Provider, or despite having taken the Providers views into account, provided that the Local Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate:
  - 10.5.1. to give the Provider advanced notice, or failing that
  - 10.5.2. to draw the disclosure to the Providers attention after any such disclosure.

## **11. DATA PROTECTION**

- 11.1. The Provider shall ensure that the Services comply with the requirements of the Data Protection Legislation governing the collection, store and/or use of Personal Data.
- 11.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Provider is the Controller and the Local Authority is the Processor. The only processing that the Local Authority is authorised to do is listed in the Data Processing Schedule by the Provider and may not be determined by the Local Authority.
- 11.3. The Provider shall comply at all times with all requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.

- 11.4. Whenever the Provider collects and shares Personal Data, it shall issue a Privacy Notice (“**PN**”) to the Data Subject, stating what Personal Data is being shared, and for what purpose. Where the Data Subject is a Child, the PN **must** be issued to the Parent of the Child.
- 11.5. The Local Authority shall notify the Provider as soon as reasonably practicable if it considers that any of the Providers instructions infringe the Data Protection Legislation.
- 11.6. The Local Authority shall provide all reasonable assistance to the Provider in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Provider, include:
- 11.6.1. a systematic description of the envisaged processing operations and the purpose of the processing
  - 11.6.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services
  - 11.6.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 11.6.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 11.7. The Local Authority shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 11.7.1. process that Personal Data only in accordance with the Data Processing Schedule unless the Local Authority is required to do otherwise by Law. If it is so required, the Local Authority shall promptly notify the Provider before processing the Personal Data, unless prohibited by Law
  - 11.7.2. ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
    - (a) nature of the data to be protected
    - (b) harm that might result from a Data Loss Event
    - (c) state of technological development; and
    - (d) cost of implementing any measures
  - 11.7.3. ensure that:
    - (a) the Local Authority Personnel do not process Personal Data except in accordance with this Agreement (and in particular, the Data Processing Schedule)
    - (b) it takes all reasonable steps to ensure the reliability and integrity of any Local Authority Personnel who have access to the Personal Data and ensure that they:
      - i. are aware of and comply with the Local Authority’s duties under this clause
      - ii. are subject to appropriate confidentiality undertakings with the Local Authority or any Sub-Processor
      - iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Provider or as otherwise permitted by this Agreement; and
      - iv. have undergone adequate training in the use, care, protection and handling of Personal Data.
  - 11.7.4. not transfer Personal Data outside of the EU unless the prior written consent of the Provider has been obtained and the following conditions are fulfilled:
    - (a) the Local Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or Law Enforcement Directive Article 37) as determined by the Provider
    - (b) the Data Subject has enforceable rights and effective legal remedies
    - (c) the Local Authority complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal

- Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Provider in meeting its obligations); and
- (d) the Local Authority complies with any reasonable instructions notified to it in advance by the Provider with respect to the processing of the Personal Data.
- 11.7.5. at the written direction of the Provider, delete or return Personal Data (and any copies of it) to the Provider on termination of the Agreement unless the Local Authority is required by Law to retain the Personal Data.
- 11.8. Subject to clause 11.9, the Local Authority shall notify the Provider immediately if it:
- 11.8.1. receives a Data Subject Access Request (or purported Data Subject Access Request)
- 11.8.2. receives a request to rectify, block or erase any Personal Data
- 11.8.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation
- 11.8.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement
- 11.8.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 11.8.6. becomes aware of a Data Loss Event.
- 11.9. The Local Authority's obligation to notify under 11.8 shall include the provision of further information to the Provider in phases, as details become available.
- 11.10. Taking into account the nature of the processing, the Local Authority shall provide the Provider with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 11.8 (and insofar as possible within the timescales reasonably required by the Provider) including by promptly providing:
- 11.10.1. the Provider with full details and copies of the complaint, communication or request
- 11.10.2. such assistance as is reasonably requested by the Provider to enable the Provider to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation
- 11.10.3. the Provider, at its request, with any Personal Data it holds in relation to a Data Subject
- 11.10.4. assistance, as requested by the Provider, following any Data Loss Event
- 11.10.5. assistance, as requested by the Provider, with respect to any request from the Information Commissioner's Office, or any consultation by the Provider with the Information Commissioner's Office.
- 11.11. The Local Authority shall maintain complete accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Local Authority employs fewer than 250 staff, unless:
- 11.11.1. the Provider determines that the processing is not occasional
- 11.11.2. the Provider determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR, or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
- 11.11.3. the Provider determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 11.12. The Local Authority shall allow for audits of its Data Processing activity by the Provider or the Provider's designated auditor.
- 11.13. The Local Authority shall designate a data protection officer if required by the Data Protection Legislation.

- 11.14. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Local Authority **must**:
- 11.14.1. notify the Provider in writing of the intended Sub-Processor and processing
  - 11.14.2. obtain the written consent of the Provider
  - 11.14.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause, such that they apply to the Sub-processor; and
  - 11.14.4. provide the Provider with such information regarding the Sub-processor as the Provider may reasonably require.
- 11.15. The Local Authority shall remain fully liable for all acts or omissions of any Sub-processor.
- 11.16. Either Party may, at any time on not less than 30 Working Days' notice, with the consent of the other Party not to be unreasonably withheld or delayed, revise this clause 11 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 incorporated by attachment to this Agreement).
- 11.17. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Local Authority may, on not less than 30 Working Days' notice to the Provider, amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 11.18. The Provider shall indemnify the Local Authority against all Losses suffered or incurred by the Local Authority arising out of or in connection with the Provider's breach of its obligations under this clause 11, including without limitation, any third party demand, fines, penalties, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Provider, its employees, servants, agents or its sub-contractors.
- 11.19. The Local Authority's total aggregate liability arising under this Agreement in respect of any breach of this clause 11 shall be limited to £1,000,000 (one million pounds GBP). This limitation applies regardless of the form of action whether in contract or in tort, including without limitation negligence, or otherwise.

## 12. DISCLOSURE AND BARRING

- 12.1. The Provider shall procure that, in respect of all potential employees or persons performing any of the Services which for the avoidance of doubt shall include all committee members of the Provider (each a "Named Employee") or before a Named Employee begins to perform any of the Services:
- 12.1.1. each Named Employee is questioned as to whether he or she has any convictions
  - 12.1.2. the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in respect of each Named Employee
  - 12.1.3. to the extent permitted by Law a copy of the results of such checks as are referred to in clause 12.1.2 are notified to the Local Authority, upon request.
- 12.2. The Provider shall procure that no person who appears on a Barred List following the results of a Disclosure and Barring Service check shall be employed or engaged in the performance of the Service.
- 12.3. The Provider shall procure that no person who discloses any convictions or CBOs or who is found to have any convictions or CBOs following the results of a Disclosure and

Barring Service check, is employed or engaged without the Local Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

- 12.4. In so far as permitted by law, the Provider shall procure that the Local Authority (Local Authority Designated Officer – LADO) is kept advised at all times of any Provider Personnel who, subsequent to his/her commencement of engagement pursuant to this Agreement:
- 12.4.1. receives a conviction or CBO which become known to the Provider or whose previous Convictions or CBO become known to the Provider; or
  - 12.4.2. in respect of whom information is referred to the Disclosure and Barring Service pursuant to the Disclosure and Barring Scheme; or
  - 12.4.3. who is placed on a Barred List pursuant to the Disclosure and Barring Scheme
- 12.5. In the event that any Provider Personnel is added to a Barred List, the Provider shall procure that such person is immediately removed from the Local Authority Premises and/or shall cease to be engaged in the performance of the Services.
- 12.6. The Provider shall ensure that all checks undertaken in accordance with clause 12.1 shall comply with all relevant policies and procedures of the Derbyshire Local Safeguarding Board.

### **13. SAFEGUARDING**

- 13.1. The Local Authority and the Provider acknowledge that this Agreement is for services which include the provision of a Regulated Activity within the meaning of the Safeguarding Vulnerable Groups Act 2006. The Provider is a Regulated Activity Provider with 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 Provider shall:
- 13.2.1. 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 or such other checks as may be required by Law from time to time
  - 13.2.2. regularly monitor the level and validity of the checks required under this clause 13 for each Provider Personnel
  - 13.2.3. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to users of the Service.
- 13.3. The Provider 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 Provider 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, as amended from time to time.
- 13.4. The Provider shall immediately provide the Local Authority with any information which it requests to enable it to be satisfied that the obligations of this clause 13 have been met.
- 13.5. The Provider shall immediately notify the Local Authority in writing in the event that it receives information about any person, or has a reasonable belief in relation to any person carrying out the Services that such person has harmed or poses a risk of harm to users of the Service and shall immediately suspend that person from carrying out their

duties in relation to this Agreement until the Local Authority has agreed (in its absolute discretion) that such person may return to their duties.

- 13.6. If the Local Authority is of the reasonable belief that a person engaged in carrying out Services to which this clause 13 applies has harmed or poses a risk of harm to users of the Service, it may demand that the Provider removes that person from the provision of Services under this Agreement at no cost to the Local Authority.
- 13.7. The Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service 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 the users of the Service.
- 13.8. The Local Authority shall have the right to withdraw funding and terminate this Agreement immediately following written notice if it becomes aware of a breach by the Provider of this clause 13.

## 14. TERMINATION

- 14.1. Without affecting any other right or remedy available to it, the Local Authority may terminate all or part of this Agreement with immediate effect by giving written notice to the Provider if:
- 14.1.1 the Provider commits a material or persistent breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 10 working days after being notified in writing to do so
- 14.1.2 the Provider repeatedly breaches 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
- 14.1.3 the Provider, or any of the Providers employees or agents (in all cases whether or not acting with the Providers knowledge):
- (a) directly or indirectly offers, promises or gives any person working for or engaged by the Local Authority a financial or other advantage to:
    - i. induce that person to perform improperly a relevant function or activity; or
    - ii. reward that person for improper performance of a relevant function or activity
  - (b) directly or indirectly requests, agrees 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) commits any offence:
    - i. under Section 117(2) of the Local Government Act 1972
    - ii. under the Bribery Act 2010
    - iii. under legislation creating offences concerning fraudulent acts
    - iv. at common law concerning fraudulent acts relating to this Agreement or any other contract with the Local Authority; or
    - v. to defraud, attempt to defraud or conspire to defraud the Local Authority.
- 14.1.4 the Provider 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 14.1.5 the Provider 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 other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or its solvent reconstruction
- 14.1.6 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 Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider
- 14.1.7 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 Provider (being a company)
- 14.1.8 a floating charge holder over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver
- 14.1.9 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider
- 14.1.10 the Provider (being an individual) is the subject of a bankruptcy petition or order
- 14.1.11 a creditor or encumbrancer of the Provider 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 its assets and such attachment or process is not discharged within 14 working days
- 14.1.12 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 14.1.3 to clause 14.1.12 (inclusive);
- 14.1.13 the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business
- 14.1.14 the Provider is a charity or organisation which is dissolved, wound up or is otherwise brought to an end
- 14.1.15 the Provider does not actively promote fundamental British values or if they promote views or theories as fact which are contrary to established scientific or historical evidence and explanations
- 14.1.16 the Provider is an Early Years Provider or Childminder and is awarded by Ofsted a grade:
- (a) lower than the grade required under clause 4.6.1(a),4.6.2(a) or 4.7; as applicable or
  - (b) of 'inadequate';
- 14.1.17 the Provider is an Agency Childminder and
- (a) the Childminder Agency is awarded by Ofsted a grade lower than the grade required under clause 4.6.1(b),4.6.2(b) or 4.7 as applicable; or
  - (b) the Childminder Agency is awarded by Ofsted a grade of 'not effective'; or
  - (c) the Childminder Agency has notified the Local Authority that the Services delivered by the Provider are not, in their reasonable opinion, of satisfactory quality
- 14.1.18 the Provider is in breach of any statutory requirement, including but not limited to any breach of the Statutory Guidance, the EYFS Statutory Framework or any other applicable Law
- 14.1.19 the Provider fails to make reasonable adjustments in line with the Equality Act 2020 to meet the needs of children with a disability
- 14.1.20 the Provider makes any verbal or written statement (including use of social media) about the Local Authority or any of its employees or agents which in the Local Authority's sole opinion is offensive, insulting, discourteous or otherwise.
- 14.2 For the purposes of clause 14.1.1 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from a substantial portion of this Agreement over the Term. In deciding whether any breach is material no regard



shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

## **15. VOLUNTARY TERMINATION**

- 15.1. Either Party may terminate this Agreement at any time by providing the other Party with one month's prior written notice, whereby this Agreement shall terminate upon the expiry of that notice with immediate effect.

## **16. CONSEQUENCES OF TERMINATION**

- 16.1. No Funding shall be paid to the Provider following expiry or termination of this Agreement.
- 16.2. In the event that this Agreement is terminated in accordance with clause 14.1 the Local Authority shall be entitled to recover from the Provider any Losses it suffers as a result of the circumstances giving rise to the Local Authority's ability to terminate this Agreement.
- 16.3. Subject to clause 16.1 in the event that this Agreement is terminated in accordance with clause 15, each Party shall bear its own costs and shall have no liability to the other Party.
- 16.4. The Provider shall immediately on termination or expiry (howsoever arising) of this Agreement provide the Local Authority with all assistance (including without limitation the provision of data not constituting Confidential Information of the Provider) reasonably required for the timely transfer of the Services to the Local Authority or to another Provider.
- 16.5. Within 10 working days of the termination or expiry (howsoever arising) of this Agreement, the Provider shall return to the Local Authority all software, manuals, information, data, drawings and other documents and materials provided to or prepared by the Provider in pursuance to this Agreement together with all Confidential Information and data received from the Local Authority, third party or other source in connection with this Agreement, and any Funding prepaid by the Local Authority in respect of services not provided by the Provider by the date of expiry or termination of this Agreement.
- 16.6. 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 date of termination or expiry.

## **17. SUSPENSION OF A PROVIDER FROM THE DIRECTORY OF PROVIDERS**

- 17.1. This clause 17 shall operate without prejudice to any rights that have accrued under this Agreement or any of the Local Authority's rights or remedies.
- 17.2. The Local Authority shall have the right to suspend the Provider from the Directory of Providers by immediate written notice in accordance with clause 17.3 in the event that:
- 17.2.1 the Provider ceases to be Eligible; and/or
  - 17.2.2 in the absolute discretion of the Local Authority the Provider has breached the Directory Conditions; and/or

- 17.2.3 the Provider fails to make payment of any monies due to the Local Authority under clause 5; and/or
- 17.2.4 the Provider:
  - (a) is an Early Years Provider who has been suspended from the Ofsted Early Years Register; or
  - (b) is a Childminder who has been suspended from the Ofsted Early Years Register; or
  - (c) is an Agency Childminder and the Childminder Agency has been suspended from the Ofsted Early Years Register
- 17.3. If the Local Authority suspends the Provider from the Directory of Providers under this clause 17 it shall serve written notice ('Suspension Notice') on the Provider setting out:
  - 17.3.1 that the Provider has been suspended from the Directory of Providers by the Local Authority
  - 17.3.2 the reasons for suspension; and
  - 17.3.3 where the breach is capable of rectification the timeframe for the breach to be rectified by the Provider.
- 17.4. Upon receipt of a Suspension Notice the Provider shall immediately take all remedial action necessary to rectify (where rectifiable) the breach giving rise to the Suspension Notice.
- 17.5. Should the Provider fail to rectify the breach within the timeframe determined by the Local Authority, the Local Authority reserves the right to remove the Provider from the Directory of Providers and terminate this Agreement upon giving five (5) working days' notice to the Provider.
- 17.6. Where the Local Authority provides notice to the Provider under clause 17.3 a Service Suspension shall take effect from the date of the notice and shall continue in force until it is lifted in accordance with clause 18.4.1 or until the Agreement is terminated in accordance with clause 17.5 or clause 18.5.1.
- 17.7. Where the Provider has been suspended from the Directory of Providers the Local Authority reserves the right to reinstate the Provider to the Directory of Providers if;
  - 17.7.1 in the Local Authority's sole discretion the grounds for suspension no longer apply; or
  - 17.7.2 the Provider has in the absolute discretion of the Local Authority remedied the breach which gave rise to a Suspension Notice.
- 17.8. In accordance with clause 5.3.7 the Local Authority may, at its absolute discretion, withhold, suspend, withdraw and/or require repayment of all or part of the Funding relating to any period of Service Suspension.

## **18. APPEAL AGAINST REMOVAL FROM DIRECTORY**

- 18.1. The Provider may appeal the Local Authority's decision to remove the Provider from the Directory of Providers under clause 17.5, by submitting an appeal ("**the Appeal**") to the Local Authority in accordance with clause 18.2.
- 18.2. The Appeal will only be valid if it is:
  - 18.2.1 in writing detailing the grounds for appeal and enclosing all supporting evidence
  - 18.2.2 submitted to the Local Authority and marked for the attention of the Principal Finance Officer (Early Years) and
  - 18.2.3 received by the Local Authority within ten (10) Working Days of the date of the notice issued by the Local Authority under clause 17.5.
- 18.3. Upon receipt of the Appeal the Local Authority shall:
  - 18.3.1 provide a written acknowledgement to the Provider within 5 Working Days

- 18.3.2 review the Appeal within 20 Working Days and
- 18.3.3 provide written notification of the outcome of the Appeal to the Provider within 30 Working Days.
  
- 18.4. If the Appeal is successful:
  - 18.4.1 the Local Authority shall immediately reinstate the Provider to the Directory of Providers; and
  - 18.4.2 the Service Suspension shall be lifted with immediate effect.
  
- 18.5. If the Appeal is unsuccessful:
  - 18.5.1 the Local Authority may remove the Provider from the Directory of Providers; and
  - 18.5.2 terminate this Agreement on immediate written notice to the Provider.
  
- 18.6. If the Provider is not satisfied with the outcome of the Appeal, the Provider shall be entitled to make a complaint in accordance with the Local Authority's complaints procedure.
  
- 18.7. For the avoidance of doubt, the Providers right of appeal under this clause 18 shall only apply to the Local Authority's decision to remove the Provider from the Directory of Providers and shall not apply to any decision of the Local Authority to suspend the Provider from the Directory of Providers.

## 19. COMPLAINTS PROCEDURE

- 19.1 The Local Authority shall supply to the Provider a poster which identifies to Parents/carers that the Services are funded by the Local Authority and the procedure for dealing with complaints. The Provider **must** display the poster within the setting at all times.
  
- 19.2 The Provider **must** ensure that:
  - 19.2.1 it implements and maintains a complaints procedure (the '**Complaints Procedure**') entitling a Parent to make a formal complaint about any aspect of the provision of the Service.
  - 19.2.2 the Complaints Procedure provides for the complaint to be properly investigated and for a written response to be received by the complainant within a timely manner
  - 19.2.3 Parents/carers are informed of their right to make a complaint and are provided with a copy of the Complaints Procedure
  - 19.2.4 Parents/carers are informed that they may also make a complaint directly to the Local Authority
  - 19.2.5 a written record is maintained of all complaints and concerns, including any complaints resolved directly by the Provider and that such records are made available to the Local Authority upon request.
  - 19.2.6 any unresolved complaints, are notified to the Local Authority within five (5) working days.
  
- 19.3 The Provider will co-operate with any investigation undertaken by the Local Authority in relation to any complaint made in relation to the Services.
  
- 19.4 The Provider's Complaints Procedure **must** be fully integrated with and compatible with the Local Authority's procedure for dealing with complaints which the Local Authority may at its absolute discretion amend from time to time.

- 19.5 The Provider shall provide to the Local Authority upon request, details of any complaint which has been made about the Service and the Provider's response to the complaint in question.
- 19.6 The Local Authority may use any information, statistics or records, relating to complaints made to the Local Authority under the Local Authority's complaints procedure, to assess the performance of the Provider and Providers compliance with this Agreement.
- 19.7 Should the Local Authority receive a complaint from a Parent about any aspect of the provision of the Services, the Parent will first be advised to talk to the Provider to see if the complaint can be resolved to the satisfaction of both the Parent and the Provider.
- 19.8 If, the complaint is not resolved under clause 19.7, the Local Authority shall request that the Parent makes the complaint in writing to:

[info.fis@derbyshire.gov.uk](mailto:info.fis@derbyshire.gov.uk)

and the complaint shall be dealt with in accordance with the Local Authority's procedure for dealing with complaints.

## **20. DISPUTE RESOLUTION**

- 20.1. Without prejudice to the appeals procedure set out in clause 18 in the event of any complaint or dispute arising between the Parties to this Agreement in relation to this Agreement, the matter should first be referred for resolution to the Local Authority and the authorised representative of the Provider or any other individual nominated by the Parties from time to time.
- 20.2. Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Local Authority and the authorised representative of the Provider or other nominated individual, as the case may be, either Party may refer the matter to the Assistant Director of Schools and Learning of the Local Authority and the authorised representative of the Provider with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Local Authority and the Provider.
- 20.3. In the absence of agreement under clause 20.2, the Parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both Parties). Unless otherwise agreed, the Parties shall bear the costs and expenses of the mediation equally.
- 20.4. Neither Party may initiate any legal action until the above process has been completed unless such Party has reasonable cause to do so to avoid damage to its business or to protect any right of action it may have.

## **21. FORCE MAJEURE**

- 21.1. If any Force-Majeure Event occurs in relation to either Party which affects or may affect the performance of any of its obligations under this Agreement, it shall forthwith notify the other Party as to the nature and extent of the circumstances in question.
- 21.2. Neither Party shall be deemed to be in breach of this Agreement or shall otherwise be liable to the other by reason of any delay in the performance or non-performance of any of its obligation under this Agreement, to the extent that the delay or non-performance, is

due to any Force Majeure Event of which it has notified the other Party, and the time for performance of that obligation shall be extended accordingly.

- 21.3. If the performance by either Party of any of its obligations under this Agreement is prevented or delayed by a Force Majeure Event for a continuous period in excess of seven days, the parties shall enter into discussions with a view to agreeing upon such alternative arrangements as may be fair and reasonable.
- 21.4. If either Party is prevented from performance of its obligations for a continuous period in excess of fourteen days, the other party may give written notice on the Party so prevented to immediately terminate this Agreement.

## **22. NOTICES**

- 22.1. All notices and other communications required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by hand (or by courier) or sent by prepaid first-class post to the address of the other Party set out in this Agreement or such other address as may have been otherwise notified in writing.
- 22.2. If delivered by hand (or by courier), all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and, if mailed, all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

## **23. MEETINGS**

- 23.1. The Provider shall attend review meetings either face to face, via Microsoft Teams or by telephone conference, at such frequency as may be required by the Local Authority where the Parties shall discuss the provision of the Service, the operation of this Agreement, and in particular, the ongoing relationship between the Parties.

## **24. ASSIGNMENT AND SUB-CONTRACTING**

- 24.1. The Provider shall not assign, novate, sub-contract or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Local Authority. In any event, the Provider will remain liable for all the acts and defaults of its sub-contractor or any transferee as if the Provider had itself carried out such acts and defaults.

## **25. STATUTORY REQUIREMENTS**

- 25.1. The Provider shall comply with all statutes, laws, orders, regulations and by-laws having the force of law and being applicable to the performance of this Agreement and the Provider shall be responsible for obtaining all licences, consents or permits required for the performance of this Agreement.
- 25.2. Without prejudice to clause 25.1 the Provider shall at all times comply with and meet all the requirements of the Equality Act 2010, the National Minimum Wage Regulations 2015 and the National Minimum Wage (Amendment) Regulations 2022.
- 25.3. The Provider shall indemnify and hold harmless the Local Authority from and against all Losses as a result of the Provider's non-compliance with its obligations set out in this clause 25.

## 26. BRIBERY AND CORRUPTION

- 26.1. The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider Personnel, have at any time prior to the Commencement Date:
- 26.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
  - 26.1.2. 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.
- 26.2. The Provider shall not during the term of this Agreement:
- 26.2.1. commit a Prohibited Act; and/or
  - 26.2.2. do or suffer anything to be done which would cause the Local Authority or any of the Local Authority's employees, consultants, Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 26.3. The Provider shall during the term of this Agreement:
- 26.3.1. establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - 26.3.2. keep appropriate records of its compliance with its obligations under clause 26.3.1 and make such records available to the Local Authority on request.
- 26.4. The Provider shall immediately notify the Local Authority in writing if it becomes aware of any breach of clause 26.1 and/or 26.2, or has reason to believe that it has or any of the Provider Personnel have:
- 26.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act
  - 26.4.2. 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; and/or
  - 26.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 26.5. If the Provider makes a notification to the Local Authority pursuant to clause 26.4 the Provider shall respond promptly to the Local Authority's enquiries, co-operate with any investigation, and allow the Local Authority to Audit any books, Records and/or any other relevant documentation in accordance with clause 27(Audit).
- 26.6. If the Provider is in default under clauses 26.3.1 and/or 26.2, the Local Authority may by notice:
- 26.6.1 require the Provider to remove from performance of this Agreement any Provider Personnel whose acts or omissions have caused the default; or
  - 26.6.2 immediately terminate this Agreement.
- 26.7. Any notice served by the Local Authority under clause 26.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Local Authority believes has committed the Prohibited Act and the action that the Local Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

## **27. AUDIT**

- 27.1. The Local Authority shall be entitled to carry out audits to determine whether the Provider is adhering to the terms and conditions laid out under this Agreement. For this purpose, the Provider grants to the Local Authority, its statutory auditors or any authorised agents of the Local Authority, a right of reasonable access to any premises of the Provider which are used in connection with the performance of the Provider's responsibilities and obligations under this Agreement. Such access shall include a right to access to all computer systems, personnel and financial records, minute books and any other relevant evidence (including obtaining relevant copies).
- 27.2. The Provider shall afford the Local Authority, its auditors or agents all co-operation and assistance reasonably required for the purposes of carrying out an audit of the Provider's compliance with this Agreement.

## **28. RIGHT OF SET-OFF**

- 28.1. The Local Authority may retain or set off any amount owed to it by the Provider against any amount due to the Provider under this Agreement or under any other agreement between the Provider and the Local Authority.

## **29. EQUALITY ACT**

- 29.1. The Provider shall observe and comply with the Local Authority's policies on equalities and human rights as amended from time to time.

## **30. THIRD PARTY RIGHTS**

- 30.1. The Parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contract (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

## **31. WAIVER**

- 31.1. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **32. REMEDIES**

- 32.1. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **33. VARIATION**

- 33.1. Subject to clause 33.2 no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 33.2. The Local Authority reserves the right to unilaterally vary this Agreement from time to time by notice in writing to the Provider to comply with any changes in the Law and/or the Statutory Guidance.

### **34. ENTIRE AGREEMENT**

- 34.1. This Agreement and any documents referred to in it, including but not limited to the Schedules to this Agreement, the Statutory Guidance and the EYFS Statutory Framework constitute the whole agreement between the Parties and supersedes, cancels and nullifies any previous arrangement, understanding or agreement between the Parties relating to the subject matter of this Agreement notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 34.2. Each Party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (“**Representation**”) of any person (whether a Party to this Agreement or not) other than as expressly set out in this Agreement or those documents.
- 34.3. Each Party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.

### **35. SEVERANCE**

- 35.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 35.2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

### **36. COUNTERPARTS**

- 36.1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

### **37. GOVERNING LAW AND JURISDICTION**

- 37.1. 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.



# SCHEDULE 1 – SERVICE SPECIFICATION

## 1. OVERVIEW

1.1 For the purposes of this Service Specification ‘Provider’ shall take the meaning given in the Early Education and Childcare, Statutory Guidance for Local Authorities April 2023 as updated, amended, or superseded from time to time as follows:

- An early years’ provider other than a childminder registered on the Ofsted Early Years Register
- A childminder registered on the Ofsted Early Years Register
- A childminder registered with a childminder agency which is registered with Ofsted; or
- Schools taking children aged two and over which are exempt from registration with Ofsted as an early years provider.

1.2 This Service Specification sets out the obligations with which early years’ providers are required to comply within the delivery of the universal and extended entitlements for children under statutory school age. Early years’ providers **must** adhere to the Provider Agreement for all the funded hours they provide.

1.3 The local authority cannot impose requirements which subject the early years provision, or services provided by the childminder agency, to a quality assessment process by the local authority, or require the early years’ provider to attend any training or other quality improvement programme, other than any training or quality improvement programme identified as necessary in an early years’ provision inspection report where a provider has been judged less than good by Ofsted.

1.4 This Provider Agreement builds on the guidance in the Early Education and Childcare, Statutory Guidance for Local Authorities (April 2023); the Model Agreement: Early Years Provision Free of Charge and Free Childcare and Early Years Entitlements: Operational Guidance for Local Authorities and Providers and is underpinned by the following frameworks and legislation:

- [Early Education and Childcare, Statutory Guidance for Local Authorities \(GOV.UK\)](#)
- [Childcare Act 2006](#) (Legislation.gov.uk)
- [Childcare Act 2016](#) (Legislation.gov.uk)
- [Equality Act 2010](#) (Legislation.gov.uk)
- [School Admissions Code 2021](#) (GOV.UK)
- [Statutory Framework for the Early Years Foundation Stage January 2024 \(GOV.UK\)](#)
- [The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) Regulations 2014](#) (Legislation.gov.uk)

- The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2022: [The Childcare \(Free of charge for Working Parents\) \(England\) Regulations 2022](#) (Legislation.gov.uk)
- [Special Educational Needs and Disabilities Code of Practice 0 to 25 years](#) (GOV.UK)
- [UK General Data Protection Regulations - Data Protection Act 2018](#) (Legislation.gov.uk)

[Early education and childcare - GOV.UK](#)

[Free early years provision and childcare: model agreement - GOV.UK](#)

[Local Authority and Early Years Provider Guide - GOV.UK](#)

## DERBYSHIRE COUNTY COUNCIL DIRECTORY OF PROVIDERS

**1.5** The local authority will fund maintained schools, academies, and early years' providers in the Private, Voluntary, and Independent sectors to deliver the early years entitlement funding based on the Ofsted judgement of the early years' provider or the childminder agency. Consideration will be given to historical information published by Ofsted about an early years' provider or childminder agency. This may include, for example, where the local authority has concerns that a provider judged "inadequate" by Ofsted or an equivalent judgement made by the childminder agency, may have re-registered their setting to avoid making the quality improvements identified by Ofsted or the childminder agency.

**1.6** The local authority will not fund the early years' provider should any third party connected with the provider, (including, for the avoidance of doubt, relating to its Ofsted registration) owe any monies to the local authority. In such circumstances, the funding may be withheld, withdrawn, suspended, or shall be repaid in accordance with clause 5.3.

**1.7** The local authority will not fund childminders registered with a childminder agency, where the agency has indicated that the childminder is not of the appropriate quality.

**1.8** Childminders who cancel their membership with a childminder agency **must** register either with another Ofsted registered childminder agency or Ofsted to be included on the Directory of Providers as an individual childminder to deliver the early years entitlement funding.

**1.9** All childminders contracted with the local authority, whether registered with Ofsted or registered with a childminder agency to deliver the early entitlement funding, **must** have a separate bank account from their personal account for their childminding business. Please note, this does not need to be a business account.

**1.10** To claim the early years entitlement funding from the local authority, Providers **must** be registered with Derbyshire County Council on its Directory of Providers. Providers will not receive payments of funding for any periods that are not included on the Directory. To be entered on to the Directory, providers **must**:

- Maintain an up-to-date registration with Ofsted (except for local authority, maintained schools) or with an Ofsted registered childminder agency.

- Run a setting in Derbyshire.
- Agree to and fully comply with the conditions of funding set out in the Provider Agreement for the periods during which the early years entitlements are claimed.
- Submit requested documents for a Provider Agreement to be issued.
- Maintain an up to date and 'active' status with Companies House or the Charity Commission if registered with either organisation and / or be registered with Her Majesty's Revenue and Customs (HMRC).
- Declare to the local authority the name of any person connected with the early years' provider that has been declared bankrupt, insolvent or had a County Court Judgement made against them (within the previous six years). In such circumstances, the funding may be withheld, withdrawn, suspended, or shall be repaid in accordance with clause 5.3.
- Display the setting's Ofsted or childminder agency registration certificate on the premises where the early years entitlement places are provided (except for independent, academy and maintained schools).
- Notify Ofsted and the local authority of changes to the owner(s), registered person, directors, trustees, or committee members.
- Notify Ofsted and the local authority of any amendments to the setting's details including change of name (including surname for childminders), address, legal status, sale of business, expansion of provision, contact details etc., as a new Provider Agreement will need to be issued.

**1.11** The local authority reserves to itself the right to undertake credit checks on any person connected with the early years' provider to verify the information supplied.

## **2. PROVIDER AGREEMENT REQUIREMENTS**

### **KEY LOCAL AUTHORITY RESPONSIBILITIES**

#### **The local authority:**

**2.1** Should secure an early years' entitlement place for every eligible child in the County.

[Early years and childcare - Derbyshire County Council](#)

**2.2** Will work in partnership with early years' providers to agree how to deliver early years entitlement places.

**2.3** Will be clear about its role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as their expectations of early years' providers.

[Local Offer Derbyshire](#)

[Special Educational Needs and Disability – Derbyshire SchoolsNet](#)

**2.4** Will contribute to the safeguarding of and promote the welfare of children and young people in the County.

[Derby and Derbyshire Safeguarding Children Partnership](#)

**2.5** Will withhold early years' providers' information from publication, for example, where the early years' provider has notified the local authority that they do not want certain information to be disclosed, such as their address.

**2.6** Will support early years' providers in Derbyshire to meet the needs of Derbyshire Children in Care. A child living in Derbyshire, however, may not be in the care of Derbyshire County Council.

[Children in Care – Derbyshire SchoolsNet](#)

## KEY PROVIDER RESPONSIBILITIES

### The early years' provider:

**2.7 Must** comply with all relevant legislation and insurance requirements.

**Please refer to:** Provider Agreement, clause 4 Standard of Performance, clause 7 Insurance and clause 25 Statutory Requirements.

**2.8** Should deliver the early years entitlement places consistently to all parents/carers, whether in receipt of universal or extended entitlement hours and regardless of whether they pay for optional services or consumables.

**2.9 Must** communicate to parents/carers, details of the days and times they offer funded places, along with their services and charges. If funded only places are limited, criteria for the allocation of places should be fair and transparent. Children accessing the early years entitlement should receive the same quality and access to provision as fee paying children.

**2.10 Must** have arrangements in place to support children with special educational needs and/or disabilities (SEND). These arrangements should include a clear approach to identifying and responding to SEND. Providers should utilise the Early Years SEN inclusion fund, EYSEN Specialist teacher support if appropriate and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents/carers.

**2.11 Must** provide information for parents/carers on how they support children with SEN and disabilities and should regularly review and evaluate the quality and breadth of the support they offer or can access for children with SEN or disabilities.

**2.12 Must** co-operate with the local authority in reviewing the provision that is available locally and in developing the Local Offer (see Chapter 4 SEND Code of Practice). Early years' providers should work in partnership with other local education providers to explore how different types of need can be met most effectively.

[Special Educational Needs and Disability – Derbyshire SchoolsNet](#)

[SEND code of practice: 0 to 25 years – GOV.UK](#)

**2.13 Must** issue a Privacy Notice in compliance with the Data Protection Legislation to all parents/carers in relation to how they share children's details. A template which providers can adapt to create their own policy is attached to this document as Appendix (i).

**2.14 Must** update termly that the details held on the Families Information Service (FIS) are current and updated where required.

**Please refer to:** The Statutory Guidance for Local Authorities

**2.15 Must** seek the approval of Ofsted when taking children's details off-site and should retain the email as evidence for their Ofsted inspection.

### 3. SAFEGUARDING

**3.1** The local authority has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. The local authority has several statutory functions under the 1989 and 2004 Children Acts which make this clear, and the 'Working Together to Safeguard Children' 2023 guidance sets these out in detail.

**3.2** Early years' providers **must** follow the Early Years Foundation Stage (EYFS) and have clear safeguarding policies and procedures in place that are in line with local guidance and procedures for responding to and reporting suspected or actual abuse and neglect. A lead practitioner **must** take responsibility for safeguarding and all staff **must** have training to identify signs of abuse and neglect. The early years' provider **must** have regard to '[Working Together to Safeguard Children' 2023 guidance](#).

[Derby and Derbyshire Safeguarding Children Partnership – online procedures](#)

[Early Years Quality Team - Safeguarding](#)

### 4. ELIGIBILITY

**4.1** Early years' providers should check documentation (eg passport, birth certificate, NHS Red Book), to confirm a child has reached the eligible age on initial registration for all the early years entitlements. Providers should record the document seen on the FE1 (Parent/Carer Declaration form) and the date of birth in the Provider Portal. Early years' providers can choose to retain paper or digital copies of documentation although this is not a requirement. Where an early years' provider retains a copy of documentation, it **must** be stored securely and deleted when there is no longer a good reason to keep it.

**Please refer to:** The Privacy Notice template at Appendix (i) and the FE1 Parent/Carer Declaration form Terms and Conditions

**4.2** Early years' providers should ensure that a child is eligible for funding **before** the child is offered a place.

**4.3** Early years' providers should continue to offer places to children eligible for the two-year old assessment-based funding until they become eligible for the universal entitlement for three and four-year olds.

[Criteria for eligible two-year olds](#) can be found on the GOV.UK website.

Parents/carers can [check their own eligibility for two-year old assessment-based funding on the Derbyshire County council website](#).

The local authority will use the Department for Education's eligibility checking system to verify that children meet the eligibility criteria including Universal Credit.

To confirm a child's eligibility for the two-year-old assessment-based funding, providers should have sight of the letter/email confirming the child's code and valid start date, prior to offering a funded place.

**4.4** Hong Kong British Nationals (Overseas) BN(O)s and their dependents may be entitled to early years entitlements for two, three and four-year olds.

Access to the early years entitlements for BN(O)s will be the same as for all other individuals subject to immigration control and BN(O)s will need to follow existing guidance about accessing the EY entitlements:

[Help paying for childcare: Free education and childcare for 2-year-olds](#) (GOV.UK)

[15 hours free childcare for 3 and 4-year-olds](#) (GOV.UK)

**4.5** The early years entitlement only applies until a child either:

- Commences a full-time school reception place during the academic year the child has its fifth birthday
- or
- Reaches compulsory school age (the term following the child's fifth birthday)

[Further information about school admissions applications](#) including delayed admissions of summer born children.

## **EXPANDED OFFER**

From April 2024, existing childcare support will be implemented in phases. By September 2025, most working families with children under the age of 5 will be entitled to 30 hours of childcare support.

- From April 2024: 15-hours early years entitlement funding for children of eligible working parents from the age of two-years-old (570 hours per academic year);
- From September 2024: 15-hours early years entitlement funding for children of eligible working parents from the age of 9 months (570 hours per academic year); and
- From September 2025: 30-hours early years entitlement funding for children of eligible working parents from the age of 9 months (1140 hours per academic year).

**4.6** The local authority should ensure that the child has an early years' entitlement place no later than the beginning of the term following the child being 9 months of age or the child's eligible birthday and the parent meeting the eligibility criteria:

- 1 January - 31 March to take up a place during the Summer term beginning on or following 1 April;
- 1 April - 31 August to take up a place during the Autumn term beginning on or following 1 September;
- 1 September -31 December to take up a place during the Spring term beginning on or following 1 January

[Childcare Choices: upcoming changes to childcare support](#)

## 5. EXTENDED ENTITLEMENT FOR - CHILDREN UNDER STATUTORY SCHOOL AGE

Eligibility criteria for the Extended Entitlement can be found on the GOV.UK website: [Get 30 hours free childcare: step by step](#)

**5.1** Most parents/carers applying for eligibility codes will get an immediate determination of eligibility, but HMRC may require further information to make the decision for some parents/carers. Early years' providers should encourage parents/carers to apply in good time and to note the code end date in order to inform parents about reconfirming their details and ensuring these are up to date through their childcare account.

**5.2** Children in foster care are eligible for the entitlement funding, providing their foster carers meet the eligibility criteria for foster carers and this is consistent with the child's Care Plan. Foster carers **must apply directly to the local authority who has parental responsibility for the child** to determine their eligibility. For children for whom Derbyshire has parental responsibility or other related queries, email:

[info.fis@derbyshire.gov.uk](mailto:info.fis@derbyshire.gov.uk)

**Please refer to:** The Statutory Guidance for Local Authorities, Eligibility for extended entitlement for three and four-year old children in foster care

**5.3** The Ministry of Defence (MOD), Department for Education (DfE) and HMRC have agreed a manual process for service families posted outside of England, to apply for the extended entitlement when they are returning to England after a term start date.

Eligibility criteria for service families is the same as for regular applications, and MOD staff will provide HMRC with evidence of their posting before a code will be issued.

Parents/carers serving abroad may contact providers before a new term starts to obtain a place in a setting for their child when they return. Depending upon the return date of the family, some places may not be taken up until mid-way through a term. These parents/carers will be subject to the standard code checks by providers and the local authority and must have an eligible code with a pre-term start date.

The codes issued will be the same as other manual codes received by early years' providers, and the process for administering these codes will mirror the standard process.

**If a parent contacts the early years' provider or local authority directly to ask about this, the parent will need to call the Childcare Service Helpline on 0300 123 4097 to ask for a manual application due to serving abroad with the MOD.**

**5.4** The local authority **cannot** fund a child within the term parents/carers receive their eligibility code. Therefore, early years' providers **must** be aware that eligibility codes they receive from parents/carers are only valid from the **start of the following term**.

**5.5** The local authority **does not** have discretionary funds to secure additional funded hours where the parent has applied or reconfirmed **after** the 31 August, 31 December or 31 March deadline dates, nor for codes issued after the relevant dates listed in the Statutory Guidance.

**Please refer to:** The Statutory Guidance for Local Authorities

**5.6** Early years' providers **must** ensure parents/carers complete all relevant sections of the FE1 Parent/Carer Declaration form to obtain written consent from, or on behalf of parent/carers, to enable the local authority to undertake funded entitlement checks.

**Please refer to:** The FE1 Parent/Carer Declaration form

**5.7** Once an early years' provider has obtained written consent from the parent on the FE1 Parent/Carer Declaration form, they should verify the eligibility code with the local authority, **before** the child is offered a place.

**5.8** Early years' providers **must** ensure the consent box in the Provider Portal is completed, verifying parents/carers have given consent for their details to be used to check eligibility.

**5.9** The local authority will confirm the validity of eligibility codes to allow providers to offer funded places for eligible children. The local authority will provide a validity checking service to early years' providers via the online Provider Portal, to enable them to verify the eligibility code. This service is available all year round. The Eligibility Checking Service (ECS) allows all local authorities to make instant checks for code validity.

**5.10** Audit checks to review the validity of eligibility codes for children who qualify for funded childcare will be undertaken at each monthly submission. Providers will be notified, in the 'Actuals' section of the Provider Portal for the corresponding monthly payment term, where a parent has fallen out of eligibility and entered the grace period, a yellow warning triangle will be displayed in line with the dates listed in table A below.

**Table A:**

<b>Date Parent Falls Out of Eligibility</b>	<b>Grace Period End Date:</b>
1 January – 10 February	31 March
11 February – 31 March	31 August
1 April – 26 May	31 August
27 May – 31 August	31 December
1 September – 21 October	31 December
22 October – 31 December	31 March

**5.11** Early Years' providers have a responsibility to alert parents/carers that their eligibility end date is due to expire and encourage them to access their childcare account as a matter of urgency.



## 6. THE GRACE PERIOD

**6.1** A child will enter the grace period when the child's parents/carers cease to meet the eligibility criteria set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016, as determined by HMRC or a First Tier Tribunal in the case of an appeal.

**Please refer to:** The Statutory Guidance for Local Authorities

**6.2** The local authority accesses information about whether a child has ceased to meet the eligibility criteria and entered the grace period, via the Eligibility Checking Service. The grace period end date will automatically be applied to eligibility codes.

**6.3** The local authority will continue to fund a place for a child who enters the grace period as set out in the Early Years and Childcare Statutory Guidance for Local Authorities.

**6.4** The grace period is intended to be used for parents/carers whose financial situation has changed, for example, a parent/carer who may have lost their employment. Early years' providers should not rely on the grace period end date in other circumstances.

**6.5** Early years' providers should be aware that a child **is not eligible** to start a new funded place at an early years' setting during the code's grace period. This also applies to those children who have been attending the same setting prior to taking up the funded hours.

## 7. FLEXIBILITY

**7.1** Provision **must** be offered within the national parameters on flexibility as set out in Section A2 of Early Education and Childcare Statutory Guidance for Local Authorities.

**7.2** Early years' providers should offer funded sessions to parents/carers of children attending on a term-time or stretched basis, that are in line with the term dates published by Derbyshire County Council. Early years' providers should check with their local Derbyshire School for any variations.

[Further information about school term dates and holidays](#) for Derbyshire settings is available on the Derbyshire County Council website.

**7.3** Early years' providers should work with the local authority and share information about the times and periods at which they are able to offer the early years entitlements to support the local authority to secure sufficient stretched and flexible places to meet parental demand in the local authority area. Where funded only places are limited, the local authority should be notified of this and the criteria for the allocation of places, which should be fair and transparent.

**7.4** Early years' providers **must** make information about their offer and admissions criteria available to parents/carers **before** the child is offered a place.

**7.5** Where settings decide they will only offer the universal entitlement, the local authority will not insist an early years' provider delivers the extended entitlement to meet parental demand. Parents/carers may choose to use more than one early years' provider to

access their full early years' entitlements; and how the hours are split between the providers of their choice for the universal and extended entitlement hours.

**7.6** If a child is accessing more than two sites in a single day, the parent/carer will be contacted by the local authority and asked to nominate settings on a maximum of two sites in a single day. The local authority will recoup any overpayment of funding.

**7.7** Early years' providers **should not** compress the early years' entitlement hours. Parents/carers **cannot** take more than 15 or 30 hours per week over fewer than 38 weeks of the year. However, parents/carers can choose an early years' provider that is open for fewer than 38 weeks of the year and receive the 15 or 30 hours a week during fewer weeks.

**7.8** Early years' providers **must not** bank unused hours (other than delivering a stretched claim over an academic year) as this can lead to an over claim if the parent leaves the setting or chooses not to access the hours.

**7.9** Early years' providers should deliver flexible packages of funded hours, with no artificial breaks, for example over the lunch period.

**7.10** Early years' providers should, as far as is practicable, take account of the average working day and deliver the funded hours to best meet the needs of working parents/carers.

**7.11** Where early years' providers offer additional paid for hours these should be offered either side of a child's funded sessions. Parents/carers should be able to access an early years' entitlement place of up to 15 or 30 hours a week **without** being required to pay for additional hours.

**7.12** Providers **must not** make the purchase of additional fee paid hours a condition of accessing a funded place of up to 15 or 30 hours per week.

**Please refer to:** Early Years Entitlements: Operational Guidance for Local Authorities and Providers

## **8. PARTNERSHIP WORKING**

**8.1** The local authority will support partnerships on four levels between:

- Local authorities and early years' providers
- Early years' providers working with other early years' providers, including childminders, schools, and organisations
- Early years' providers and parents/carers
- Local authorities and parents/carers

**8.2** The local authority will promote partnership working between different types of early years' providers across all sectors and encourage more early years' providers to work together to offer flexible provision.

**8.3** Early years' providers should work in partnership with parents/carers, and other early years' providers to improve provision and outcomes for children in their setting. An

interactive toolkit has been developed to help early years' providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring:

[Family and Childcare Trust – DfE's 30 hour mixed model partnership toolkit](#)

**8.4** Early years' providers should discuss and work closely with parents/carers to agree how a child's overall care will work in practice when their early years' entitlement is split across different early years' providers, such as at a maintained setting and childminder, to ensure a smooth transition for the child.

## 9. SPECIAL EDUCATIONAL NEEDS AND DISABILITIES

**9.1** The local authority strategically plans support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in their local area as per the [Special Educational Needs and Disability code of practice: 0 to 25 years](#).

**9.2** Providers **must** ensure all staff members are aware of their duties in relation to the SEND Code of Practice, and the [Equality Act 2010](#).

**9.3** The local authority is clear and transparent about the support on offer in their area, through their [Local Offer](#), so parents/carers and early years' providers can access that support.

Email the Early Years helpline at [EarlyYears.SENHelpline@derbyshire.gov.uk](mailto:EarlyYears.SENHelpline@derbyshire.gov.uk)

**9.4** To meet the requirements of the EYFS, early years' providers **must** have arrangements in place to support children with SEN or disabilities. Early years' providers should be clear and transparent about the SEND support on offer at their setting and make information available about their offer to support parents/carers to choose the right setting for their child with SEND.

**9.5** All eligible children in receipt of Disability Living Allowance (DLA) and accessing their early years' entitlement funding are eligible for the Disability Access Fund (DAF). DAF is paid to the child's early years' setting as a fixed rate of £910.00 per eligible child (subject to change throughout the duration of this contract). The Disability Access Fund Declaration section of the FE1 Parent/Carer Declaration form **must** be completed by parents/carers of eligible children. As only one early years' provider can receive the funding, if a child attends more than one setting, the parent should nominate which setting should receive the DAF payment. The early years' provider **must** retain a copy of the letter confirming a child is in receipt of DLA for future funding audits. Early years' providers **must** indicate on the Provider Portal they are claiming DAF for an eligible child when submitting Actuals' data.

## 10. SOCIAL MOBILITY AND DISADVANTAGE

**10.1** The local authority promotes equality and inclusion, to meet the needs of all families, children in care and children in need by working to remove barriers of access to funded places and working with parents/carers to give each child support to fulfil their potential.

**10.2** Early Years' Pupil Premium (EYPP)/Deprivation funding is additional funding for early years' providers to improve outcomes for children by providing enhanced learning and development support. From April 2024, providers can claim an additional hourly supplement to the early years' entitlement funding for all eligible children. Early years' providers are encouraged to tick the EYPP box on the provider portal to access the funding for eligible children.

Providers should demonstrate how children who are eligible for EYPP benefit and what impact this additional funding has on children's outcomes.

Eligibility criteria for EYPP can be found in the [Early Years Entitlements: Local Authority Funding of Providers Operational Guide 2023-2024 \(GOV.UK\)](#)

**10.3** Early years' providers claim EYPP funding through two routes, either the **economic route** or the **non-economic route** for children that have left the care of the local authority through adoption, special guardianship, or child arrangement order. The [SchoolsNet - Funding and contracts](#) tile provides further information about how to claim EYPP.

**10.4** Early years' providers claiming EYPP/Deprivation funding for children that have left the care of the local authority through adoption, special guardianship, or a child arrangement order, **must** request a copy of the relevant Order from the family and forward a copy, with the setting's details, highlighting it is evidence for EYPP and Deprivation Funding to the following email address:

Childminders: [CS.enquiries.childminders@derbyshire.gov.uk](mailto:CS.enquiries.childminders@derbyshire.gov.uk)

Groupcare: [CS.enquiries.groupcare@derbyshire.gov.uk](mailto:CS.enquiries.groupcare@derbyshire.gov.uk)

Schools: [CS.enquiries.schools@derbyshire.gov.uk](mailto:CS.enquiries.schools@derbyshire.gov.uk)

Early years' providers will not be required to re-submit evidence if provided in previous terms.

**10.5** Children in care who are accessing the early year's entitlement funding are eligible for EYPP. Early years' providers should contact the local authority having legal responsibility for the child, to make a claim. For children who are in the care of Derbyshire County Council, Providers should contact Virtual School by email: [virtualschool@derbyshire.gov.uk](mailto:virtualschool@derbyshire.gov.uk).

[More information regarding children in care can be found on SchoolsNet.](#)

## 11. QUALITY

**11.1** The EYFS Statutory Framework is mandatory for all schools that provide early years provision and Ofsted-registered early years' providers in England. The EYFS sets the standards that all early years' providers **must** meet to ensure that children learn and develop well and are kept healthy and safe.

[Early years foundation stage \(EYFS\) statutory framework \(GOV.UK\)](#)

**11.2** The local authority, in line with the Statutory Guidance, rely solely on the Ofsted inspection judgement of the provider for all early years' entitlements. Ofsted and inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.

**11.3** The local authority will notify early years' providers of any restrictions imposed on them for the delivery of the early years' entitlements to eligible children under statutory school age, following publication of an Ofsted inspection or childminder agency judgement of 'requires improvement', 'inadequate', 'not met' or 'not effective' in the case of a childminder agency.

**Please refer to:** The Statutory Guidance for Local Authorities

**11.4** The local authority has a legal duty to provide information, advice and training on meeting the requirements of the EYFS, meeting the needs of children with SEND and on effective safeguarding and child protection for early years' providers who are rated less than 'good' by Ofsted or newly registered early years' providers.

**11.5** Early years' provision **must** be offered in accordance with the national parameters on quality as set out in the Early Education and Childcare Statutory Guidance for Local Authorities and the EYFS Statutory Framework.

**Please refer to:** The Statutory Guidance for Local Authorities

## 12. FINANCIAL PLANNING

**12.1** The local authority provides an online Provider Portal for providers to claim early years' entitlement funding. The Portal stores all previous claims and payments, early years' providers should use this information at the beginning of each financial year to forecast their indicative budgets for the year ahead. The local authority will adjust budgets and/or payments made to early years' providers, to reflect actual levels of participation based on the information submitted into the Provider Portal for 'actual' census returns.

**Please refer to:** The Statutory Guidance for Local Authorities

**12.2** The Provider Portal mini guides and video tutorials contain information for early years' providers about claiming the early years entitlements including submitting census returns, stretched funding claims, adjustments, and payment dates.

[SchoolsNet - Funding and contracts](#)

**12.3** The local authority collects information from early years' providers for government and local purposes. **It is a statutory duty to complete the Early Years Census within the publicised timescales and deadlines. Where early years' providers do not submit their Census returns, the early entitlement funding will be withheld.** This includes a requirement to ensure the details held by the Families Information Service (FIS) are up to date.

**12.4** Early years' providers **must** tick the 'Present during Census' box on the Provider Portal for all children claimed for and in attendance during Head Count week, to ensure the local authority receives the correct amount of early years entitlement funding. Failure to do so may result in inaccurate, delayed or withheld/non-payment of funding and may result in a reduced increase to future funding rates.

**12.5** Early years' providers will be informed of the withdrawal of funding or the termination of the Agreement in accordance with the provisions of the Provider Agreement.

**12.6** Early years' providers should maintain accurate financial and non-financial records relating to early years entitlement places and should give the local authority access on reasonable notice to all financial and non-financial records relating to places funded under the Provider Agreement, subject to confidentiality restrictions.

**12.7** Early years' providers operating for less than 38 weeks of the year, will be paid by the local authority accordingly. Parents/carers cannot access more than 15/30 hours per week. Parents/carers can access the remaining funded hours with another early years' provider during school holidays, to enable them to receive the full entitlement for their child. For example, if a parent/carer accesses 30 hours x 35 weeks = 1050 hours with one early years' provider, they have 90 hours remaining to take up a place with another early years' provider during the school holidays.

**12.8** Childminders taking a holiday during term time **must** offer alternative sessions to the parents/carers of funded children within the same term, for example during holiday periods or a reclaim of funding will be made for these weeks. Early years' providers should be mindful of the impact on parents/carers if they choose to close and should be confident, they can still provide the total number of hours parents/carers agreed with the provider in their parental declaration.

**12.9** Childminders cannot claim the early years entitlements for children they are related to.

- "Childcare" does not include care provided for a child by - (c) a relative of the child
- "relative", in relation to a child, means a grandparent, aunt, uncle, brother or sister, whether of the full blood or half blood or by marriage or civil partnership

Section 18 Childcare Act: [Childcare Act 2006 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

**12.10** Where a parent of a child accessing funded hours only chooses to move settings' mid-term, the existing early years' provider will receive funding until the end of the week the child last attends. The child's new early years' provider can access funding from the start of the week the child begins to attend. There is not a required notice period for children accessing funded hours only.

### 13. CHARGING

**13.1** Government funding is intended to cover the cost to deliver 15 or 30 hours a week of free, high quality, flexible childcare which meets the requirements of the EYFS. It is not intended to cover the cost of meals, additional hours, additional services, or some consumables. Parents/carers **must** benefit financially from the early years entitlement funding.

**13.2** Early years' providers can charge for meals and snacks as part of an early years' entitlement funded place and they can also charge for consumables such as nappies or sun cream and for services such as trips and musical tuition. Parents/carers should therefore expect to pay for these, although providers should be mindful of the impact of additional charges on parents / carers. Providers who choose to offer the early years entitlements are responsible for setting their own policy on providing parents/ carers with options for alternatives to additional charges, including allowing parents/carers to supply their own meals or nappies, or waiving or reducing the cost of meals and snacks.

**13.3** Early years' providers **must** deliver the early years' entitlements consistently so that all children accessing the early years entitlements will receive the same quality and access to provision, regardless of whether they opt to pay for additional hours, services, or meals.

**13.4** Early years' providers **must not** charge the parents/carers of funded children, higher rates for additional hours or meals that result in them not benefitting from the early entitlement funding. All parents/carers **must** see a reduction in their monthly childcare costs.

**13.5** The local authority will not intervene where parents/carers choose to purchase additional hours of provision or additional services such as dance, music, or language tuition, providing that this does not affect the parent's ability to take up their child's funded place. Early years' providers **must** be completely transparent about any additional charges.

**13.6** Early years' providers **must** publish their admissions criteria including the number of funded only places, how the places will be filled and ensure parents/carers understand which hours/sessions can be taken as funded only entitlement. Not all early years' providers will be able to offer fully flexible places, but early years' providers should work with parents/carers to ensure that as far as possible the pattern of hours are convenient for parents/carers' working hours.

**13.7** Early years' providers can charge parents/carers a deposit to secure their child's funded place but should refund the deposit in full to parents/carers within a reasonable time scale, for example on their first invoice.

**13.8** Early years' providers cannot charge parents/carers "top-up" fees (the difference between a provider's normal charge to parents/carers and the funding they receive from the local authority to deliver funded places).

**13.9** Early years' providers **cannot** charge a registration fee to parents/carers who are only accessing a funded place.

**13.10** Early years' providers may charge parents/carers a registration fee where they are accessing additional hours. Early years' providers should be mindful of the impact of additional charges for all families, specifically those in receipt of early years funding through an economic eligibility criteria. Providers should ensure that all charges are fair and transparent.

**13.11** Early years' providers **must not** charge parents/carers of children accessing the early years entitlements for consumables that are required to deliver the EYFS, for example craft materials, books, toys, and equipment etc.

**13.12** Early years' providers **must not** charge parents/carers of children accessing the early years entitlements a service/administration charge to cover business costs eg on-line registers, accommodation, qualified teaching staff, staff training, learning journals etc.

**13.13** The early entitlement hours must be free at the point of delivery, early years' providers can charge for meals, consumables, additional hours or additional services. However, early years' providers **must** be transparent about how such charges have been calculated. For example, if your weekly charge is £300 for 50 hours for a child who does not access the funded entitlement, this equates to £6 per hour. Therefore, for a child accessing the early years entitlement, any additional fee-paying hours should not be greater than this.

**13.14** Early years' providers **must** ensure their invoices and receipts are clear, transparent, and itemised, allowing parents/carers to see they have received their early years entitlement completely free of charge and fully understand fees paid for additional hours or services. Early years' providers **must** ensure that receipts contain their full details so they can be identified as being issued by a specific early years' provider.

**Please refer to:** The example invoice attached to this document at Appendix (ii)

**13.15** Independent Schools should be mindful of the impact of additional charges on parents/carers. This may result in waiving the registration fee and uniform charges for funded children in nursery, pre-prep, and reception classes.

**13.16** Independent Schools offering the early years entitlements to eligible children in Reception Classes **must** show the funded hours as free on parent invoices.



## 14. COMPLAINTS PROCESS

**14.1** Should the local authority receive a complaint from a parent raising concerns they have not received their early years entitlement in accordance with the legislation or as set out in this agreement and in the Early Education and Childcare Statutory Guidance for Local Authorities, the parents/carers will be advised to talk to their early years' provider to see if the situation can be resolved. If the parents/carers are not satisfied with the outcome of the discussion with their early years' provider, they will be asked to put their complaint in writing by emailing the Families Information Service:

[info.fis@derbyshire.gov.uk](mailto:info.fis@derbyshire.gov.uk)

The local authority will only contact the early years' provider where permission has been given by the parental/carer. The local authority will report back to the parent/carer and the provider upon completion of a review.

**14.2** Early years' providers should ensure they have a complaints procedure in place that is published and accessible for parents/carers who are not satisfied their child has received their funding entitlement in the correct way, as set out in this Agreement and in the Early Education and Childcare Statutory Guidance for Local Authorities.

**14.3** If a parent or early years' provider is not satisfied with the way in which their complaint has been dealt with by the local authority or believes the local authority has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.

**Please refer to:** Clause 19 (Complaints Procedure) of the Provider Agreement

## 15. FUNDING

**15.1** The local authority will pay all early years' providers each month based on data submitted by the early years' provider. The local authority reserves the right to give notice to early years' providers of any change to the hourly rate paid.

**15.2** Early years' providers **must** complete and submit accurate returns using information supplied by parents/carers on the FE1 Parent/Carer Declaration form. Claims must be submitted via the online Provider Portal by the given deadline dates, to ensure correct payments are made by the local authority. Failure to do so and to rectify errors entered in the Provider Portal may result in inaccurate, delayed or withheld/non-payment of funding.

**15.3** Early years' providers **must** only claim for the funded hours children are attending.

**15.4** Early years' providers who fail to submit monthly returns within the published timescales **will not** receive a funding payment for that month. Early years' providers **must** input data for the children they are claiming funding for, during the period the Portal is open, to receive a funding payment.

The [SchoolsNet - Funding and contracts](#) tile provides information to support with the submission of funding.

**15.5** From April 2024 eligible children of working parents from the age of two-years old will be able to access 15 hours of funded provision.

**15.6** From 15 April 2024, the local authority will fund early years' providers:

- £7.53 per hour for children eligible for the two-year old assessment-based funding (6-digit code issued by the local authority)
- £7.21 per hour for two-year-old children of working parents with an eligible extended entitlement code (11-digit code issued by HMRC).
- £5.00 per hour for three- and four-year-olds for both the universal and extended entitlement hours (11-digit code issued by HMRC)

These rates are subject to change throughout the duration of this contract. The local authority reserves the right to vary the funding rates by notice in writing, to take account of any changes made by the government.

**15.7** From 01 September 2024 the local authority will fund early years providers £9.85 per hour for children under the age of two-years old of working parents, with an eligible extended entitlement code (11-digit code issued by HMRC).

**15.8** Early years' providers **must** complete a User Access Form to nominate two authorised people to access the Provider Portal and input funding claims. Childminders who work alone **must** complete the User Access Form to nominate **themselves** as the authorised person. A User Access form should be completed when nominated members of staff join/leave a setting. User Access log-in details **must not** be passed on to other staff members.

**15.9** To take account of the Data Protection Act 2018 and the UK General Data Protection Regulation, childminders **cannot** nominate non-employees, such as friends or family members to access the Provider Portal to input children's and census data.

**15.10** Childminders who have a joint contract to deliver the funded hours, are only permitted to claim using one provider portal account.

**15.11** The FE1 Parent/Carer Declaration form is the contract between the parent/carer and early years' provider for the early years' entitlements. The FE1 form **must** be completed by parents/carers and retained by the early years' provider. Parents/carers can be given a copy of their completed FE1 Parent/Carer Declaration form where requested. The contract amendment sheet should be completed and signed by parents/carers when any changes to their child's funded sessions occur. In instances where double funding is identified, funding will be paid to the early years' provider obtaining the completed FE1 form first.

**15.12** Early years' providers will not be penalised for children's absences if a record of the absence has been completed and signed by the child's parent/carer.

**Failure to complete or maintain accurate absence records may result in funding being reclaimed.**

Early years' providers should follow up absences of funded children, referring to local safeguarding procedures as necessary and retain records of attempts to contact parents/carers during periods of absence.

**15.13** Early years' providers should monitor children's attendance and absences and identify patterns of missed sessions each term. Early years' providers should discuss identified patterns of missed sessions with parents/carers to determine the reasons, retaining records of the discussion outcome and amending funding claims as necessary.

**15.14** Early years' providers **must** notify the Early Years Finance Team of a child's absence of four weeks or more and the reason for the absence. The local authority will inform the early years' provider if funding can be claimed for the period or if the place should be withdrawn.

[CS.enquiries.childminders@derbyshire.gov.uk](mailto:CS.enquiries.childminders@derbyshire.gov.uk) or  
[CS.enquiries.groupcare@derbyshire.gov.uk](mailto:CS.enquiries.groupcare@derbyshire.gov.uk) or  
[CS.enquiries.schools@derbyshire.gov.uk](mailto:CS.enquiries.schools@derbyshire.gov.uk)

**15.15** Early years' providers will not be penalised for short term closures of a setting where it is outside of their control, for example, bank holidays, strike action, local or national elections or damage to the premises. However, providers should be mindful of the impact on parents/carers if they choose to close and should be confident, they can still provide the total number of hours parents/carers agreed with the provider in their parental declaration.

**15.16** Early years' providers opening on Inset Days can offer these as funded sessions and charge parents/carers for the 'unfunded week' or charge for the Inset Day and offer funded sessions during the 'unfunded week'.

**15.17** Providers **must** notify the Early Years Finance Team of any closures of more than two days per academic year and the reason for the closure. Providers should be mindful of the impact on parents/carers if they choose to close and should be confident, they can still provide the total number of hours parents/carers agreed with the provider in their parental declaration.

[CS.enquiries.childminders@derbyshire.gov.uk](mailto:CS.enquiries.childminders@derbyshire.gov.uk) or  
[CS.enquiries.groupcare@derbyshire.gov.uk](mailto:CS.enquiries.groupcare@derbyshire.gov.uk) or  
[CS.enquiries.schools@derbyshire.gov.uk](mailto:CS.enquiries.schools@derbyshire.gov.uk)

## **16. TERMINATION AND WITHDRAWAL/RESTRICTING OF FUNDING**

**16.1** Suspension of registration by Ofsted due to a breach of statutory requirements or safeguarding issues, will result in the termination of the arrangement and withdrawal of funding.

**16.2** Local authorities are not required to fund places with early years' providers who do not meet the quality standards set out in the Statutory Guidance.

**16.3** Early years' providers receiving an 'inadequate', 'requires improvement' or 'not met' Ofsted judgement will be notified in writing by the local authority of any restrictions placed on the setting for claiming the early years entitlements. Early years' providers **must not** submit funding claims once notified of the restrictions imposed by the local authority.

**16.4** Providers claiming for children despite the restrictions notified in writing, will have funding reclaimed by the local authority.

**16.5** A childminder registered with a childminder agency receiving a 'not effective' judgement; or a childminder registered with a childminder agency receiving an 'inadequate' or 'requires improvement' or equivalent judgement from the agency, will be notified in writing by the local authority, upon the publication of the setting's Agency report, of any restrictions placed on the setting for claiming the early years entitlements. Childminders **must not** submit funding claims once notified of the restrictions imposed by the local authority.

**16.6** Early years' providers who receive two consecutive 'inadequate' or 'not effective' consecutive Ofsted inspection judgements may be removed / suspended from the Directory of Providers by the local authority. Support will be given to the early years' provider and parents/carers to find alternative provision for funded children.

**16.7** The local authority should secure alternative provision and withdraw funding when Ofsted publish a second consecutive inspection judgement of a childminder agency of 'ineffective'. Following a second consecutive 'ineffective' inspection judgement, the local authority should continue to fund the childminder agency's providers if the childminder agency has assessed them as being of acceptable quality and Ofsted has not identified any concerns about the childminder agency's assessment arrangements. It is for local authorities to determine an appropriate timeframe for withdrawing funding. When withdrawing funding from a childminder agency-registered provider, local authorities should also take account of the impact on children and their families.

**16.8** The local authority will take account of the concerns and actions raised by Ofsted when considering any restrictions to funding.

**16.9** Where an Ofsted or childminder agency report identifies serious safeguarding issues, the provider may not be permitted to offer funded places to both existing and new children. Providers will be notified in writing by the local authority of any such decision. Support will be given to the provider and parents/carers to find alternative provision for funded children.

**16.10** The local authority will consider continuing to fund an early years' provider, based upon current data entered on to the Provider Portal, the local sufficiency of places and any information published by Ofsted at the time of the providers published report.

**16.11** Following the receipt of a 'requires improvement' Ofsted judgement, the local authority will only fund places for two-year-old children eligible for the assessment-based funding (6-digit code issued by the local authority), where there is not sufficient, accessible 'good' or 'outstanding' provision in the area.

**16.12** Following the local authority receiving notification from Ofsted of a published 'inadequate', 'requires improvement', 'not met' or 'not effective' Ofsted or equivalent childminder agency judgement, reports will be considered at regular early years' Panel meetings.

**16.13** The local authority will not accept any new funding claims for children, following the receipt of an 'inadequate', 'requires improvement', 'not met' or 'not effective' Ofsted or equivalent childminder agency judgement, from the date agreed at the early years' Panel meeting, as notified in writing to the provider.

**16.14** Where funding is restricted, the early years' provider **must** provide the local authority with contact details of funded parents/carers. Providers should ensure parents/carer's contact details are kept up to date on the FE1 form.

**16.15** The local authority will inform parents/carers of the local authority's decision to restrict or remove approval to deliver the funded entitlements. Assistance will be offered to parents/carers to find alternative provision for funded children, where appropriate. It may not, however, be possible to meet the first preference of each parent.

**16.16** The local authority will not fund early years' providers who do not actively promote fundamental British values or if they promote as evidence-based, views or theories which are contrary to established scientific or historical evidence and explanations.

**Please refer to:** The Statutory Guidance for Local Authorities

**16.17** The local authority reserves the right to suspend payments of early years entitlement funding where an early years' provider fails to allow an officer of the local authority to visit the setting.

**16.18** The local authority will take account of any historical evidence of consecutive 'requires improvement' and/or 'inadequate' Ofsted judgements, even where an early years' provider has re-registered with Ofsted.

## **17 APPEALS PROCESS**

**17.1** Early years' providers denied approval to offer the early years entitlements or have their funding withdrawn as set out above can appeal against that decision. More information, including the [Complaints procedure](#), is available on the DCC website.

**17.2** Early years' providers should appeal in writing within ten (10) working days of the notification by the local authority, detailing the ground for appeal, and enclosing all supporting documents to:

[cs.enquiries.groupcare@derbyshire.gov.uk](mailto:cs.enquiries.groupcare@derbyshire.gov.uk)  
[cs.enquiries.childminders@derbyshire.gov.uk](mailto:cs.enquiries.childminders@derbyshire.gov.uk)  
[cs.enquiries.schools@derbyshire.gov.uk](mailto:cs.enquiries.schools@derbyshire.gov.uk)

**17.3** Upon receipt of the appeal the local authority will:

- Provide a written acknowledgement to the early years' provider within five (5) working days
- Review the appeal within 20 working days, and
- Provide written notification of the outcome of the appeal to the early years' provider within 30 working days

**17.4** If the appeal is successful, the local authority will reinstate funding payments to the early years' provider.

**17.5** If the appeal is unsuccessful, the local authority will continue to restrict the early years' provider from offering the funded entitlements as previously notified, until such time as an improved Ofsted or childminder agency judgement is received.

## **18. FUNDING COMPLIANCE AUDIT**

**18.1** The local authority carries out regular funding compliance audits of early years' providers to ensure compliance with the requirements of delivering the early years' entitlements.

**18.2** Early years' providers may be referred to Audit Services or the Police should there be concerns over potentially fraudulent activities.

**18.3** Funding compliance audits are to assist early years' providers to develop systems to ensure that:

- Funding is claimed in accordance with the terms of this Provider Agreement
- Disability Access Funding is claimed correctly
- Fee/Charging policy for parents/carers is fair and transparent
- Parents/carers receive their child's early years entitlement in the form of a free place
- Parents/carers invoices are clear, transparent, and itemised
- Insurance cover meets the minimum requirement
- Funded children attend for their claimed hours/session
- All childminders have a separate bank account for their childminding business
- Absence records are completed, maintained and signed by parents/carers
- Admissions policy is clear for parents/carers
- EYPP and Deprivation funding is used to improve outcomes for eligible children.

**18.4** The local authority undertakes funding audits either in the setting or remotely. Early years' providers will be contacted and asked to either send in **copies** of the required documents by email or ensure documentation is available at the setting for the officer undertaking the checks.

**18.5** Early years' providers should collect and retain the following documents:

- Completed FE1 Parent/Carer Declaration form
- Eligibility approval letter or code for eligible two-year olds
- Registers of children's attendance with accurate arrival and departure times
- Absence records
- Admissions policy
- Fees/Charging policy
- Evidence of child's Disability Access Funding (DAF)
- Invoices issued to parents/carers
- Any related documents

**18.6** To comply with HMRC and local authority financial regulations, providers **must** adhere to the retention periods recommended within the Companies Act, which states documents relating to income should be kept for six years, plus the current financial year

(any provider acting as a sole trader, for example, childminders, must adhere to the retention periods recommended within the Public Records Act, of five years, plus the current financial year).

**18.7** The local authority reserves the right to contact parents/carers to verify details of their claim, to confirm they have received the early years' entitlement in the form of a free place and that invoices are clear, transparent, and itemised.

**18.8** Following the completion of funding audits, early years' providers will be sent a report identifying actions to be undertaken to ensure the requirements of the Provider Agreement continue to be met.

**18.9** Early years' providers who fail to comply with the requirements of the Provider Agreement and have not remedied the situation within the specified timeframe, are likely to have funding payments withheld by the local authority or be removed from the Directory of Providers.

**18.10** Early years' providers required to repay an overclaim of funding **must** either repay in full or agree a payment plan with the local authority and **cannot** pass on this cost to the parent.

**Please refer to:** The Compliance process at Appendix (iii)

## SCHEDULE 2 - SCHEDULE OF PROCESSING, PERSONAL DATA AND DATASUBJECTS

1. The Local Authority shall comply with any further written instructions with respect to processing by the Provider.
2. Any such further instructions shall be incorporated into this Data Processing Schedule.

Description	Details
Subject matter of the processing	<p><i>The Local Authority will make funding payments by using the information included on the Provider Portal.</i></p> <p><i>The Local Authority will undertake funding audits to validate the accuracy of the claims made for the early years' entitlements.</i></p> <p><i>The Local Authority may use any information, statistics, or records, relating to complaints made to the Local Authority under the Local Authority's complaints procedure, to assess the performance of the Provider and Providers compliance with this Agreement.</i></p>
Duration of the processing	<i>For the duration of the Term</i>
Nature and purposes of the processing	<p><i>The Local Authority will process information by collection, recording, organisation, consultation, storage, alteration, retrieval, financial, funding audits, statistical, erasure or destruction of data (whether or not by automated means).</i></p> <p><i>The purpose the Local Authority will process the information is for contractual processing/purposes, statutory obligation, financial calculation and payment, communication, and information distribution.</i></p>
Type of Personal Data	<i>Names, address, email addresses, telephone numbers, bank details, Ofsted data, HMRC data, insurance details, NI numbers, DOB</i>
Categories of Data Subject	<i>Providers, including Schools and Private Voluntary Independent sector (PVI), parents/carers and children.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p><i>Financial 6 years plus current year.</i></p> <p><i>Destruction of electronic information in line with DCC's retention policy. For paper copies these will be destroyed using the Local Authority Confidential Waste process.</i></p>



# APPENDICES

## Appendix (i) Privacy Notice

### Privacy Notice for [Insert Setting]

This notice explains what personal data (information) we hold about you, how we collect, how we use and may share information about you. We are required to give you this information under data protection and including the UK General Data Protection Regulation and the Data Protection Act 2018.

#### Who are we?

[Insert Setting] collects, processes and is responsible for certain personal information about you in accordance with the above legislation and we are responsible as 'controller' of that personal information for the purposes of those laws.

#### The personal information we collect and use

##### Information collected by us

In the course of providing education and care we collect the following personal information when you provide it to us:

- Personal information (such as name, date of birth, gender, home address and postcode)
- Special category data (such as special educational needs (SEN) information, ethnicity, relevant medical information)
- Parents/carers Information (such as name, date of birth, National Insurance or National Asylum Support Service Number)
- Financial eligibility information (such as eligibility codes)
- Attendance information (such as sessions attended, number of absences and absence reasons)

We also obtain personal information from other sources as follows:

- [Please give details of any agencies or local authorities, such as Derbyshire County Council, SEN, Health Visitors]

#### How we use your personal information

We use your personal information to:

- Check and calculate free entitlement
- Provide appropriate pastoral care and support services to children
- Provide funding
- Provide advice, support and guidance to the setting
- Enable financial and policy compliance checks of the setting
- Assess and improve the quality of our services
- Comply with the law regarding data sharing
- Safeguard children

#### How long your personal data will be kept

We will hold financial information securely and retain it for 7 years (6 years, plus the current financial year), after which the information is securely destroyed.

We will hold your personal information securely and retain it from the child /young person's date of birth until they reach the age of 25, after which the information is securely destroyed.

### Reasons we can collect and use your personal information

We collect and use personal information to comply with our legal obligations under section 537A of the Education Act 1996, section 83 of the Children Act 1989, and to carry out tasks in the public interest. If we need to collect special category (sensitive) personal information, we rely upon reasons of substantial public interest (equality of opportunity or treatment). Under the UK GDPR the lawful bases we rely on for processing this information are:

- Article 6(a) - Consent (for any processing which does not fall into the bases detail within this section below)
- Article 6(c) - Compliance and Legal Obligation (Children Act 1989, the Childcare Act 2006, Children and Families Act 2014 and Education Act 1996.
- Article 6(e) - Public Interest

Our legal basis for processing special category data is:

- Article 9(2g) - Processing is necessary for reasons of substantial public interest

and Data Protection Act 2018, part 2 schedule 1

- 8 - Equality of Opportunity or Treatment
- 18 - Safeguarding Children and Individuals at Risk

### Who we share your personal information with

- Department for Education (DfE) (statutory for early years funding and policy monitoring)
- Derbyshire County Council Finance Team (to provide funding)
- Other local authorities, or other early years settings, to resolve duplicate claims and funding queries
- Derbyshire County Council services working to improve outcomes for children and young people
- Commissioned providers of local authority services (such as education services)
- Local multi-agency forums which provide SEND advice, support and guidance
- Schools that you attend after leaving us
- Partner organisations signed up to the Derbyshire Partnership Forum Information Sharing Protocol, where necessary, which may include, school nurses, doctors and mental health workers and hospital trusts
- Contracted providers of services (such as external photographers and catering providers) where consent has been given

We will share personal information with law enforcement or other authorities if required by applicable law.

### **The National Pupil Database (NPD)**

We are required by law, to provide information about our pupils to the DfE as part of statutory data collections such as the school census and early years' census. Some of

this information is then stored in the NPD. The law that allows this is the Education (Information About Individual Pupils) (England) Regulations 2013.

The NPD is owned and managed by the DfE and contains information about pupils in schools in England. It provides invaluable evidence on educational performance to inform independent research, as well as studies commissioned by the DfE. It is held in electronic format for statistical purposes. This information is securely collected from a range of sources including schools, local authorities and awarding bodies.

The DfE may share information about our pupils from the NPD with third parties who promote the education or well-being of children in England by:

- conducting research or analysis
- producing statistics
- providing information, advice or guidance

The DfE has robust processes in place to ensure the confidentiality of our data is maintained and there are stringent controls in place regarding access and use of the data. Decisions on whether DfE releases data to third parties are subject to a strict approval process and based on a detailed assessment of:

- who is requesting the data
- the purpose for which it is required
- the level and sensitivity of data requested: and
- the arrangements in place to store and handle the data

To be granted access to pupil information, organisations must comply with strict terms and conditions covering the confidentiality and handling of the data, security arrangements and retention and use of the data.

## Your Rights

Under the UK GDPR you have rights which you can exercise free of charge which allow you to:

- Know what we are doing with your information and why we are doing it
- Ask to see what information we hold about you (Subject Access Request)
- Ask us to correct any mistakes in the information we hold about you
- Object to direct marketing
- Make a complaint to the Information Commissioners Office
- Withdraw consent (if applicable)

Depending on our reason for using your information you may also be entitled to:

- Ask us to delete information we hold about you
- Have your information transferred electronically to yourself or to another organisation
- Object to decisions being made that significantly affect you
- Object to how we are using your information
- Stop us using your information in certain ways

We will always seek to comply with your request however we may be required to hold or use your information to comply with legal duties. Please note: your request may delay or prevent us delivering a service to you.

For further information about your rights, including the circumstances in which they apply, see the guidance from the Information Commissioners Office (ICO) on individuals' rights under the UK General Data Protection Regulation.

If you would like to exercise a right, please contact [\[insert name and contact details\]](#)

### [Keeping your personal information secure](#)

We have appropriate security measures in place to prevent personal information from being accidentally lost, or used or accessed in an unauthorised way. We limit access to your personal information to those who have a genuine business need to know it. Those processing your information will do so only in an authorised manner and are subject to a duty of confidentiality.

We also have procedures in place to deal with any suspected data security breach. We will notify you and any applicable regulator of a suspected data security breach where we are legally required to do so.

### [Who to Contact and Where to go for Further Information](#)

Please contact [\[include details of the DP contact\]](#) to exercise any of your rights, or if you have a complaint about why your information has been collected, how it has been used or how long we have kept it for.

For more information about services for young children, please visit the [Derbyshire County Council website](#) or visit the [Derbyshire Local Offer](#) to find out about support available for children with special educational needs or disabilities.

The UK General Data Protection Regulation also gives you right to lodge a complaint with a supervisory authority. The supervisory authority in the UK is the [Information Commissioner who may be contacted via their website](#) (<https://ico.org.uk/concerns>) or telephone 03031 231113.

For further information on how Derbyshire County Council uses your information visit the [Privacy notices section of the DCC website](#)

For further information about how the Department for Education uses your information:

Find out more about the pupil information we share with the DfE, for the purpose of data collections, see the [Early years census information on GOV.UK](#).

[Find out about National Pupil Database \(NPD\) policy and procedures](#) (GOV.UK)

[DfE's data sharing process](#) (GOV.UK)

To find out about which organisations the department has provided pupil information, (and for which project), please visit the [DfE external data shares information on GOV.UK](#).

[How to contact the DfE](#)

## Appendix (ii) Invoicing

### Invoicing

Government funding is intended to deliver 15 or 30 hours a week of free, high quality, flexible childcare. The number of funded hours accessed in each invoicing period, whether weekly, monthly, or termly, **must** be shown on the invoice as completely free. Parents/carers **must** benefit financially from the early years entitlement.

**Invoices and receipts must be clear, transparent, and itemised allowing parents/carers to see they have received their child's early years entitlement completely free of charge and understand the fees paid for additional hours or services.**

The early years entitlement should not be deducted as a monetary subsidy from the total fees charged.

Invoices **must** show the number of funded hours/sessions within the invoicing period, the number of paid for hours/sessions (if applicable) and the hourly/sessional rate agreed with parents/carers and as published.

Early years' providers can charge for meals and snacks as part of an early years' entitlement funded place and they can also charge for consumables such as nappies or sun cream and for services such as trips and musical tuition. Parents/carers should therefore expect to pay for these, although providers should be mindful of the impact of additional charges on parents/carers. Providers, who choose to offer the early years' entitlements, are responsible for setting their own policy on providing parents/carers with options for alternatives to additional charges, including allowing parents to supply their own meals or nappies, or waiving or reducing the cost of meals and snacks.

Invoices **must** show the number of meals and snacks in the invoicing period and the rates charged.

Invoices **must** show itemised charges for additional services such as trips, extra-curricular activities such as language, music, or dance tuition.

Parents/carers should not be charged for consumables that are required to deliver the requirements of the EYFS, for example craft materials, books, toys and equipment or an administration/service charge to cover on-line registers, qualified teaching staff, staff training, learning journals etc.

Invoices and receipts should include the early years' provider's full details so that they can be identified as being issued by a specific early years' provider.

See example invoice.

## Example 'Stretched Delivery' Invoice

<b>123 NURSERY, 10 High Street, Toy Town, AA1 AA1</b> <b>Provider's Ofsted Unique Reference Number (URN): xxxxx</b> Registered Company Number: xxxxxxx Company's Registered Office: 123 Down Lane, Toy Town, AC1 AC1
---

<b>Parent's Details:</b> (Parent name) 36 Main Road Toy Town AB1  <b>Child's Name:</b>	<b>Customer Ref:</b> DUCKAB1 <b>Invoice Date:</b> 15/08/2024 <b>Invoice Period:</b> 02/09/24 - 30/09/24 <b>Invoice Number:</b> 00023
--	---

Type of Attendance	Yes/No
Term-time (38 weeks)	No
Stretched	Yes
If stretched, state number of weeks funded hours are delivered per annum	50

<b>Number of Funded Hours to be Utilised Per Week</b>	15 hours	<b>Number of Days Funded Hours are Taken Over Per Week</b>	3
<b>Stretched Equivalent Per Week</b>	11.4 hours	<b>Stretched Equivalent Per Day</b>	3.8 hours

Dates Attended	Hours Attended		Total Hours
	From:	To:	
02/09/2024	09:00	15:00	6
03/09/2024	09:00	15:00	6
04/09/2024	09:00	15:00	6
09/09/2024	09:00	15:00	6
10/09/2024	09:00	15:00	6
11/09/2024	09:00	15:00	6
16/09/2024	09:00	15:00	6
17/09/2024	09:00	15:00	6
18/09/2024	09:00	15:00	6
23/09/2024	09:00	15:00	6
24/09/2024	09:00	15:00	6
25/09/2024	09:00	15:00	6
30/09/2024	09:00	15:00	6
<b>Total hours</b>			<b>78</b>

Type of hours	Total hours / items per invoice period	Rate per hour / item	Total
Funded hours (3.8 hours per day)	49.4	£00.00	£00.00
Charged hours (2.2 hours per day)	28.6	£5.00	£143.00
Meals	13	£2.10	£27.30
<b>Total to pay</b>			<b>£170.30</b>

<b>Payment due:</b> <b>Payment methods: Childcare</b> <b>Payment to:</b>	30/08/2024 Vouchers, Tax Free Bank transfer, Childcare Toy Town Bank sort code:000000 Account: 0000000
--	---

**Please contact the Nursery Manager by return if you have any questions about this invoice.**

## Example 'Term Time Delivery' Invoice

<b>123 NURSERY, 10 High Street, Toy Town, AA1 AA1</b> <b>Provider's Ofsted Unique Reference Number (URN): xxxxx</b> Registered Company Number: xxxxxxx Company's Registered Office: 123 Down Lane, Toy Town, AC1 AC1
---

<b>Parent's Details:</b> (Parent name) 36 Main Road Toy Town AB1  <b>Child's Name:</b>	<b>Customer Ref:</b> DUCKAB1 <b>Invoice Date:</b> 15/08/2024 <b>Invoice Period:</b> 09/09/24 - 30/09/24 <b>Invoice Number:</b> 00023
--	---

Type of Attendance	Yes/No
Term-time (38 weeks)	Yes
Stretched	No

<b>Number of Funded Hours to be Utilised Per Week</b>	18 hours	<b>Number of Days Funded Hours are Taken Over Per Week</b>	3
---	----------	--	---

Dates Attended	Hours Attended		Total Hours
	From:	To:	
09/09/2024	09:00	18:00	9
10/09/2024	09:00	18:00	9
11/09/2024	09:00	18:00	9
16/09/2024	09:00	18:00	9
17/09/2024	09:00	18:00	9
18/09/2024	09:00	18:00	9
23/09/2024	09:00	18:00	9
24/09/2024	09:00	18:00	9
25/09/2024	09:00	18:00	9
30/09/2024	09:00	18:00	9
<b>Total hours</b>			<b>90</b>

Type of hours	Total hours / items per invoice period	Rate per hour / item	Total
Funded Hours (6 hours per day)	60	£00.00	£00.00
Wrap Around Hours (3 hours per day)	30	£5.00	£150.00
Meals	10	£2.10	£21.00
<b>Total to pay</b>			<b>£171.00</b>

<b>Payment due:</b> <b>Payment methods:</b> Childcare <b>Payment to:</b>	30/08/2024 Vouchers, Tax Free Bank transfer, Childcare Toy Town Bank sort code:000000 Account: 0000000
--	---

**Please contact the Nursery Manager by return if you have any questions about this invoice.**

## Appendix (iii) Funding Compliance Audits Explained

The local authority is required by the Department for Education (DfE) to undertake funding compliance audits to ensure that providers meet the requirements for the delivery of early years entitlement funding.

Funding compliance audits help providers to ensure that:

- funding is being claimed in accordance with the Provider Agreement whilst also adhering to the Early Education and Childcare, Statutory Guidance for Local Authorities (April 2024): [Early education and childcare - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/early-education-and-childcare)
- there are fully funded places offered by providers
- the fee/charging policy is clear for parents
- parents' invoices are clear, transparent, and itemised
- funded children attend for their claimed hours/session
- the admissions policy is clear for parents
- childminders have a separate bank account for their childminding business

### What happens during a funding compliance audit?

Most of the funding audits are undertaken remotely, however visits may also be undertaken in the setting.

Providers will be contacted by a member of the early years finance team who will explain the funding compliance audit process, and request that the provider email copies of documentation required to undertake the audit.

Documents usually requested include:

- funding audit form – issued by the local authority; completed and signed by the provider
- copies of FE1 forms for children accessing fee paying hours in addition to the funded hours
- copies of invoices for the same children
- a copy of the setting's fee structure / admissions policy / information for parents
- copies of register/ arrival departure records for the same children, along with copies of any absences logs for the same children
- copy of a DLA letter for children in receipt of this

Providers may be asked to submit additional documents or further information as required.

### Will I be notified of the outcome of the funding compliance audit?

Following completion of the funding compliance audit, providers will receive a report. Where actions have been identified, these will be explained in the report and should be implemented to meet the requirements of the signed Provider Agreement.