



Derbyshire County Council
Children's Services Department

**AGREEMENT FOR THE
DELIVERY OF FREE
ENTITLEMENT PLACES FOR
TWO, THREE AND FOUR
YEAR OLDS**

Universal and Extended Entitlement

1st September 2018 to 31st August 2019

CONTROLLED

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Legal Requirements

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

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

(Provider Name:), (Owner Name:) whose principal place of business is at (),
Company/Charity number (), Ofsted number () (the “**Provider**”);

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

BACKGROUND

- A. From 1st September 2018, the Local Authority must have regard to the Early Education and Childcare Statutory Guidance for Local Authorities – June 2018 (the “**Statutory Guidance**”) and the Early Years Entitlements: Operational Guidance for Local Authorities and Providers – June 2018. The Statutory Guidance replaces the guidance which came into effect from 1st March 2017. 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. Free early education places are offered in nursery schools, nursery units in schools, and a range of different settings. This document relates to Voluntary, Community and Independent (PVI) settings, such as private day nurseries, nursery units of independent schools, pre-schools, 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 free 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 on behalf of Derbyshire County Council

Signature:

Print Name: Amanda Gordon signed on behalf of Kathryn Boulton

Designation: Service Director, Children's Services Department

Date:

Signed on behalf of Provider

Setting Name:

Signature:

Signature:

Print Name:

Print Name:

Designation:

Designation:

Date:

Date:

Failure to obtain the appropriate signatory(ies) to the Provider Agreement may result in a delay to funding payments.

Please return one copy of the Legal Requirements page, along with the signature page (pages 4 & 5) and a list of up-to-date committee members / governors / trust members (*where applicable*) to:

**Early Years Sufficiency Service
Room 150
John Hadfield House
Dale Road
MATLOCK
DE4 3RD**

Within the allocated timescale.

1. DEFINITIONS

1.1.

“Barred List”	means the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012;
“Child”	means a child or children eligible to receive a free nursery place funded by the Local Authority;
“Childminder”	means a childminder who is either registered with a Childminder Agency or registered with Ofsted on the Early Years Register;
“Childminder Agency”	means an early years childminder agency which is registered with Ofsted;
“Commencement Date”	means 1 September 2018 or the latest date of signature to this Agreement by the Parties whichever is the later;
“Confidential Information”	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;
“Contract Period”	means as described in clause 2.1;
“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”	take the meaning given in the GDPR;
“Criminal Behaviour Order” (“CBO”)	means an order as defined in the Anti-social Behaviour, Crime and Policing Act 2014;
“Data Loss Event”	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;
“Data Processing Schedule”	means the ‘Schedule of Processing, Personal Data and Data Subjects’ as set out schedule 2 of this Agreement;
“Data Protection Legislation”	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) 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;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Subject Access Request”	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;
“Directory Conditions”	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, section 2, paragraph 2.4;
“Directory of Providers”	means a list of providers contracted with the Local Authority to deliver the Services;
“Disclosure and Barring Scheme”	means the disclosure and barring scheme operated by the Disclosure and Barring Service;
“Disclosure and Barring Service”	means the non-departmental public body established pursuant to the Protection of Freedoms Act 2012;
DPA 2018	means the Data Protection Act 2018;
“Early Years Register”	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;
“Eligibility Requirements”	means the requirement that the Provider meets and complies with the Directory Conditions and is either; <ul style="list-style-type: none"> a) an early years provider, other than a Childminder, registered on the Ofsted Early Years Register; or b) is a Childminder registered with Ofsted on the Early Years Register; or c) is a Childminder registered with a Childminder Agency;
“Eligible”	means that the Provider meets the Eligibility Requirements to be on the Directory of Providers;
“EIR”	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;
“FOIA”	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;
“Force Majeure Event”	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;

“Funding”	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);
GDPR	means the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>);
“Good Industry Practice”	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;
“Intellectual Property Rights”	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;
“Law”	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, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, 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;
“LED”	means the Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);
“Local Authority Personnel”	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;
“Losses”	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;
“Ofsted”	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);
“Parent”	means the person with responsibility for the Child and includes a parent, guardian, carer or person with whom the child normally resides;

<p>“Prohibited Act”</p>	<ul style="list-style-type: none"> (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; (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); (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; (d) gives any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972; (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; (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: <ul style="list-style-type: none"> (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 (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; (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; (h) committing any offence: <ul style="list-style-type: none"> (i) under the Prevention of Corruption Acts 1889-1916; (ii) under Law creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or (i) defrauding or attempting to defraud or conspiring to defraud the Council;
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“Protective Measures”	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;
“Provider Personnel”	means all employees, volunteers, workers, staff, agents and consultants of the Provider engaged in the provision of the Services at any time;
“Regulated Activity”	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;
“Regulated Activity Provider”	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006;
“Relevant Requirements”	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;
“Request for Information”	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR;
“Services”	means the provision of early education places to eligible children delivered by the Provider under this Agreement and more particularly described in Schedule 1 (Service Specification);
“Service Specification”	means the specification for the Services in Schedule 1;
“Service Suspension”	means a suspension to the Services which is not a force majeure nor a material breach as defined in clause 14.3;
“Setting”	means the Providers premises where the Services are to be performed;
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of the Local Authority related to this Agreement.
“Working Day”	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 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 subordinate 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 Statutory Framework for Early Years Foundation Stage; 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 August 2019 (the "**Contract Period**") whereupon this Agreement shall automatically terminate.

3. PROVISION OF THE SERVICES

- 3.1. The Provider shall provide the Services during the Contract Period 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 Statutory Framework for Early Years Foundation Stage 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 and may terminate this Agreement in accordance with clause 17.
- 4.6. Unless otherwise permitted by the Local Authority, the Provider shall only deliver the Services:
 - 4.6.1. in respect of Children aged two where the Provider is awarded a grade of 'good' or higher; or
 - 4.6.2. in respect of Children aged three and four where the Provider is awarded a grade of 'requires improvement' or higher, by Ofsted in the most recent early years provision inspection report published by Ofsted in respect of the Provider.
- 4.7. The Provider shall immediately notify the Local Authority if there is any change to the grade awarded by Ofsted to the Provider during the Contract Period.
- 4.8. In the event that the Providers grade is lower than the grade or grades required under clause 4.6, the Local Authority shall have the right to terminate this Agreement in accordance with clause 14.
- 4.9. If during the Contract Period, 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 Funding in accordance with the terms of this Agreement.
- 5.2. The 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 Funding:
 - 5.3.1. if the free early education 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. 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. The Local Authority shall be entitled to undertake a rolling programme of checks to verify the headcount data provided;
 - 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 Statutory Framework for Early Years Foundation Stage 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.
- 5.4. 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 11.20 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 11.20 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 in order to comply with the Law for the duration of the Contract Period. 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 Contract Period 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 Contract Period 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 Provider shall not remove any Personal Data from the Setting without the prior approval of Ofsted.
- 11.6. 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.
- 11.7. 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:
 - 11.7.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 11.7.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 11.7.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 11.7.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 11.8. The Local Authority shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 11.8.1. 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;
 - 11.8.2. 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;
 - 11.8.3. 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.

11.8.4. 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 GDPR Article 46 or LED 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;

11.8.5. 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.

11.9. Subject to clause 11.10, the Local Authority shall notify the Provider immediately if it:

- 11.9.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
- 11.9.2. receives a request to rectify, block or erase any Personal Data;
- 11.9.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 11.9.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- 11.9.5. 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
- 11.9.6. becomes aware of a Data Loss Event.

11.10. The Local Authority's obligation to notify under 11.9 shall include the provision of further information to the Provider in phases, as details become available.

- 11.11. 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 11.9 (and insofar as possible within the timescales reasonably required by the Provider) including by promptly providing:
 - 11.11.1. the Provider with full details and copies of the complaint, communication or request;
 - 11.11.2. 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;
 - 11.11.3. the Provider, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 11.11.4. assistance, as requested by the Provider, following any Data Loss Event;
 - 11.11.5. 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.
- 11.12. 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:
 - 11.12.1. the Provider determines that the processing is not occasional;
 - 11.12.2. the Provider determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR, or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 11.12.3. the Provider determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 11.13. The Local Authority shall allow for audits of its Data Processing activity by the Provider or the Provider's designated auditor.
- 11.14. The Local Authority shall designate a data protection officer if required by the Data Protection Legislation.
- 11.15. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Local Authority must:
 - 11.15.1. notify the Provider in writing of the intended Sub-processor and processing;
 - 11.15.2. obtain the written consent of the Provider;
 - 11.15.3. 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
 - 11.15.4. provide the Provider with such information regarding the Sub-processor as the Provider may reasonably require.
- 11.16. The Local Authority shall remain fully liable for all acts or omissions of any Sub-processor.
- 11.17. 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).

- 11.18. 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.
- 11.19. 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.
- 11.20. 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 In the event that 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; 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.
 - 14.1.15 the Provider is awarded by Ofsted a grade:
 - (a) lower than the grade required under clause 4.6; or
 - (b) of 'inadequate'.
 - 14.1.16 where the Provider is a childminder, the childminder agency has notified the Local Authority that the Services delivered by the Provider are not, in their reasonable opinion, of satisfactory quality;
 - 14.1.17 the Provider is in breach of any statutory requirement, including but not limited to any breach of the Statutory Guidance, the Statutory Framework for Early Years Foundation Stage or any other applicable Law.
- 14.2 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.
- 14.3 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 Contract Period. 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. In the event that this Agreement is terminated in accordance with clause 14 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.
- 16.2. 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.
- 16.3. 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.
- 16.4. 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.
- 16.5. 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 has been suspended from the Early Years Register by Ofsted.
- 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 in accordance with clause 21 and marked for the attention of the Assistant Director of Schools and Learning; 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. In the event that 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. In the event that 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. In the event that 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 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 are informed of their right to make a complaint and are provided with a copy of the Complaints Procedure;
 - 19.2.4 Parents 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:

**Early Years Sufficiency Manager
Children's Services Department
Room 154
John Hadfield House
Dale Road
MATLOCK
Derbyshire
DE4 3RD**

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

20 FORCE MAJEURE

- 20.1 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.
- 20.2 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.
- 20.3 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.
- 20.4 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.

21 NOTICES

- 21.1 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.
- 21.2 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.

22 MEETINGS

- 22.1 The Provider shall attend review meetings either face to face 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.

23 DISPUTE RESOLUTION

- 23.1 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 Early Years Sufficiency Manager of the Local Authority and the authorised representative of the Provider or any other individual nominated by the Parties from time to time.
- 23.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Early Years Sufficiency Manager of 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.
- 23.3 In the absence of agreement under clause 23.2, 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.
- 23.4 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.

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 bye-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 Equal Pay Act 1970, the Equality Act 2010, the National Minimum Wage Act 1998, the National Minimum Wage Regulations 2015 and the National Minimum Wage (Amendment) Regulations 2018.
- 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 has performed its obligations 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 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

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 Statutory Framework for Early Years Foundation Stage 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

The requirements the Local Authority expects from a contracted Provider and the requirements the Provider can expect from the Local Authority are outlined in the following pages. By signing the Provider Agreement both parties are agreeing to fulfil its requirements.

Providers must be contracted with the Local Authority prior to delivering a free entitlement place and must submit the required documentation in order to be entered onto the Directory of Providers.

Section 1: Overview

1.1 This Provider Agreement builds on the guidance provided in the Early Education and Childcare, Statutory Guidance for Local Authorities (June 2018); 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 2018
- General Data Protection Regulations 2018
- Childcare Act 2006
- Childcare Act 2016
- Equality Act 2010
- Schools Admissions Code 2014
- Statutory Framework for the Early Years Foundation Stage 2014
- Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014
- The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016
- Special Educational Needs and Disability Code of Practice: 0 to 25 years 2015
- Data Protection Act 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/692348/Early_education_and_childcare_-_statutory_guidance.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604417/Model_Agreement_FINAL_20170302.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629544/Early_years_entitlements-operational_guidance.pdf

1.2 The guidance seeks to provide clear expectations and regulations that both the Providers of free entitlement and the Local Authority must adhere to when entering into a Provider Agreement contract to deliver the free entitlements to two, three and four year olds, to ensure the free entitlements deliver the best outcomes for children and families within Derbyshire.

1.3 The Local Authority should not intervene where Parents choose to purchase additional hours of provision or additional services, providing that this does not affect the Parent's ability to take up their child's free place, as there is an expectation that the Provider will be completely transparent about any additional charges.

1.4 Throughout the Provider Agreement 'Provider' means: (statutory guidance 2018 page 6)

- 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 itself registered with Ofsted; or
- Schools (including Independent Schools and Academies) taking children age two and over and which are exempt from registration with Ofsted as an early years Provider

1.5 This Provider Agreement refers to eligible two year olds, Universal and the Extended Entitlements, therefore, Providers are required to adhere to this document and apply it for all the free entitlement hours they provide.

Section 2: Eligibility for Providers

Outcome: all children who meet the prescribed criteria are able to take up high quality free entitlement, regardless of their parent's ability to pay, benefiting their social, physical and mental development and helping to prepare them for school. Evidence shows that regular high quality education has lasting benefits for all children.

Registering to deliver the free entitlement and conditions of entry

2.1 The Local Authority will base their decision to fund a Provider to deliver free entitlement places solely on the Provider's published Ofsted inspection judgement. For childminders registered with a childminding agency, the agency's Inspection judgement will be used to determine whether funding will be granted.

2.2 Consideration will be given to any historical information published by Ofsted about a Provider. This could include, for example a Provider using the same location, and employing at least one member of the leadership team of a Provider that has previously closed down or judged 'Inadequate' by Ofsted.

2.3 The Local Authority will not fund childminders registered with a childminder agency where the agency has indicated to the Local Authority that the childminder is not of satisfactory quality.

2.4 Providers wishing to claim the free entitlement must be registered with Derbyshire County Council on its Directory of Providers. Providers will not receive any free entitlement for periods they are not included on the Directory. To be entered on to the Directory of Providers and become eligible to claim the free entitlement Providers **must**:

- Run a setting in Derbyshire.
- Comply with the conditions outlined within the Provider Agreement.
- Agree to be bound by the conditions of funding for periods during which they are claiming funding.
- Operate in accordance with all relevant legislation and Government guidance.
- At all times hold a current Office for Standards in Education (“Ofsted”) registration certificate, be registered on the Early Years Register and ensure compliance with all Ofsted registration requirements throughout the period of the contract. **Nursery Unit of Independent Schools (NUIS)** must ensure compliance with Independent Schools’ Inspectorate
This certificate must be displayed during opening hours.
- Meet the requirements of the Early Years Foundation Stage (EYFS).
- Actively promote fundamental British values and not promote views or theories as facts which are contrary to established scientific or historical evidence and explanations.
- Childminders/childminder agencies must not claim free entitlement for a childminder’s family member.
- Have the required cover of public liability and employers’ liability insurance of £10,000,000 (ten million pounds) for each.
This certificate must be displayed during opening hours.
- Must maintain an ‘active’ status with Companies House if set up as an incorporated company.
- Submit the required documents in order for a Provider Agreement to be issued and included on the Directory of Providers.

Section 3: Key Responsibilities

The Local Authority:

3.1 Will secure sufficient childcare, where reasonably practicable for every eligible child in the County.

3.2 Will seek to work in partnership with Providers to agree how to deliver the free entitlement places and will encourage strong partnership working between Providers in all sectors to ensure the market offers maximum flexibility for Parents to access free hours to meet their needs and the needs of their child.

3.3 Has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. They have a number of statutory functions under the 1989 and 2004 Children Acts which makes this clear, and the 'Working Together to Safeguard Children' 2015 guidance sets these out in detail.

3.4 Will report annually to elected Council Members on how they are meeting their duty to secure sufficient childcare. This report will be available and accessible to Providers and Parents.

3.5 Will work with Providers to ensure invoices and receipts are clear, transparent and itemised allowing Parents to see that they have received their child's free entitlement completely free of charge and understand fees paid for additional hours or services. Invoices and receipts should include the Provider's full details so that they can be identified as coming from a specific provider. An example invoice is attached to this document as Appendix (iii).

3.6 Will provide a timetable of payment dates to all Providers and will use reasonable endeavours to ensure that payment dates are met.

3.7 Will ensure that published information on Childcare Providers, other than those who have notified the Local Authority they do not wish information to be published, is updated as frequently as appropriate.

3.8 Will offer support to Early Years and Childcare Providers in Derbyshire, to meet the needs of children with special educational needs and/or disabilities (SEND). For children receiving free entitlement within the Private, Voluntary and Independent (PVI) sector referrals to support services should be made via 'Referral for a Derbyshire Specialist Support Service for Children in the Foundation Stage' available on DCC website ([Early years special educational needs panel: Education and learning - Derbyshire County Council](#)) and the Local Offer (localoffer.derbyshire.gov.uk/). Early Years Providers can access support for children from services for the hearing impaired, visually impaired, physically impaired, educational psychology and Early Years Special Educational Needs (EYSEN) service. Nursery classes or schools should access school support services via normal routes. These providers should consult with SSEN as to whether a child might meet their criteria for referral.

The Early Years SEN helpline is available for support and signposting for any concern or question regarding young children with SEND. EarlyYears.SENHelpline@derbyshire.gov.uk.

Additional funding to support children with Special Educational Needs and Disabilities (SEND) can be applied for via the Early Years SEN Inclusion Fund (currently known as ETAEYS). One off annual payments are available to three and four year old children in receipt of DLA through the Disability Access Fund (DAF) 8.6 refers. Information is available on DCC website, the Local Offer (ETAEYS initiative/Derbyshire Local offer) or the helpline as above.

For children who have significant needs in the areas of Education, Health and Social Care, it may be appropriate to apply for an Education Health Care Plan. Support Service professionals can offer advice on this process, or contact the helpline as above.

Further support for all Early Years providers can be sought from the SEND Officer based in the 6 localities. (See Derbyshire's Local Offer)

3.9 Will give support to Early Years and Childcare Providers in Derbyshire, to meet the needs of Derbyshire Children in Care (even though a child is living in Derbyshire they may not be in the care of Derbyshire County Council).

For any Derbyshire Child in Care who will be attending a Derbyshire school or setting requests for support should be made either via telephone (01629 538028) or email virtualschool@derbyshire.gov.uk

The Provider:

3.10 Must be registered with Ofsted on the Early Years Register or Independent Schools Inspectorate.

3.11 Must comply with all relevant legislation and insurance requirements and **must** maintain the insurance minimums of £10,000,000 (ten million) for both Public and Employers' liability cover.

3.12 Must follow the 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 Provider must have regard to 'Working Together to Safeguard Children' 2015 guidance.

3.13 There is an expectation that Providers will deliver the free entitlements consistently to all Parents, whether in receipt of 15 or 30 hours and regardless of whether they opt to pay for optional services or consumables. This means a Provider should be clear and communicate to Parents details about the days and times that they offer free places, along with their services and charges. Those children accessing the free entitlements should receive the same quality and access to provision.

3.14 Must issue a Privacy Notice in compliance with the Data Protection Legislation to all Parents in relation to how they share children's details. A template which Providers can adapt to create their own policy has been emailed to all Providers along with the Provider Agreement supporting documents and is attached to this document as Appendix (i).

3.15 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 SEN inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to Parents.

3.16 There is an expectation that Providers update their details with Families Information service (FIS) on a regular basis in line with Section C.9 of the statutory guidance June 2018.

3.17 Early Years Providers in receipt of free entitlement must comply with the terms of the 2015 SEN Code of Practice and the 2010 Equality Act. This includes, but is not limited to having a named Special Educational Needs Coordinator (SENCO) and investing in all children with special needs through a Graduated Response to meeting their needs.

3.18 Must adhere to the regulations regarding removal of children's confidential details off site. Providers must seek the approval of Ofsted when taking children's details off-site and should retain the email as evidence for their Ofsted inspection.

Section 4: Eligibility and Grace Periods

The Local Authority:

Two year olds

4.1 The Local Authority has a duty to secure free entitlement places for eligible two year olds. The two year old eligibility criteria can be found at the link below:
<https://www.gov.uk/help-with-childcare-costs/free-childcare-2-year-olds>

Universal Credit

4.2 Parents who wish their child to start a two-year-old entitlement place from 1 April 2018 onwards (children starting in summer term 2018, or any subsequent term) and who are in receipt of Universal Credit, will be subject to the earned income threshold.

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

4.3 Statutory guidance 2018 outlines eligible terms as below:

A child born in the period	Will become eligible for a free place
1st January to 31st March	April following a child's 2 nd birthday (Summer school term)
1st April to 31st August	September following a child's 2 nd birthday (Autumn school term)
1st September to 31st December	January following child's 2 nd birthday (Spring school term)

4.4 Since September 2017, Parents have been able to check their own eligibility for two year old funding by following the link below:

https://caya-apps.derbyshire.gov.uk/Parent_Portal/Website/default.aspx

4.5 Eligible Parents will receive confirmation via e-mail / letter which will include their six digit code and start date. Eligible Parents will then take their code to their chosen Provider who will enter the code into the Provider Portal at 'Actual' submission. Providers should continue to accept the previous style letterhead and approval letter until it has been phased out.

4.6 Funded two year olds continue to be eligible to receive a free entitlement place once they have received confirmation of eligibility, even if a change in family circumstances means the child ceases to meet these criteria at a later date.

Universal Entitlement for 3 & 4 years olds

4.7 Is available to all three and four year olds, the term following the child's third birthday and is therefore not based on eligibility criteria.

4.8 Statutory guidance 2018 outlines eligible terms as below:

A child born in the period	Will become eligible for a free place
1st January to 31st March	April following a child's 3 rd birthday (Summer school term)
1st April to 31st August	September following a child's 3 rd birthday (Autumn school term)
1st September to 31st December	January following child's 3 rd birthday (Spring school term)

Duration of a free entitlement place

4.9 Free entitlement only applies until a child either:

- Commences a school reception place after the child's fourth birthday
- or
- Reaches compulsory school age (the term following the child's fifth birthday)

Delayed admission of summer born children

4.10 Where a parent chooses to defer their child's school place and their child is of compulsory school age, the free entitlement will not continue at the Parents chosen Provider:

- Any parent of a summer born child who wishes to delay entry into Reception by an academic year cannot automatically do so. Agreement must first be sought from Derbyshire County Council and the guidance and application form for this can be found at the following link under 'related documents': <https://www.derbyshire.gov.uk/education/schools/school-places/apply-for-a-school-place.aspx>. The form requires information from the current early years setting and whenever possible the Headteacher of the preferred school. The assessment not only takes account of academic ability but also of the child's social development.
- Any application for a child outside the normal age group should be made no later than the 31 March preceding the academic year the child would normally start. There is no guarantee of a place at the preferred school even if the Authority agrees in principle to the request.
- E-mail admissions.transport@derbyshire.gov.uk or telephone 01629 537479 for further information.

Extended Entitlement for 3 & 4 year olds

4.11 The eligibility criteria for the Extended Entitlement can be found at the link below: <https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>

4.12 The Local Authority will ensure, where reasonably practicable, that a child has a free entitlement place by the beginning of the following term in which the child and the parent meet the eligibility criteria for the free entitlements.

4.13 The Local Authority will only fund a place the term following receipt of the Parent's eligibility code from HMRC. The Local Authority cannot fund a child within the term they receive their eligibility code, therefore, Providers must be aware that any eligibility codes they receive from Parents during a term are only valid from the start of the following term. The eligibility criteria at Section 4.11 still applies. **Providers who offer an Extended Entitlement place during the term the child has become eligible, will either have to cover the cost of the place or charge the Parents for the sessions attended.**

4.14 Will confirm the validity of 30 hours eligibility codes, once submitted by the Provider on the Portal, to allow them to offer 30 hours places for eligible three and four year olds.

4.15 If a parent becomes ineligible for the Extended Entitlement, the Local Authority will fund the Universal Entitlement at the Provider nominated on the FE1 (Parent Declaration form). Where the Parent changes their mind, the Local Authority will ask the Parent to nominate again.

Children from other local authorities claiming free entitlement

4.16 Two, three and four year old children who live outside the Derbyshire County Council area, but attend provision in the County, will receive their funding from Derbyshire, and Derbyshire children attending provision in the catchment of a neighbouring council will be funded by that authority.

Grace periods

4.17 The Local Authority will complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at six fixed points in the year (the table below sets out the dates and grace periods). The Local Authority will endeavour to meet these fixed dates set by central government however, this may fall on a weekend / bank holiday therefore the check will be undertaken the next appropriate working day. The Local Authority will notify the Provider by updating the code details in the Provider Portal where a Parent has fallen out of eligibility and inform them of the grace period end date. For any term, this information can be obtained in the ‘actuals’ tab within the Provider Portal. It is in a Provider’s interest to check this information regularly and inform Parents when they are approaching the end date of the code to enable the Parent to reconfirm before entering their grace period. If a Parent falls into their grace period, both Parents and Providers may experience difficulties in claiming funding for future terms. The Local Authority cannot fund children starting an extended entitlement place where they have entered the Grace Period and have not accessed their extended entitlement previously.

Date Parent Falls Out of Eligibility	Local Authority Audit Check Date:	Grace Period End Date:
1 January – 10 February	11 February	31 March
11 February – 31 March	1 April	31 August
1 April – 26 May	27 May	31 August
27 May – 31 August	1 September	31 December
1 September – 21 October	22 October	31 December
22 October – 31 December	1 January	31 March

A child will enter the grace period when the child’s Parents 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.

The Local Authority will be able to access 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.

The Local Authority will continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory Guidance for Local Authorities 2018.

Free school meals

4.18 Statutory entitlement to free school meals (FSM) only applies to children in maintained schools, including the extended eligibility criteria for those in reception, Years 1 and 2. Academies and free schools are required to follow the FSM legislation as if it applied to them by virtue of their funding agreements. FSM requirements do not apply to children in the private, voluntary or independent sector.

In order to qualify for FSM:

- A child must be a registered pupil of the school;
- If the child is under compulsory school age, the child must be receiving full time education, or if part time, receiving education before and after the lunch break
- Under current criteria the child's Parent must be in receipt of any one or more of the following support payments: income support (IS); income – based jobseeker's allowance (IBJSA); income-related employment and support allowance; support under part 6 of the Immigration and Asylum Act 1999; the guarantee element of State Pension Credit; Child Tax Credit (but not Working Tax Credit) and have an annual income not exceeding £16,190, as assessed by Her Majesty's Revenue and Customs; Working Tax Credit four-week run on (the payment someone receives for a further four weeks after they stop qualifying for Working Tax Credit); Universal Credit, from the 1st April 2018 if a parent is entitled to Universal Credit they must have an annual net earned income equivalent to and not exceeding £7,400 accessed on up to three of the Parents most recent Universal Credit assessment periods to be eligible.
- A child who is in receipt of a qualifying benefit in their own right is also entitled to FSM. To be eligible to receive free school meals, a pupil or their parent must be in receipt of any of the above listed benefits and must make a claim to the school for FSM.
- There is a duty (section 512ZB(4A) of the Education Act 1996) to provide FSM for all infants (those children in reception and Years 1 and 2) who are registered pupils in state schools (including academies and free schools).

The Provider:

4.19 Must log they have seen identification for each child whom they are claiming the free entitlements, for example sight of their passport, birth certificate, NHS Red Book etc. and must comply with their obligations under Data Protection Legislation with regards to the retention and destruction of such Personal Data. The Provider will record this on the FE1 (Parent Declaration form) and Provider Portal. Section 13.9 identifies further documentation which should be collected and retained.

4.20 Must offer places to eligible two year olds on the understanding that the child remains eligible until they become eligible for the Universal entitlement for three and four year olds.

4.21 Must acquire written consent from, or on behalf of, the Parent to be able to receive confirmation and future notifications from the Local Authority of the validity of the parent's 30 hours eligibility code. Completion of the FE1 (Parent Declaration form) will acquire this consent.

4.22 Must verify the 30 hours eligibility code with the Local Authority once they have received written consent from or on behalf of the Parent. Providers will be able to check the validity of the 30 hour code through the Provider Portal. The Provider will input the code alongside the child's details at headcount; at that point if it is still an eligible code then the system will open up the parameters for that child to enter Extended Entitlement funding. Essentially acting as a further check to ensure the code is still valid.

Section 5: Flexibility

The Local Authority:

5.1 Will ensure Providers deliver free entitlement places within the parameters set out in point 5.11.

5.2 Will support Parents to identify Providers who can offer free places on the days and at the times needed by the Parent. This information is available through the Families Information Service.

5.3 The Local Authority has a duty to ensure there is sufficient high quality, affordable, accessible and flexible places to meet the demand from Parents. Where it is identified that Parents are unable to access free funded places that meet their requirements, the Local Authority may seek to create new flexible provision to meet demand.

Multiple provider process

5.4 Parents have the right to decide how they take their free entitlement and how they split their hours between Providers. However, where settings decide they only wish to offer Universal Entitlement, the Local Authority cannot get involved in this decision and will not force a Provider to deliver Extended Entitlement to meet parental demand. In

this scenario, Parents would need to use multiple providers to access their full free entitlements.

5.5 Settings who accept 30 hours eligibility codes are by definition delivering Extended Entitlement, even if they are only open for 15 hours a week; they are still delivering part of the Universal and Extended Entitlement. Where Providers can only deliver part of the Universal and Extended Entitlement, Parents would need to use multiple providers to access their full free entitlements.

5.6 If the Local Authority is made aware that a child is accessing more than two sites in a single day, it will contact the Parent and ask them to nominate settings over a maximum of two sites in a single day. The Local Authority will reclaim funding where required.

Double funding

5.7 In instances where double funding is identified, funding will go to the Provider where the parent first signed the FE1 (Parent Declaration) form.

5.8 The Local Authority **will not** double fund children. With the removal of the Local Authority's notice period, children are able to leave a Provider and start a new Provider the following funded week.

Mid-term variations

5.9 With the introduction of the on-line finance system, the Local Authority has re-introduced mid-term variations on a trial basis to allow for a parent to increase or reduce their child's funded hours.

Every child will be entitled to **one variation per term** only. Providers will not be able to complete a variation using the Provider Portal, therefore, must complete and return the FE4 Variation form to:

**Financial Services
Room 268
County Hall
MATLOCK
DE4 3AG**

The Local Authority reserves the right to withdraw the offer of mid-term variations should it require to do so.

Starters & leavers

5.10 Providers must ensure children who start/leave after headcount day and before changes week record this through the Provider Portal during the Changes Week identified in the timetable. This is completed by altering the start/end dates and the number of weeks claimed for each child. Changes after Changes Week will be submitted using the relevant FE2/3 forms.

The Provider:

5.11 Is expected to consider offering flexible packages of free entitlement to Parents, however Providers should ensure that:

- There is no minimum session length (subject to the requirements of registration on the Ofsted Early Years Register)
- No session is longer than 10 hours in a single day
- No session is delivered before 6:00am or after 8:00pm
- A maximum of two sites are attended by a child in a single day
- The quality requirements as set out in regulations and in the statutory guidance are met
- No artificial breaks

5.12 Should consider offering the free entitlements outside of the school term times, up to 52 weeks of the year and at weekends.

5.13 Must provide information about their offer and admissions criteria to Parents and the Local Authority upon request.

5.14 Should discuss and work closely with Parent(s) to agree how a child's overall care will work in practice when their free entitlement is split across different Providers, to ensure a smooth transition for the child.

Stretched funding

5.15 Where there is Provider capacity, Parent(s) are able to take up their child's free entitlement place in patterns of hours that "stretch" their child's entitlement over more weeks.

The Local Authority will provide the facility for Providers to claim stretched funding. Providers should follow their Provider Portal guidance document on how to do this.

Rolling hours forward

5.16 Providers cannot choose to bank unused hours (other than delivering a stretched claim over three terms) and offer them to Parents in the following term as this can lead to an over claim if the parent leaves the Provider or chooses not to access them.

Artificial breaks

5.17. Children should be able to take up their free hours as part of continuous provision and Providers should avoid artificial breaks being created throughout the day, for example over the lunch period.

Providers are encouraged to offer any required additional fee paying hours either side of their funded sessions. This supports working Parents to be able to access a free funded place of up to 30 hours a week without the requirement to pay for additional hours.

Examples of flexibility

5.18 Where a child commences a place part way through a term (Universal Entitlement only), it may be possible to access the full terms entitlement using the holiday weeks.

5.19 Where a child accesses a term time only Provider and takes less than the maximum funded hours each week, they could then sign up to use the remaining hours over the holiday periods with an all year round Provider. In this instance, the hours should be agreed at the start of the term to allow for each Provider to include the hours on the Provider Portal. All hours must be used within the correct term as hours cannot be rolled into the next term and all hours must be taken in conjunction with the criteria set out in Section 5.11.

5.20 Where a child accesses a Universal Entitlement place for 38 weeks per year, if eligible, they could then take up to the Extended Entitlement in the holidays only. In this instance, the hours should be agreed at the start of the term to allow for each Provider to include the hours on the Provider Portal. All hours must be used within the correct term as hours cannot be rolled into the next term and all hours must be taken in conjunction with the criteria set out in Section 5.11.

5.21 Where Providers require a settling in period for new children, the Local Authority will expect that the child is attending for their full claimed hours within three weeks of their start date. Where the settling in period exceeds this time and there is no documented reason, it may result in a reclaim of the funding for over claimed hours.

5.22 Providers are expected to provide regular updates to Families Information Service (FIS) of how they deliver free entitlement funding, for example, can free entitlement places be accessed flexibly or does the Provider stipulate when free entitlement places can be taken. Also, if a Provider limits the number of free places they offer, they **must** ensure Parents are aware of this and should update FIS with these restrictions. This can be included on the Provider Update Form in the 'Service Description' box which Providers can access using their allocated password.

5.23 Providers should regularly inform Families Information Service (FIS) of vacancy rates to ensure that Parents receive accurate information regarding the Provider.

5.24 Providers **must** ensure they inform Ofsted, the Local Authority and (FIS) of any changes to contact details, as a new funding contract may need to be issued. Failure to inform of changes may result in a contract becoming null and void and may lead to a delay in funding payments and the removal from the Directory of Providers.

5.25 The Local Authority will act as a broker between overall parental demand and Provider capacity, seeking to provide the maximum possible flexibility where demand exists. Where Providers are only able to offer a limited number of free places, this may not meet the demand and the Local Authority may seek to create new places in the area.

5.26 Where provision is expanded by the same owner (i.e. childminder to group care), the Local Authority must be informed and a new contract will be issued.

5.27 Where a business is purchased by a new owner, the Local Authority will need to be informed, and any awarded free entitlement will need to be transferred from one Provider to the other as part of the sale of the business. The Local Authority will not intervene in this transaction. The Local Authority will pay the new owner at the next payment date once instructed the sale is completed and a funding contract is in place.

Section 6: Partnership Working

The Local Authority:

6.1 Encourages strong partnership working between Providers from all sectors (maintained schools, academies and free schools, private, voluntary and independent Providers and childminders) to ensure the market offers maximum flexibility for Parents to access free hours to meet their needs and the needs of the child.

Section 7: Special Educational Needs and Disabilities

The Local Authority:

7.1 Will offer support to Early Years and Childcare providers in Derbyshire, to meet the needs of children with special educational needs and/or disabilities (SEND). For further information regarding the Local Offer (localoffer.derbyshire.gov.uk/), contact the Early Years helpline at EarlyYears.SENHelpline@derbyshire.gov.uk.

Refer to Section 3, the key responsibilities of the Local Authority for further details.

Section 8: Social Mobility and Disadvantage

The Local Authority:

Early Years Pupil Premium (EYPP) and Deprivation Funding

8.1 Will pay EYPP at a rate of 0.53p per hour per child and Deprivation Funding at a rate of £1.31 per hour per child, where the child is eligible for EYPP and receives the Universal 15 hours entitlement. The Local Authority will notify Providers should these rates change. The eligibility criteria for EYPP can be found in the Early Years Entitlements: Local Authority Funding of Providers Operational Guide for 2018 to 2019 on page 24 at the link below:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/682452/Early_years_entitlements-Operational_guide_2018_to_2019.pdf

8.2 Providers will now claim EYPP and Deprivation Funding through two routes, either the **Economic route** where claims are made using the Provider Portal at headcount, or the **Non-economic route** where Providers will be required to contact the Early Years Sufficiency Service.

Economic route

Where a Parent has supplied their details in order for the Provider to check eligibility for Early Years Pupil Premium (EYPP) and Deprivation Funding, the Provider will enter these in the Parent Details tab on the Provider Portal. Further information about how to claim is set out in the Provider Portal Guidance, Claiming Free Early Education for Two, Three and Four Year Olds, A guide for PVI providers August 2018.

Please note: EYPP and Deprivation Funding data can only be submitted by the deadline provided; late applications will not be accepted.

Non-economic route

Where a child has left care through adoption, special guardianship or a child arrangement order, Providers must request a copy of the relevant order from the family and forward a copy, with the setting's details, highlighting that this is evidence for Early Years Pupil Premium (EYPP) and Deprivation Funding to enquiries.sufficiency@derbyshire.gov.uk

Providers will not be required to submit evidence provided in previous terms.

8.3 Children in Care accessing three and four year old funding are eligible for Early Years Pupil Premium. This should be requested from the Local Authority who has legal responsibility for the child. Information for Derbyshire Children in Care is available on the DCC website or via telephone (01629 538028) or email virtualschool@derbyshire.gov.uk

8.4 For Derbyshire Virtual School Pupil Premium Policy: "Schools and settings are accountable for ensuring Early Years Pupil Premium/Pupil Premium Plus is used appropriately and effectively to enhance and improve the child in care's educational achievement. Targets will be submitted termly by the school/setting on a provision map. Schools/settings will be expected to review the previous term's targets and the effect of the Pupil Premium spending."

8.5 EYPP and Deprivation funding is paid to Providers to support identified needs of disadvantaged children and improve outcomes. Providers should use EYPP and Deprivation Funding effectively with a clear plan for investing and using the additional funding and how this will benefit and impact identified children and reduce any differences in outcomes between groups of children. Providers will be asked to evidence how this additional funding has been used and what impact this has had on individual children. Providers will need to complete a form which includes how they have spent the additional funding and what the impact has been.

Providers need to evidence to Ofsted how they have spent this additional funding.

Return forms to:

**Early Years Manager
Room 154
John Hadfield House
Dale Road
MATLOCK
Derbyshire
DE4 3RD**

Disability Access Fund

8.6 Three and four year old children who are in receipt of child Disability Living Allowance and are receiving the free entitlement are eligible for the Disability Access Fund (DAF). DAF is paid to the child's early years setting as a fixed annual rate of £615 per eligible child. Section 7 of the FE1 form should be completed by the Parent if their child is in receipt of Disability Living Allowance. If the child attends more than one Provider, the Parent will need to nominate which one they wish to receive the DAF. The letter stating a child is in receipt of Disability Living Allowance should be retained by the setting as evidence and made available upon request to a Local Authority Officer at compliance checks. The Provider should notify the Local Authority through the Provider Portal when submitting 'Actuals' data if they wish to claim DAF for a child.

Section 9: Derbyshire Children in Care

The Local Authority:

9.1 Will offer support to Early Years and Childcare Providers in Derbyshire, to meet the needs of Derbyshire Children in Care.

As part of its Corporate Parenting role Derbyshire County Council is required to "promote high aspirations, and seek to secure the best outcomes, for those children and young people" in its care (Children and Social Work Act 2017, Chapter 16, Part 1, Chapter 1, Section 1e). Where a local school/setting has a 'Child in Care'/'Looked After' child it is required to work with the Local Authority who has responsibility for the child to support its Statutory Duty.

This will include:

- contacting Derbyshire Virtual School to inform them when a Derbyshire Child in Care will be starting at their school/setting or if a child already attending their school/setting becomes a Derbyshire Child in Care
- providing information about the child's development and progress, including tracking information
- completing specific assessments such as the ECAT Child Monitoring Tool
- attending meetings about the child, including termly Personal Education Plan meetings

- completing and returning reports about the child including the Personal Education Plan within specified timescales
- meeting with Derbyshire Children's Services staff to discuss appropriate provision for the child and how to best meet their needs
- applying for and using Early Years Pupil Premium appropriately and effectively to enhance and improve the Child in Care's educational achievement

For further information regarding Children in Care, contact Derbyshire Virtual School:
Tel: 01629 538028 Email: virtualschool@derbyshire.gov.uk

Section 10: Quality

The Local Authority:

10.1 Understands that Ofsted are the sole arbiter of quality for free entitlements and Ofsted and Inspectorates of Independent Schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.

10.2 Rely solely on the Ofsted inspection judgement of the Provider or the childminder agency Inspection judgement as the benchmark of quality.

10.3 Will 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 Providers who are rated less than 'Good' by Ofsted or newly registered Providers.

10.4 May, in cases where settings are identified as potentially vulnerable at the point of an Ofsted inspection and/or where they face a range of short-term difficulties, offer an enhanced, time limited level of support. In all instances the Early Years Improvement Service will work with Providers to ensure that any barriers to high quality provision can be addressed in a timely manner.

10.5 Will offer support to all Providers throughout Derbyshire. Providers who receive a 'Requires Improvement' or 'Inadequate' Ofsted judgement will need to demonstrate progress against the Ofsted report and address quality concerns raised by Ofsted at inspection. There is an expectation that such Providers will work in partnership with Local Authority Officers to secure improvement.

10.6 Will fund Providers with an Ofsted inspection judgement of 'met' until their Ofsted quality inspection judgement is published. The Local Authority should not fund Providers with an Ofsted inspection judgement of 'not met'.

10.7 Will escalate any concerns to Safeguarding and/or Ofsted where the Provider fails to co-operate with the Local Authority.

Withdrawal of the free entitlement

10.8 There are a number of instances where funding may be withdrawn. These are detailed as follows:

10.9 Provider is judged to be 'Inadequate' by Ofsted.

If a Provider is judged to be 'Inadequate' the Early Years Sufficiency Team will give notice at the point at which the setting's Ofsted report is published, that **no new** free entitlement places for two, three and four year olds will be funded until such time as the setting receives a published 'Requires Improvement, 'Good' or 'Outstanding' inspection outcome.

The Local Authority will not accept any new claims for children from the date of publication and may require Providers to send in registers showing which children were in receipt of free entitlements at the point of the Ofsted report been published. Depending upon the point in term, the Local Authority may choose to opt to only fund existing places based upon current submitted data.

Where Providers claim for children through the Provider Portal after the publication date of the Ofsted report, the Local Authority may reclaim the funding at the next payment date.

Where the Ofsted report identifies safeguarding issues, the Early Years Improvement Team will take into account the content of the report and make a decision as to whether the Provider can retain existing funded places or whether children should be removed at the earliest possible convenience.

Any decision made to remove free entitlement children will be confirmed in writing.

The Provider will be required to inform all Parents of their 'Inadequate' inspection result and, where required, the decision from the Local Authority regarding the removal of existing places to allow Parents time to find alternative provision.

Where Providers are permitted to retain existing funded places, the Local Authority recognises that some Parents may take the decision to change Provider. In such circumstances, the Local Authority recommends that Providers waive their required notice period, where applicable, allowing Parents to move quickly if required.

All Providers judged 'Inadequate' will be offered support by Officers of the Local Authority to work towards improving their Ofsted judgement.

At the point of the next inspection report being published, the Early Years Sufficiency Team will issue a letter with further details pertaining to funding.

If a Provider receives two consecutive 'Inadequate' judgements, the Local Authority retains the right to remove the Provider from the Directory of Providers and will work with the Provider to find alternative provision for those funded children already in attendance.

Provider is judged to be ‘Requires Improvement’ by Ofsted

10.10 If a Provider is judged to be ‘Requires Improvement’ the Early Years Sufficiency Team will give notice at the point at which the setting’s Ofsted report is published, that **no new** free entitlement places for two year olds will be funded until such time as the setting receives a published ‘Good’ or ‘Outstanding’ inspection outcome.

At the point of the next inspection report being published, the Early Years Sufficiency Team will issue a letter to Providers with further details pertaining to funding.

In the event of a setting receiving two consecutive ‘Requires Improvement’ judgements, the Local Authority retains the right to suspend funding for two year olds and this funding will not be available to the Provider until such time as the setting receives an improved Ofsted judgement.

Other circumstances where free entitlement may be withheld:

10.11 Where a Provider has outstanding debts owing to any Department within the Local Authority, the Local Authority reserves the right to withhold/remove funding payments until the outstanding debt is cleared.

10.12 If a Provider’s circumstances change and they no longer meet the eligibility criteria for the Directory of Providers set out in this agreement.

British Values

10.13 The Local Authority will respond to substantive and well-evidenced concerns regarding fundamental British Values or the promotion of views and theories contrary to established scientific or historical evidence brought to our attention. Where there are reasonable grounds to believe that a Provider is not meeting these requirements set out in Early Education and Childcare – Statutory Guidance for local authorities, June 2018 the Local Authority may withdraw funding and secure alternative provision for children taking up their free entitlement place at those Providers as soon as reasonable practicable. The Local Authority may also notify and consult the regulator of any such concerns.

The Provider:

10.14 Will adhere to the guidance stipulated within the Early Years Foundation Stage (EYFS).

10.15 Will actively promote fundamental British Values and not promote views or theories as fact which are contrary to established scientific or historical evidence and explanations.

10.16 **Must** take any measures identified in a report from Ofsted to improve the overall effectiveness of the provision.

10.17 May choose to work with the Local Authority to address the concerns raised by Ofsted at inspection when a Provider receives a judgement less than ‘Good’.

Section 11: Business Planning and Funding the Free Entitlement

The Local Authority:

11.1 Will fund Providers for eligible two, three and four year olds who are rated 'Good' or 'Outstanding' by Ofsted or newly registered Providers or at any childminder registered with a childminder agency judged as 'effective' by Ofsted.

11.2 Will fund Providers for three and four year olds who are rated 'Requires Improvement' ('Satisfactory'), 'Good' or 'Outstanding' by Ofsted or newly registered Providers or any childminder registered with a childminder agency judged as 'effective' by Ofsted.

11.3 May fund providers with exemptions from the Early Years Foundation Stage if a parent wants their child to take up their free place at an exempt provider and the provider is willing to accept the Local Authority funding and any other Local Authority requirements.

11.4 May fund individual children who have exemptions from the EYFS.

11.5 Will fund Providers at £5.20 per hour for eligible two year olds and £4.03 per hour for three and four year olds for both the Universal and Extended Entitlement. The Local Authority will notify Providers should these rates change.

11.6 Will pay all Providers twice a term based on 80% initial payment and the remaining 20% (subject to starters and leavers) will be paid mid – term. Following consultation with Providers, from January 2019, payments will be made monthly (as stated in 11.8 of the Provider Agreement 2017-2018).

11.7 The Local Authority will issue Providers with an indicative budget at the beginning of the financial year which broadly reflects anticipated participation (Section A4.2 of the statutory guidance). The Local Authority will adjust budgets to reflect actual levels of participation based on a count of children attending provision conducted at least three times a year using the information supplied on 'Actual' returns via the Provider Portal.

11.8 Derbyshire County Council has an encrypted message facility to exchange child information securely. You will be instructed by a member of the Council if they require you to use this facility and Providers must reply to the secure email sent to them in order for information to remain confidential. Providers must not send full children's details via non-encrypted email and where the need arises, should only put the child's initials and date of birth in non-secure email correspondence.

11.9 The Local Authority is obliged to collect information from Providers for other Government and local purposes. As a condition of receiving the funding, Providers **must** complete the annual Early Years Census form and any other requests for information from the Local Authority.

11.10 The Local Authority will fund places for two, three and four year old children at new Providers registered with Ofsted until the Providers first full Ofsted inspection judgement is published or attending a childminder registered with an agency until the agency's first full Ofsted inspection judgement is published. Providers wishing to claim free entitlement prior to their first full Ofsted inspection must allow Officers of the Local Authority access into their provision. Failure to do so may result in withdrawal of the funding. The Local Authority has a duty to notify Ofsted of any concerns regarding children's welfare and where there are on-going concerns that the Provider is not meeting the Early Years Foundation Stage requirements.

11.11 Where a school commissions a PVI Provider to deliver all or part of the Extended Entitlement from the school site, it is recommended that an agreement is drawn up between the two parties to ensure expectations are clear and transparent.

11.12 There is no requirement that Providers must be open for at least 38 weeks of the year although children must be able to access a funded place for a minimum of 38 weeks to meet the criteria set by the Department for Education. Therefore, a parent accessing funded hours at an Independent School for 35 weeks a year, can then take the remaining 3 weeks at a holiday club.

11.13 Where Providers operate for less than 38 weeks of the year, the Local Authority will pay accordingly. This allows Parents to access the remaining funded hours at another Provider to ensure they meet the minimum 38 weeks.

11.14 Where childminders take a holiday during term time, they must offer the missed sessions back to the affected Parents within the same term, i.e., during the holiday periods. This must be in line with the criteria set out in Section 5.11.

11.15 The Local Authority will undertake compliance checks on all contracted Providers to ensure that funding is being claimed in accordance with this Provider Agreement and that Parents receive their child's free entitlement in the form of a free place.

11.16 The Local Authority will pay Providers as stipulated on the Headcounts and Payments Timetable.

11.17 The Local Authority will notify Providers of any restrictions to the delivery of the free entitlements imposed on them following the publication of their Ofsted inspection judgement, where the Provider falls below the standard requirements set out in paragraphs A3.2 and A3.3 of the Statutory Guidance 2018. Will inform Providers of withdrawal/termination of the contract in line with Section 10 of the Provider Agreement.

11.18 Will not fund childminders to deliver funded places to children they are related to.

11.19 Will fund Providers for a child who leaves a setting until the end of the week in which the child last attends. The Local Authority will then fund the child's new provision from the start of the following funded week. The Local Authority will no longer fund a notice period for a child leaving a free entitlement place.

11.20 Will cease funding Providers who owe the Local Authority money until such a time as the debt is cleared or a robust payment plan is in place and agreed by all parties. The Local Authority reserves the right to pass all debts onto its Legal Department and not back date funding during a period of outstanding debt. In cases where a resolution is not met, the Local Authority reserves the right to withdraw a Provider from the Directory, resulting in the Provider losing all funded places at their setting.

The Provider:

11.21 Must submit relevant documentation to the Local Authority to support payments for the free entitlements accurately and by the deadlines specified.

The Provider Portal Guidance, Claiming Free Early Education for Two, Three and Four Year Olds, A Guide for PVI Providers August 2018 provides clarification on the relevant documentation.

11.22 Must maintain accurate financial and non-financial records relating to free entitlement places and must give the Local Authority access on reasonable notice to all financial and non-financial records relating to free entitlement places.

11.23 Must ensure all documents relating to claims for the free entitlements are kept for a minimum of six years plus the current term.

Claiming for the free entitlement

11.24 Funding for the free entitlement will be claimed on the Provider Portal and, after Changes Week, using the relevant starters and leavers forms. Providers are responsible for all claims to be completed and submitted between the dates specified on the timetable. Where a Provider has no children for a term, they are **not required** to enter data into the Provider Portal.

11.25 The information must be accurate and Providers are reminded that claiming for children who are not attending the setting will be treated by the Local Authority as potentially fraudulent. Where such instances arise, this constitutes prima facie evidence of fraud and so is likely to be referred to Audit Services for investigation. Audit Services may require access to all financial information relating to the business. In some instances, such settings may subsequently be reported to the Police and the setting will be removed from the Directory of Providers.

11.26 Estimated claims need to be a true reflection of anticipated participation of funded hours for the following term. Providers must be aware that over-claiming estimate amounts will result in an overall minus payment at census and funding will be recouped. If a Provider is identified as continually over-claiming, the estimate funding may be withdrawn and you will only be able to submit details at Headcount. You will need to refer to the number of funded weeks in each term on your timetable in order to calculate the estimated amount.

11.27 Hours claimed must reflect children's attendance. Funded hours attended can be increased or reduced only once during a term. This type of amendment cannot be processed directly through the Provider Portal so FE4 Variation forms must be submitted. A maximum of one variation per child per term will be accepted.

11.28 Where Providers claimed hours exceeds the child's attendance, the difference will be reclaimed by the Local Authority if this is as a result of an over claim. Providers can only claim for the hours requested by a parent and cannot claim for hours the parent has no intention of attending as this prevents Parents accessing these hours with another Provider.

11.29 Childminders who have a joint contract to deliver the funded places can only do so for the same children. Therefore, are only permitted to claim using one 'User Access Code' when inputting children's data into the Provider Portal. Where it is discovered that childminders have claimed for children using two 'User Access Codes' the Local Authority will contact the childminders, ask them to nominate which 'User Access Code' they wish to use and reclaim any double funding paid where required.

11.30 For children who start or leave a funded place **after** Changes Week, Providers must complete financial forms to inform the Local Authority of such changes as the on-line system will be closed. These forms are listed below:

- Starters Form – FE2
- Starters Form Holiday clubs – FE2(a)
- Leavers Form – FE3
- Leavers Form Holiday clubs – FE3(a)

11.31 It is a Providers responsibility to use the Provider Portal to input accurate information relating to children's details and hours claimed. Funding checks will be carried out by the Local Authority and Providers will be contacted to resolve any discrepancies.

11.32 The Local Authority will issue Providers with a User Guide on how to claim funding through the Portal. Claims should be made in accordance with the processes and rules laid out in this guidance document. If Providers have any queries on claiming that fall outside the scope of that document, the Financial Services team can be e-mailed at caya.finance@derbyshire.gov.uk.

11.33 Providers who have not submitted actuals by the timescales provided should submit a written justification of why the deadline was missed to the Early Years Sufficiency Manager. A decision will then be made as to whether funding can be claimed for that term. Providers should make alternative arrangements with Financial Services where holidays impact on the Provider submitting information on time.

11.34 It is a Provider's responsibility to inform Parents when the extended entitlement code has expired (as indicated by the Local Authority start-of-term or mid-term audits). If a parent has not re-confirmed before the end of the grace period, they will revert back to the Universal Entitlement of 15 hours. The Parent must re-confirm to be eligible for the 30 hours in the following term.

Authorisation of claims

11.35 Providers will be asked to complete a User Access Form to nominate two authorised people (one for childminders who work alone) and this will be used to access the Portal and input data to claim for funded children. Where a nominated person leaves a setting, another form must be completed and returned to Financial Services. Providers must not pass on codes to other staff members.

11.36 Providers must inform Financial Services immediately (by completing the User Access Changes Form) if a nominated user of the system no longer requires access. Upon receipt of the form, a new User Access Code will be assigned to the Provider.

FE1 Parent Declaration Form

11.37 The FE1 (Parent Declaration) form serves as a contract between the parent and the Provider and **must** be completed by Parents and retained by the Provider. The FE1 form has recently been updated and no longer needs to be signed by the Parent each term. The contract amendment sheet should be completed and signed by Parents only when any changes to their funded sessions take place.

11.38 The completion of these forms is essential; if a dispute should arise between Providers whereby a child has been attending in excess of the maximum termly amount (570 hours or 1140 over the year), or the child becomes ineligible for the Extended Entitlement the following action will be undertaken:

- Local Authority will try to resolve the dispute with the Providers concerned
- Local Authority will decide how the funding will be allocated depending on the information given by the Parent and Providers on the FE1 form

Absences

11.39 It is recognised that high quality provision contributes to the outcomes for all children. However, it does not matter how good the provision is if the children do not attend. The free entitlement is non-statutory and there is no legal obligation for Parents to ensure children attend, however, Parents should only sign up for the actual number of sessions they require and are prepared to commit to.

11.40 Providers will not be penalised for absences of children so long as a record of the absence has been completed and signed by the child's parent. **Failure to complete or maintain an accurate absence log may result in funding being reclaimed.** Providers must be able to evidence that they have attempted to contact the Parent during periods of absence and where a pattern of non-attendance is identified.

11.41 The Local Authority expects Providers to monitor children's attendance and absences and identify patterns of missed sessions, (full or part of), after one half term (6 weeks). Where patterns are identified, Providers must ensure that they amend their claim using an FE4 Variation Form or reduce their claim the following term in line with the child's attendance pattern and update the FE1 (Parent Declaration Form) accordingly. Where funding claims are not reduced and the Provider over claims, this

may result in funding being reclaimed by the Local Authority.

11.42 Where Parents inform Providers that their child will be absent for a period exceeding four weeks the Provider must inform the Local Authority, in writing, of this absence. The Local Authority will then inform the Provider whether the funding can be claimed for this absence period or whether the child's place will cease. Absences under four weeks must be recorded in the Provider's usual manner.

11.43 Free entitlement Providers offer some stability for children who may be experiencing difficulties at home. It is particularly important to follow up any absences where you might have concerns about a child and where applicable, follow your local safeguarding procedures.

11.44 The Local Authority, like Providers, takes non-attendance of free entitlement children seriously as this not only results in significant amounts of lost funding per annum but is also not in the best interests of the children.

Closure days

11.45 Providers **must** keep a record of all closure days (not including Bank Holidays, Polling day and Inset days). Evidence of closure days will be requested at a compliance check. Further information relating to compliance checks can be found in Section 13 of this agreement.

11.46 Inset days - are not paid for by the Local Authority as they fall outside of the 190 teaching days; therefore, Providers are not obliged to find alternative days for children who miss a session for an inset day. Where Providers open for inset days, they can either: offer these as a funded session and make a charge for the 'Unfunded' week or, charge for individual inset days and offer the 'Unfunded' week as a funded week.

11.47 Bank holidays - where a bank holiday leads to closure of a setting, a Provider can choose to offer the session elsewhere to make up the missed session, but the Local Authority will not insist on this as most businesses and schools close for bank holidays. The Local Authority will not reclaim funding for a closed bank holiday.

11.48 Polling days - where a Provider must close their setting for Polling, the Local Authority will not reclaim the funding. When a Provider can offer an alternative to Parents this would be welcomed, but the Local Authority will not insist on this.

11.49 Where a closure day occurs due to Provider illness, severe weather, staff training or accommodation issues, the Local Authority will allow funding to be retained for two days and the Provider is not required to offer alternative sessions to children. However, where closure exceeds two days, the Provider should offer alternative sessions for all affected children as soon as possible within the same term. Where Providers are unable to offer alternative sessions they **must** inform the Local Authority of the missed sessions on day three and funding may be reclaimed. Providers **must** ensure all registers reflect changes to funded sessions for compliance purposes.

Section 12: Charging

The Local Authority:

12.1 Will not intervene where Parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent's ability to take up their child's free place, as there is an expectation a Provider is completely transparent about any additional charges.

12.2 Recognises that Government funding for the free entitlements is intended to cover the cost to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.

12.3 May consider implementing a charging policy for late submission of claims. This is currently under review and further details will be communicated to Providers when a final decision is made.

The Provider:

12.4 Is expected to ensure that the funding it receives from the Local Authority for the free entitlements is used to cover the cost to deliver 15 or 30 hours a week of free, high quality, flexible childcare.

12.5 Can charge for meals and snacks as part of a free entitlement place and can also charge for consumables (such as nappies, sun cream, trips etc.). **These charges must be voluntary for the Parent and cannot be a condition of accessing a funded place.** Where Parents are unable or unwilling to pay for meals and consumables, Providers who choose to offer free entitlement places are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks or allowing Parents to supply their own. Providers **must** offer alternative options for Parents within their policy.

12.6 Providers must ensure Parents are fully informed of the cost for any additional meals, consumables and hours they choose to take prior to commencing their funded place, additional charges cannot be presented to Parents after their place has commenced.

12.7 Independent Schools must also ensure that any charges are voluntary to Parents; therefore, allowing for the option of a free place should a parent wish. This may result in waiving the registration fee and uniform charges until a child reaches compulsory school age.

12.8 Is expected to deliver the free entitlements consistently so that all children accessing any of the free entitlements receive the same quality and access to provision, regardless of whether they opt to pay for optional hours, services, meals or consumables.

12.9 Must publish their admissions criteria and ensure Parents understand which hours/sessions can be taken as free provision. Not all Providers will be able to offer fully flexible places but Providers should work with Parents to ensure that as far as possible the pattern of hours are convenient for Parents' working hours.

12.10 Must publish within their admissions criteria and with Families Information Service (FIS) how many places they offer as free of charge only places and the criteria on how these places will be filled (for example first come first served, children with SEN etc).

12.11 Can charge Parents a deposit to secure their child's free place but must refund the deposit in full to Parents within the **first two weeks** of the place commencing. If Providers refund this through the Parent's first invoice, then this must be completely clear to the parent. Providers can retain the deposit if the place is not commenced.

Providers are encouraged to consider that the amount set should not act as a barrier to accessing a free funded place.

12.12 Cannot charge Parents "top-up" fees (the difference between a Provider's usual fee and the funding they receive from the Local Authority to deliver free places), or require Parents to pay a registration fee as a condition of taking up their child's free place. Providers **must** ensure they deduct funded hours as a £0 balance before making a charge for any required additional hours/services; providers cannot deduct the funding as a monetary subsidy. Where additional hours and services are required by the parent, the Provider can charge for these at their own rates, but must ensure these fees are **clear** to Parents prior to them agreeing a place.

12.13 Must ensure their invoices and receipts are **clear, transparent and itemised**, allowing Parents to see that they have received their free entitlement completely free of charge and understand fees paid for additional hours and services. The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific Provider. Failure to comply may result in funding payments being suspended. An example invoice is attached to this document as Appendix (iii)

12.14 A free entitlement place may be made subject to the Provider's normal admissions criteria (other than financial criteria), which should be available to Parents upon request.

12.15 Cannot enforce any other conditions on Parents, this includes insisting on using specific early years provision for the Universal and Extended Entitlements to secure a school place.

12.16 Where a Provider limits the number of completely free places they offer, they **must** make this clear to Parents and **must** publish this information in their admissions policy and through Families Information Service.

12.17 Providers **must** be able to demonstrate to the Local Authority, upon request, that the free places have all been allocated to Parents seeking a funded only place, and no Parent has been informed they can only take a place with additional hours when 'free' places have been available.

12.18 Where a Provider has no capacity to offer a completely free Universal/Extended Entitlement place to a child, the Provider should be clear to Parents that they can only offer a place as part of a longer session, therefore, if they require a completely free place they could choose to use alternative provision.

12.19 All documentation relating to a Provider's funded offer **must** be made available, upon request, to an Officer of the Local Authority.

12.20 There will be several services that childminders can offer as part of a broader package alongside the free hours they are delivering. These will be optional extras that Parents can choose to pay for, and, as such, are a matter for the childminder and the parent.

These services could include offering to pick up or deliver children to nursery classes or playgroups outside the free hours, and covering the remaining time that the Parent is at work.

Childminders could also incorporate such a service within the funded hours if the Parent wished to access in this way and the childminders' capacity allowed.

Section 13: Compliance

The Local Authority:

13.1 Will undertake compliance checks to validate the accuracy of the claims made for the free entitlements.

13.2 May refer details of a Provider on to Audit Services or the Police should there be concerns over potential fraudulent activities.

13.3 Will not penalise Providers for short term absences, for example sickness, late arrivals or early collections, or a family emergency through withdrawing funding, but will use its discretion where absence is recurring or for extended periods, taking into account the reason for the absence and the impact on the Provider.

Where absences are systematic and not followed up by the Provider, the Local Authority may have no choice but to reclaim over payments of funding from the Provider.

13.4 Will reclaim funding from the Provider where there are no explanations for absences.

13.5 Will not penalise a Provider through withdrawal of funding for short term closures of a setting, where it is outside their control for example, as a result of local or national elections or damage to the premises.

13.6 The Local Authority will undertake routine compliance checks of Providers on a rolling programme. Providers will be given a minimum of one week's notice prior to a compliance check taking place. Compliance checks are to assist Providers to develop systems to ensure that:

- Funding is being claimed in accordance with this Provider Agreement
- Disability Access Funding is claimed correctly
- Charging policy is clear
- Parents receive their child's free entitlement in the form of a free place
- Parents invoices are clear and transparent
- Insurance cover is meeting the minimum requirement
- Registers of children's attendance are accurate
- Absence logs are in place
- Admissions policy is clear

13.7 The Local Authority will undertake compliance checks either as office based or in the setting. Providers will be contacted and asked to either send in **copies** of the required documents by post (**special delivery recommended**), bring the required documents for scanning/copying to the address below or ensure documentation is available for the officer undertaking the checks at the setting:

Early Years Sufficiency Service
Room 150
John Hadfield House
Dale Road
MATLOCK
Derbyshire
DE4 3RD

The Provider:

13.8 Must submit the requested documents or will make available the requested documents and/or allow access to the provision for an Officer of the Local Authority in order for checks to be completed. Failure to do so may result in withholding funding or removal from the Directory of Providers. Once compliance checks are completed all copies of the submitted paperwork will be scanned, securely saved and shredded.

Compliance checks

13.9 Providers should collect, log and retain the following documents to ensure that they are offering funded places to children who are the appropriate age and eligible to receive the funding. Where Providers choose not to collect children's identification evidence, they must ensure they record they have seen this evidence and present this to the Local Authority upon request. Where discrepancies occur relating to over claimed sessions or two year old eligibility and Providers fail to retain the documents below, the Local Authority may have no alternative but to reclaim funding. Furthermore, where Providers do not collect and retain these documents and compliance checks cannot be carried out, the Local Authority may have no choice but to withhold future funding payments until the documents are collected, as they will be unable to determine that compliance to the Provider Agreement is upheld.

Providers should collect and retain the following documents:

- FE1 forms (Parent Declaration)
- Log evidence of child's Identification, i.e. Birth Certificate, NHS Redbook, Passport on FE1 form and Provider Portal
- Evidence of two year old approval – where applicable
- Evidence of Extended Entitlement eligibility code
- Evidence that a Privacy Notice has been issued to Parents
- Evidence a child is in receipt of Disability Living Allowance
- Registers of children's attendance with accurate arrival and departure times
- Absence logs and details of absences
- Admissions policy
- Charging policy
- Evidence of child's Disability Access Funding (DAF)
- Invoices issued to Parents
- Any related documents

13.10 In order to take into account the Local Authority's financial regulations and compliance requirements, Providers **must** keep any documents relating to eligible children for a period of six years plus current term.

13.11 Records **must** be kept safe, secure and in good order. If any records are normally kept off the premises, Parents have a right to know where they are kept.

13.12 The Local Authority retains the right to make checks with Parents, in order to verify details of their claim and that they have received their free entitlement in the form of a free place or a reduction to their invoice if they are accessing additional hours.

13.13 Following a compliance check, an Officer of the Local Authority will, where required, give a two week deadline for the submission of further documents that could support Providers to reduce any potential reclaim of the funding. Where Providers fail to meet this deadline or negotiate an extension with an Officer, it will be assumed that the Provider has no further evidence to add to the process and the final report will be finalised and sent to the Provider.

13.14 Following the compliance checks, where required, Providers will be issued with an action plan for completion to ensure they are adhering to the Provider Agreement. A timescale to complete these actions will be set. An Officer from the Local Authority will carry out checks to ensure actions have been completed. In some circumstances, where actions have not been completed, an Officer may arrange a further visit to ensure the requirements of the Provider Agreement have been met.

13.15 Where actions have not been completed, the Local Authority reserve the right to withhold the next funding payment due to the Provider, and will only release this and future payments once the outstanding actions have been completed. Where continued breach of the contract occurs, the Local Authority may seek to withdraw the Provider from the Directory of Providers.

13.16 Where Providers are required to pay back an over claim of funding following a compliance check, the Provider will be given an opportunity to contact the Compliance Officer and discuss how this money will be repaid. Where the Provider doesn't request this, the Compliance Officer will arrange a sensible payment plan with Financial Services and inform the Provider how the money will be reclaimed.

13.17 If the Local Authority reclaims the funding from a Provider, a Provider cannot pass this cost on to the Parent by invoicing them for the reclaim.

13.18 Any substantial or systematic discrepancies identified following compliance checks will be reported to Derbyshire County Council Audit Services. Such discrepancies may result in the Provider being suspended or withdrawn from the Directory of Providers.

If you have any questions please contact:

**Early Years Sufficiency Service
Room 150
John Hadfield House
Dale Road
Matlock
Derbyshire
DE4 3RD**

E-mail: enquirieseycontracts@derbyshire.gov.uk

Appendix (i)

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 law.

Who are we?

[Insert Setting] collects, uses and is responsible for certain personal information about you. When we do so we are regulated under the General Data Protection Regulation which applies across the European Union (including in the United Kingdom) 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 characteristics (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 30 hours 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, after which the information is archived or 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 archived or 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).

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 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 UK Information Commissioners Office (ICO) on individuals' rights under the 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 go to Derbyshire County Council's website at www.derbyshire.gov.uk or visit the website www.derbyshiresendlocaloffer.org to find the the support available for children with special educational needs or disabilities.

The 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 at <https://ico.org.uk/concerns> or telephone 03031 231113.

For further information on how Derbyshire County Council uses your information visit www.derbyshire.gov.uk/privacynotices

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

To find out more about the pupil information we share with the DfE, for the purpose of data collections, go to <https://www.gov.uk/guidance/early-years-census>

To find out more about the NPD, go to <https://www.gov.uk/government/publications/national-pupil-database-user-guide-and-supporting-information>.

For more information about the DfE's data sharing process, please visit:

<https://www.gov.uk/data-protection-how-we-collect-and-share-research-data>

For information about which organisations the department has provided pupil information, (and for which project), please visit the following website:

<https://www.gov.uk/government/publications/national-pupil-database-requests-received>

To contact DfE: <https://www.gov.uk/contact-dfe>

Appendix (ii)

EYPP and Deprivation Funding Form
01 September 2018 – 31 August 2019

Name of Setting: Ofsted Number:

Number of eligible children		
Autumn 2018	Spring 2019	Summer 2019

Total amount of additional funding		
Autumn 2018	Spring 2019	Summer 2019

Please state below how the EYPP & Deprivation funding has been used

--

What impact has the additional funding had on outcomes for children?

--

Signed:

Position:

Date:

Please return to the Early Years Manager by 31 August 2019 via e-mail:
sarah.bryan@derbyshire.gov.uk

Invoicing

The **Government funding is intended to deliver 15 or 30 hours a week of free, high quality, flexible childcare.** This means that the number of funded hours accessed in each invoicing period, whether this is weekly, monthly or termly, must be shown on the invoice as completely free.

Invoices and receipts must be clear, transparent and itemised allowing Parents to see that they have received their child’s free entitlement completely free of charge and understand fees paid for additional hours or services. No deduction can be made from the funded hours and Parents must receive the full benefit.

The funded entitlement cannot be shown as a monetary subsidy, ie deducted from the total amount of the invoice.

Additional hours should be clearly shown, ie the number of hours, sessions etc and the hourly or sessional rate, which was agreed with Parents at the time of registration.

The funding does not cover trips or other extra-curricular sessions such as a language or dance. A charge may be made for such additional services but this must again be clearly itemised on the invoice, eg 4 x 2 hrs dance sessions @ £10.00 per session.

The funding from Government is not intended to cover the costs of meals or consumables such as nappies or sun cream and again, these should be clearly itemised, eg 20 lunches at £6.00 per lunch or 20 sessions (inc lunch) & £20.00 per session. The Government’s Statutory Guidance is clear, however, that **these charges must be voluntary for the Parent.** Where Parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free entitlements are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks, or allowing Parents to supply their own meals.

Invoices and receipts should include the provider’s full details so that they can be identified as coming from a specific provider.

The example invoice below is taken from Childcare Works:

How to be compliant!

ABC Nursery 10 High Street, Toy Town AA1 AA1
Registered Company xxxxx, Registered office 123 Down Lane, Toy Town AC1 AC1

Daisy Duck 36 Main Road Toy Town Ab1 Ab1
 Customer Ref: DUCKAB1
 Invoice Date: 15.01.17
 Invoice Period: 01.02.17 to 28.02.17
 Invoice number: 00023

Childcare services for Harry Duck -

Detail	Hours/Units	Hour/Unit Rate	Total
Universal Funding	60	£0.00	£0.00
Extended Funding - eligibility code 1234567	60	£0.00	£0.00
Additional childcare	40	£6.50	£260.00
Agreed services - Meals	28	£4.00	£112.00
Agreed services - Monday Dancing Club	4	£6.00	£24.00
Total			£396.00

Payment due: 31.01.17
 Payment method: Bank Transfer, Childcare vouchers, Tax Free Childcare
 Payment to: Toy Town Bank, sort code: 000000 Account: 00000000

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

Schedule 2 - Schedule of Processing, Personal Data and Data Subjects

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 compliance checks to validate the accuracy of the claims made for the free 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	<p><i>For the duration of the 'Contract Period'</i></p>
Nature and purposes of the processing	<p><i>The Local Authority will process information by collection, recording, organisation, consultation, storage, alteration, retrieval, financial, compliance, 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	<p><i>Names, address, email addresses, telephone numbers, bank details, Ofsted data, HMRC data, insurance details, NI numbers, DOB</i></p>
Categories of Data Subject	<p><i>Providers, including Schools and Private Voluntary Independent sector (PVI), parents and children.</i></p>
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>