

Agreement

This **Agreement** is made this..... day ofyear

Between

Insert Name of Provider Ofsted Registration Number **EYxxxxxx**: - whose registered office or principal trading address is at **Insert Full Registered Address** (“the Provider”) but principal business address is at **Insert Address where provision operates**

AND

Derby City Council of the Council House, Corporation Street, Derby DE1 2FS (“the Council”).

1. Background and key local authority responsibilities

- 1.1 The Childcare Act 2006 places specific duties on local authorities to secure sufficient early years provision free of charge for eligible 2, 3 and 4 year olds. And the Childcare Act 2016 places a duty on local authorities to secure the equivalent of 30 hours of funded childcare over 38 weeks of the year for qualifying children.
- 1.2 The Council aims to work in partnership with Providers to agree how to deliver Funded Early Education Entitlement (FEEE).
 - 1.2.1 This Provider Agreement and the associated guidance does not provide guidance on how Providers operate their private business, including charges for provision over and above a child’s funded hours. The Council 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 funded place. The Provider should be completely transparent about any additional charges.
- 1.3 From June 2018, the Council has had regard to the revised Department of Education Early Education and Childcare Statutory Guidance for Local Authorities and from June 2018 the Council has also had regard to the DfE Early Years Entitlements: Operational Guidance June 2018 on the delivery of funded early education for two, three and four year olds (referred to in this document as “Statutory Guidance”). The term “Statutory Guidance” shall include any government new iteration or revision of the Statutory Guidance made from time to time and expressed to be statutory guidance, as supplemented by the Council from time to time and after written notice to the Provider. The Council will not supplement the Statutory Guidance without good reason.

This document should be read in conjunction with the associated Provider Agreement Guidance September 2018. These documents form the contractual agreement between the Council and the provider.

- 1.4 This Agreement applies to Providers who are listed on the Directory of Providers (“Directory of Providers”) which enables each such provider, subject to entering into a Provider Agreement with the Council, to deliver funded early education for two, three and four year olds and will remain in place until

further guidance is published by DfE or the Council amends its requirements of providers. The Council reserves the right to exclude providers from inclusion on the Directory of Providers for good cause and to include new providers temporarily pending the outcome of their first Ofsted inspection.

- 1.5 The following frameworks and legislation underpin this Provider Agreement and Provide Guidance to Local Authorities and providers on their duties with regard to delivering 2, 3 and 4 year old funded sessions:
 - 1.5.1 Early Education and childcare, Statutory guidance for Local Authorities 2017
 - 1.5.2 Childcare Act 2006,
 - 1.5.3 Childcare and Families Act 2014 – Duty to Secure Early Years Provision Free of Charge
 - 1.5.4 Childcare Act 2016 – Early Years Provision Free of Charge and Extended Entitlement
 - 1.5.5 Data Protection Act 2018
 - 1.5.6 Education Act 2011
 - 1.5.7 Equality Act 2010
 - 1.5.8 School admissions code 2014
 - 1.5.9 Special Educational Needs and Disability Code of Practice 2015
 - 1.5.10 Statutory framework for the early years foundation stage 2014
 - 1.5.11 The Council retains the right to unilaterally vary the Agreement to reflect changes in legislation and departmental guidance without express changes in the Provider Agreement and / or Provider Agreement Guidance.
- 1.6 The Council requires all providers of early education wishing to provide the FEEE within the City of Derby, to enter into a Provider Agreement on the terms of this Agreement and the Guidance to the Provider Agreement, to govern the provision of the FEEE and be included on the Directory of Providers.
- 1.7 All Providers of the FEEE must be registered with Ofsted on the Early Years Register for inclusion on the Directory of Providers or be able to evidence that they are exempt from registration.
- 1.8 All children who meet the prescribed criteria are able to take up a funded place benefiting their social, physical and cognitive development and outcomes and helping to prepare them for school. Evidence shows that attending high quality early education has lasting impact on social and behavioural outcomes. The entitlements make childcare more affordable for parents and enables parents to work or increase their working hours if they wish to do so.
- 1.9 The Council and the Provider agree that they share a clear vision and a joint aim that the provision of FEEE within the City of Derby should be of high quality, and both Parties believe high quality education is most likely to be evident in those providers that embrace dialogue, challenge and partnership working.
- 1.10 The Provider must act in accordance with the Equalities Act 2010 by promoting equality and inclusion to all by removing barriers to accessing the FEEE and by working with parents to ensure each child is supported to reach their full potential.

- 1.11 The Provider has agreed to supply and deliver FEEE to all eligible 2, 3 and 4 year old children as commissioned by the Council upon the terms and conditions of this Agreement and in accordance with the Statutory Guidance.
- 1.12 The Provider must sign and return to the Council this Provider Agreement and associated documentation to be included on the Directory of Providers and when requested to confirm its compliance with this Agreement (including by supplementation (if any) of the Agreement as (initially) attached at Appendix 1 to this Agreement (“Guidance to the Provider Agreement”).

2 Definitions

- 2.1 In this Agreement the following definitions shall apply:

Business Day	means a day where the Service is open for business and delivering childcare.
Child(ren)	means a child or children eligible to receive an early learning place funded by the Council in accordance with the terms of this Agreement
Childminding Agencies	will be ‘one-stop-shop’ organisation which will help childminders with training, business support, advice and finding suitable parents.
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) including 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 and sensitive data within the meaning of the Data Protection Requirements.
Data Protection Requirements	means the Data Protection Act 2018 (“DPA”) and all applicable laws and regulations relating to the processing of personal data and privacy including, where applicable, the guidance and codes of practice issued by the Information Commissioner.
Directory of Providers	the Council’s list of providers who have applied to and are able to deliver FEEE.
Eligibility Codes	means the 6 digit code issued by the Council for eligible 2 year old or the 11 digit code issued by HMRC for eligible 3 and 4 year old for the extended entitlement.
Extended Entitlement	means the extended funded early education places delivered for an additional 15 hours a week over a minimum of 38 weeks of the year for eligible 3 and 4 year olds. Parents must reconfirm their eligibility for the extended entitlement every 3 months with HMRC
Funded Early Education Entitlement (FEEE)	means funded early education places delivered for 15 hours a week over a minimum of 38 weeks of the year for 2, 3 and 4 year olds.
Grace Period	means the period of childcare given to a family who has taken up an extended entitlement childcare place but subsequently loses eligibility.
Link Officer	means a member of the Early Years Quality Improvement team that has been nominated to work with a provider.

Ofsted	the regulator of childcare providers who are registered on the Early Years Register and/or Childcare Register which term shall include any successor body carrying out the same or similar functions.
Parent/s	means the person/persons with responsibility for the child and such terms includes parent, guardian, carer or person with whom the child normally resides.
Party	means the Provider and/or the Council.
Provider Agreement and Guidance to the Provider Agreement	these documents shall form the contract between the Council and providers able to deliver funded places for 2, 3 and 4 year old and included on the Council's Directory of Providers.
Remediation Plan	means a remediation plan also known as a Focused Improvement Plan (FIP) developed by the Council either in conjunction with the Provider or not as the case may be and issued to the Provider in accordance with clause 13.2.3.1
Service	means the service to be provided by the Provider under the terms of this Agreement, being the management and delivery of a high quality early years education to eligible 2, 3 and 4 years olds as more fully described in the Service Specification;
Setting	means the place of delivery of the service by the Provider.
Specification	the specification describing detail as to the Service to be provided by the Provider under this Agreement

3 Duration of the Agreement and the Directory of Providers

3.1 This Agreement shall come into effect on 1st September 2019 and shall, subject to earlier termination in accordance with terms of this Agreement, remain in full force and effect until further notice in accordance with the terms of clause 13 (“Termination and withdrawal of funding”).

3.2 Any provider wishing to join the Directory of Providers must complete the notification form for delivering FEEE for 2, 3 and 4 year olds which can be found at:

www.derby.gov.uk/community-and-living/childcare/childcare-providers/ and attend a FEEE briefing session. Following the FEEE briefing session:

3.2.1 A FEEE Provider Set Up Form must be completed and accompanied

3.2.1.1 BACS forms - all providers

3.2.1.2 Supplier Information Request – Group Providers

3.2.1.3 Bank statement for previous month – all providers

3.2.1.4 Cash flow forecast – new group providers

3.2.1.5 Last year’s accounts – group providers

3.2.1.6 Provider’s Admissions and Access Policy – all providers

3.2.1.7 Provider Charging Policy – all providers.

3.2.2 Ofsted and where appropriate inspectorates of independent schools are the sole arbiter of quality for all early year’s providers, inspection will have due regard to the early years foundation stage and the Council will consider the quality judgement issued to providers when including a provider on the Directory of Providers.

3.2.2.1 The Council will not include providers on the Directory of Providers that do not actively promote British values (first set out in the Government’s Prevent strategy and include democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs), or which promote views or theories as fact which are contrary to established scientific or historical evidence and explanation. Upon receipt of a complaint regarding the above the Council will consider the claim being made and retains the right to investigate further and notify Ofsted. Where complaints are upheld the Council will withdraw all FEEE funding.

Additionally the next following sub-paragraphs in this para 3.2 are subject to sub-para 3.2.7

Delivery of Funded 2 Year Old Places

3.3.1 Providers intending to deliver FEEE for eligible 2 year olds must hold an ‘Outstanding’ or ‘Good’ Ofsted at the most recent inspection in order to be listed on the Directory of Providers.

3.3.2 Providers who hold a ‘Requires Improvement’ or ‘Inadequate’ Ofsted inspection outcome will not be able to join or stay on the Directory of Providers offering funded 2 year old places.

3.3.3 If the Ofsted inspection has identified significant breaches of the Statutory Framework for the Early Years Foundation Stage or the requirements for children’s learning and development outcomes are not being met the Council retains the right to give legal notice to stop funding 2 year old places with the provider with immediate effect.

3.3.4 Providers who are already delivering FEEE for eligible 2 year olds and receive a 'Requires Improvement' or 'Inadequate' Ofsted inspection outcome will only remain on the Directory of Providers to provide continuity of care to children already attending or where the Council recognises through its Childcare Sufficiency or Market Position Statement that there are insufficient places available locally to offer families an alternative.

3.3.5 Providers who do not have an Ofsted 'Outstanding' or 'Good' will only be allowed to remain on the Directory of Providers for a time limited period specified by the Council and informed by Ofsted monitoring visits or re-inspections. Ofsted have stated that all provision judged 'Inadequate' will be monitored, and re-inspected within six months. During the monitoring process Ofsted may take further enforcement action if there is no improvement. Nurseries and pre-schools judged as 'Requires Improvement' will be monitored within six months and re-inspected within 12 months. They will have two years to get to 'Good'. A nursery or pre-school that has been judged as 'Requires Improvement' at two consecutive inspections and is still not 'Good' at its third inspection is likely to be judged 'Inadequate'. This does not apply to childminders, childcare on domestic premises, before and after school care, holiday schemes or crèches.

3.3.6 In exceptional circumstances the Council may consider continuing to fund 2 year old places 'Requires Improvement' or 'Inadequate' providers if the Council can evidence that there is not sufficient accessible 'Good' or 'Outstanding' provision locally.

Delivery of Funded 3 and 4 Year Old Places

3.3.7 Providers intending to deliver FEEE for 3 and 4 year olds must hold an 'Outstanding' or 'Good' or 'Requires Improvement' Ofsted inspection outcome in order to be listed on the Directory of Providers. This provision and the next following provisions are subject to sub-para 3.2.13

3.3.8 Providers who hold an 'Inadequate' Ofsted inspection outcome will not be able to be join the Directory of Providers offering funded 2, 3 and 4 year olds places.

3.3.9 If the Ofsted inspection has identified significant breaches of the Statutory Framework for the Early Years Foundation Stage or the requirements for children's learning and development outcomes are not being met the Council retains the right to give legal notice to stop funding 3 and 4 year old places with the provider with immediate effect.

3.3.10 Providers who are already delivering FEEE for 3 and 4 year olds and receive an 'Inadequate' Ofsted inspection outcome will only remain on the Directory of Providers to provide continuity of care to children already attending or where the Council can evidence through its Childcare Sufficiency or Market Position Statement that there are insufficient places available locally to offer families an alternative.

3.3.11 Providers who do not have an Ofsted 'Outstanding', 'Good' or 'Requires Improvement' will only be allowed to remain on the Directory of Providers for a time limited period specified by the Council and informed by Ofsted's monitoring visits and re-inspections. Ofsted have stated that all provision judged as 'Inadequate' will be monitored, and re-inspected within six months. During the monitoring process Ofsted may take further enforcement action if there is no improvement. Nurseries and pre-schools judged as 'Requires Improvement' will be monitored within six months and re-inspected within 12 months. They will have two years to get to 'Good'. A nursery or pre-school that has been judged as 'Requires Improvement' at two consecutive inspections and is still not good at its third inspection is likely to be judged

'inadequate'. This does not apply to childminders, childcare on domestic premises, before and after school care, holiday schemes or crèches.

3.3.12 In exceptional circumstances the Council may consider continuing to fund 3 and 4 year old places at 'Inadequate' providers if the Council can evidence that there is not sufficient accessible 'Outstanding', 'Good' or 'Satisfactory'/'Requires Improvement' provision locally.

3.3.13. The Council will fund providers with an Ofsted inspection judgement of 'met' until their Ofsted quality inspection judgement is published. Ofsted give 'met' judgements where a childminder who is registered on the Early Years Register, can evidence that they meet the welfare requirements but have no children on role at the time of the inspection.

3.3.14. The Council will not withdraw funding from a provider or from a childminder registered with an agency until the provider's or childminder's Ofsted inspection judgement is published.

3.3.15. Before a provider is listed on the Directory of Providers the Council will consider all information published by Ofsted about a provider or childminding agency including the recent history about childcare provision by a particular provider or agency or childcare provision at a particular address.

- 3.4 Childminders who are registered with a Childminding Agency will only be able to be listed on the Directory of Providers and deliver funded 2 year old places if the Agency has achieved an Ofsted grading of 'Outstanding' or 'Good' and for 3 and 4 year old funded places they will only be able to be listed if their Agency has achieved an Ofsted grading of 'Outstanding', 'Good' or 'Requires Improvement'. Childminders who are registered with a new Childminder Agency will be offered temporary inclusion onto the Directory of Providers pending the Agency's first Ofsted inspection outcome.

3.4.1 The Council 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 unless it is necessary to do so to ensure sufficiency of accessible places.

- 3.5 Providers delivering FEEE must immediately inform their Link Officer in the EYQI Team when they are being inspected by Ofsted and invite their Link Officer or a member of the EYQI Team to attend the Ofsted feedback session.
- 3.6 The Council will maintain a Directory of Providers who are entitled to deliver FEEE to 2, 3 and 4 year olds. The Provider shall work in partnership with the Council and be able to demonstrate that they are a sustainable business in order to be listed on the Directory of Providers.
- 3.7 If the provider fails to meet all data requirements requested by the Council as outlined in the Guidance to the Provider Agreement, the Council reserves the right to remove the Provider from the Directory of Providers as soon as is reasonably practical.

4 Eligibility, grace period and charging

- 4.1 The Provider shall be operationally located within Derby City as regards the relevant setting.
- 4.2 The Provider shall deliver high quality early years provision to children throughout the Contract Period in accordance with the terms of this Agreement and specifically meeting the conditions within **Section A1: Eligibility** of the Statutory Guidance 2018 so that all eligible children that wish to attend the setting are able to take up high-quality early education and childcare regardless of their parent's ability to pay.
- 4.3 The Provider should deliver the FEEE entitlement consistently to all parents, whether in receipt of the universal or extended entitlement offers and regardless of whether they opt to pay for optional services or consumables. The Provider must publish their admissions criteria and ensure that parents understand which hours and sessions can be taken as funded provision by clearly communicating the days and times that they offer FEEE places, along with their service charges.
- 4.3.1 The Provider must publish within their admissions criteria and with the Families Information Service (FIS) how many places they offer as funded places and the criteria on how these places will be filled.
- 4.3.1.1 A FEEE place may be made subject to the Provider's normal admissions criteria (other than financial criteria), which should be available to parents upon request.
- 4.3.1.2 Where a Provider limits the number of completely free funded places they offer, they must make this clear to parents and must publish this information in their admissions policy and through FIS.
- 4.3.1.3 The Provider must be able to demonstrate to the Council, upon request, that the FEEE places have all been allocated to parents seeking funded only places, and no parent has been informed they can only take a place with additional hours when 'free' places have been available.
- 4.3.1.4 Where the Provider has no capacity to offer a completely free universal or extended entitlement funded 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 funded place they could choose to use alternative provision.
- 4.3.1.5 All documents relating to the Provider's FEEE offer must be made available, upon request, to an Officer of the Council.
- 4.3.2 Those children accessing the FEEE should receive the same quality and access to provision as other children not accessing the FEEE.
- 4.3.3 If the Provider is not able to offer fully flexible places it should work with parents to ensure that as far as possible the patterns of hours are convenient for parents' working hours.
- 4.4 The Provider must check original documentation to confirm a child is eligible for and has reached the eligibility age at the point of initial registration for all FEEE places. If the Provider delivers a place to a child where eligibility has not been fully checked by the Provider the Council shall not provide any funding in respect of that child.
- 4.4.1 Parents must apply for their 2 year old eligibility code directly from the Families Information Service either on their web site <https://www.derby.gov.uk/community-and-living/childcare/early-learning/> or by calling 01332 640758

4.4.2 Parents must apply for their 3 and 4 year old extended entitlement code directly from HMRC either on their web site www.childcarechoices.gov.uk or by call their helpline on 0300 123 40 97.

4.4.3 From September 2018, children in foster care will also be eligible for the extended entitlement, providing:

- the child has attained the age of three,
- that the additional childcare is consistent with the child's care plan
- the foster parents are taking up paid employment outside their fostering roles and meets the usual extended entitlement income eligibility.

4.4.3.1 Foster parents should check their eligibility for the extended entitlement by applying to the responsible local authority.

4.5 The Provider should offer places to eligible 2 year olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for 3 and 4 year olds.

4.6 The minimum FEEE that the Provider must make available to every eligible child is 570 hours over no fewer than 38 weeks up to a maximum of 52 weeks a year or 1140 hours over no fewer than 38 weeks up to a maximum of 52 weeks for 3 and 4 year olds who are eligible for the extended entitlement. Where the Provider is not available to deliver a child's full entitlement or parents' wish to split the funded hours across multiple providers, the Provider must ensure that maximum funded hours are not exceeded and that effective transitional and partnership working arrangements are in place to meet the care needs of the child.

4.7 The Provider should ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see how they have received the FEEE and understand fees paid for additional hours and or services. The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider.

4.7.1 The Government funding is intended to cover the cost to deliver 15 or 30 hours a week of funded, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services. Providers are able to charge for these additional hours and services. Parents can therefore expect to pay for these, although the charges must be voluntary for the parent.

4.7.2 Any additional costs such as costs or meals, other consumables, additional hours or additional services should be detailed in a written contract with parents and agreed with the parent prior to the FEEE place being taken up. The Provider must not use additional costs as a condition of a child accessing a FEEE place.

4.7.3 Where a parent chooses to purchase additional hours of provision, consumables or services this is a private matter between the Provider and the parent, however the Provider must offer alternative options for parents and be mindful of the impact additional charges have on the most disadvantaged parents.

4.7.4 The Provider is responsible for setting their own transparent policy on how to respond where parents are unwilling or unable to pay for meals and consumables with options including waiving or reducing costs or allowing parents to provide their own consumables/meals.

4.7.5 Where the cost of consumables is a barrier to access for a family the Provider must offer an alternative in line with their policy. For example allowing a parent to bring in their own consumable or a pack lunch, where the

meal offered is not suitable for children with specific dietary needs or parents prefer a lower cost option.

- 4.8 The Provider can charge parents who are taking a FEEE 3 and 4 year old place a deposit, payable in advance, to secure their child's FEEE place but should refund the deposit in full to parents within a reasonable time scale.
4.8.1 The Provider must not charge parents who are taking a FEEE 2 year old childcare place as this would be a barrier to access.
- 4.9 The Provider cannot charge parents 'top up fees' or require parents to pay a registration fee as a condition of taking up their child's FEEE place.
- 4.10 The Provider shall ensure that all parents sign the Parental Contract provided by the Council and retain completed copies of signed Parental Contracts for 6 years. The Provider may wish to have a separate agreement with parents for any additional hours or activities, which clearly sets out for how long the parent has opted to pay the additional charges and the circumstances when parents can opt out of paying the additional charges.
4.10.1 Alongside having sight of the 3 and 4 year olds extended entitlement eligibility code, the Provider must acquire written consent from, or on behalf of, the parents to be able to receive confirmation and future notification from the Council of the validity of the parent's extended entitlement code. The Provider should use the Parental Contract to gain this consent.
4.10.2 Once the Provider has received written consent from the parent, they should verify the extended entitlement eligibility code with the Council via the on-line Provider Portal.
4.10.3 The Council will provide via the on-line Provider Portal a swift and efficient instant checking service which confirms the validity of extended entitlement codes.
4.10.4 The Council will complete audit checks to review the validity of eligibility codes for children who qualify for the extended entitlement at 6 fixed points in the year.
4.10.5 The Council will be responsible for notifying the Provider where a parent has fallen out of eligibility and will inform the provider of the 'grace period' end date.
- 4.11 Grace period for the 3 and 4 year old extended entitlement:
4.11.1 A child will enter the 'grace period' when the child's parents cease to meet the eligibility criteria.
4.11.2 The Council will notify the Provider when a child has entered their 'grace period' and the 'grace period' end date.
4.11.3 The Council will continue to fund a place for a child who has entered their 'grace period'
4.11.4 The Council will not fund children who start a new extended entitlement place during the grace period.
- 4.12 The Provider may admit children on a staggered basis for no more than a 2 week period in accordance with the Provider Agreement Guidance.
- 4.13 The Council shall not reclaim the cost of FEEE hours lost to any staggered intake during the first 2 weeks of each term as long as the staggered intake does not exceed the Council's expectations as detailed in 4.12.

5 Business planning, flexibility, compliance and the funding process

- 5.1 The Council shall fund all sectors in line with **Section A2: Flexibility** of the Statutory Guidance to ensure that children are able to take up their full entitlement to FEEE at times that best support their learning and development and at times which fit with parents' needs.
- 5.2 The Provider should work with the Council and share information about the times and periods at which they are able to offer FEEE to support the Council to secure sufficient stretched and flexible places to meet parental demand in the City. The Provider should also make information about their FEEE offer and admissions criteria available to parents at the point the child first accesses provision at their setting.
- 5.3 The Council shall only fund FEEE, where the Provider delivers it in line with this Agreement and associated guidance.
- 5.4 The Council encourages the Provider to deliver flexible packages of FEEE hours within the parameters set out in the Statutory guidance, these are:
 - 5.4.1 no session to be longer than 10 hours;
 - 5.4.2 no minimum session length;
 - 5.4.3 not before 6.00am or after 8.00pm;
 - 5.4.4 a maximum of two sites in a single day;
 - 5.4.5 meet the quality requirements as set out in regulations and in the Statutory Guidance;
 - 5.4.6 no artificial breaks, FEEE should be offered in continuous blocks and the Providers should avoid artificial break being created throughout the day, for example over the lunch period.
- 5.5 FEEE cannot be claimed by, or spent on, childminders providing childcare for their own children, even if they are claiming for other children. Early Years provision is defined in section 20 of the Childcare Act 2006. This definition of childcare specifically excludes care provided for a child by a parent or step-parent (or other relative).
- 5.6 The Provider shall return accurate termly child data via the FUNDING section of the Provider Portal and annual charges information when requested by the Council by the specified dates. Failure to do so may result in FEEE funding payments being delayed or not being paid.
 - 5.6.1 Where a child is receiving their FEEE from multiple providers the Provider must use the Parental Contract, with parents, to confirm who the main provider is and list all providers involved in the child's care. If the Council identifies any instances of duplicate funding it will contact all providers, seek sight of the Parental Contracts and award funding in accordance with the Parental Contract.
- 5.7 The Provider must return via the census e-form in the FORMS section of the Provider Portal accurate Early Years census data as stipulated by the Council annually by the specified date. Failure to do so may result in FEEE funding payments being delayed or not being paid.
- 5.8 The Provider may 'stretch' the FEEE of 570 hours over a minimum of 38 weeks and up to a maximum of 52 weeks where parental demand has

identified a need. A 'stretched' offer will reduce the number of funded hours per week and increase the number of funded weeks delivered by the Provider.

5.8.1 The Provider may 'stretch' the FEEE for children who qualify for the 3 and 4 year old extended entitlement of 1140 hour over a minimum of 38 weeks and up to a maximum of 52 weeks where parental demand has identified a need. A 'stretched' offer will reduce the number of funded hours per week and increase the number of funded weeks delivered by the Provider.

5.9 In Autumn 2018 the Council consulted with Providers regarding the implementation of monthly FEEE payment to all Providers, particularly childminders, a clear majority of Providers opted to retain the current method of payment. The Council will be mindful of the concerns of smaller Providers, particularly childminders about their cash flow when making decisions about payment methods and will regularly review how it pays Providers to ensure that it continues to meet the needs of Providers in the city.

5.10 The Provider must inform the Council of their estimated hours for the next full financial year when requested by the Council so that an indicative budget can be issued to comply with the Statutory Guidance.

5.10.1 The Provider must submit via the FUNDING section on the Provider Portal termly estimated hours in line with the published funding timetable, failure to submit termly estimated hours will result in the 70% funding payment being delayed or not being made.

5.10.2 The Provider must submit headcount data via the FUNDING section of the Provider Portal in line with the published funding timetable. The data must include accurate child and parent information so that eligibility for 2 year funding, FEEE, EYPP and the Extended Entitlement can be checked and audited.

5.10.3 The Provider must submit an adjustment in the ADJUSTMENT section of the Provider Portal for any eligible 2, 3 and 4 year old children who start at their setting after headcount and for whom they wish to claim FEEE. Adjustment submissions must be completed in line with the funding timetable and before the stated term's cut-off date.

5.11 The Council shall fund the Provider as follows:

5.11.1 A fixed hourly rate for 2 year olds; and

5.11.2 In accordance with Derby City Council's single funding formula for the 3 and 4 year old universal and extended entitlement.

5.11.3 The Council will pay providers the Early Years Pupil Premium (EYPP) in respect of disadvantaged 3 and 4 year old children who are attending their setting for the universal 3 and 4 year old offer and who meet the eligibility criteria for EYPP. Parents must confirm on the Parental Contract which provider they wish the EYPP to be paid to where multiple providers are being used. The Provider must submit parental details via the Provider Portal with headcount information and evidence that parental consent has been obtained before CFIT can check EYPP eligibility and make any EYPP payments.

5.11.4 The Council will pay the Disability Access Funding (DAF) to the Provider who has been nominated as the main provider, by the parents, on the Parental Contract where the Provider can evidence that the child is eligible.

5.11.5 Where additional funding as part of the Early Years Funding Formula (EYFF) for individual children has been provided by the Council, the Provider will when requested, provide evidence to demonstrate how this has been spent to improve teaching and children's learning outcomes for those children to whom the extra funding is allocated.

- 5.12 The Council has a reciprocal arrangement for funding 2, 3 and 4 year old places with all local authorities, if a child who is resident in Derby City attends a provider in another local authority area, the other local authority will fund the place. If a child lives out side Derby and attends a provider in Derby, the Council will fund the place. If a child transfers to a new provider in a different local authority area mid-term, the local authority in which the new provider is located will not fund the place until the start of the following term. However in exceptional circumstances where a child moves out of Derby City before headcount date the Council may consider funding the weeks attended in a Derby setting.
- 5.13 The Provider shall provide parents with clear information on what their FEEE offer is and review the offer annually to ensure where possible it matches parental needs.
- 5.14 The Council will undertake announced and unannounced compliance audit checks to review financial and non-financial records relating to FEEE places records. The Provider should give the Council access, on reasonable notice, to all financial and non-financial records relating to FEEE funding subject to confidentiality restrictions. Where evidence of over payment or funding irregularities are identified the Provider shall return such funding to the Council and the Council will take all necessary steps to reclaim such funding including deduction of monies owed from future FEEE payments.
- 5.15 The Provider shall provide the Council with the details of the bank account into which all funding is to be paid, such bank account must be in the same name as stated within the Provider Agreement and approved by the Council. The Provider shall inform the Council immediately if the bank account details change.
- 5.15.1 Childminders registered with a Childminding Agency must inform the Council if they want their funding to be paid directly into their own account or routed to the childminder through the agency.
- 5.15.2 The Council will ensure that none of the funding paid to childminders registered with an agency to deliver FEEE places is retained by the agency.
- 5.16 The Provider shall monitor children's attendance and shall work in accordance with the processes set out in the Provider Agreement Guidance for monitoring attendance. If the Council is not satisfied with the actions taken by the Provider to monitor attendance, the Council will reclaim funding.
- 5.17 Where a setting is closed on a Bank Holiday the Provider can chose to offer the session elsewhere to make up the missed session, but the Council will not insist on this as most businesses and schools close for back holidays. The Council will not reclaim funding for closed bank holidays.
- 5.18 Complaints procedure:
In the event that a parent has concerns in relation to the funding of the FEEE, the Provider shall attempt to resolve such issues with the parent, where the Provider is unable to resolve such concerns the Provider shall direct the parent to the Childcare and Families Information Team (CFIT) at the Council.

6 Quality, special educational needs and disability

6.1 The Provider must:

6.1.1 Comply with the Statutory Framework for the Early Years Foundation Stage (EYFS) which is mandatory for all schools that provide early year's provision and Ofsted-registered early years providers in England. The EYFS sets the standard that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe;

6.1.2 Ensure that owners and all staff members are aware of their duties and can demonstrate high quality inclusive practice as set out in the Special Educational Needs and Disability Code of Practice 2014, revised January 2015 and ensure that their practice has due regard to the SEND Code of Practice and Equality Act 2010 and meets the needs of individual children with SEN and disabilities;

6.1.2.1 Be clear and transparent about the SEND support on offer at their setting and make information available about their offer to support parents to choose the right setting for their child with SEND.

6.1.2.2 Have arrangements in place to support children with special educational needs and / or disabilities which include a clear approach to identifying and responding to SEND. Where appropriate the Provider should utilise the SEN inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents;

6.1.2.3 Work with the Council to review at least annually, children's Education, Health Care Plans (EHCP) and to convene and hold annual review meetings on the Council's behalf when requested to do so by the Council;

6.1.3 Comply with safeguarding legislation to ensure the safeguarding of children attending the setting and have clear safeguarding policies and procedures in place that link to 'Working Together to Safeguard Children' 2015 guidance and the City's guidance for recognising, responding, reporting and recording suspected or actual abuse;

6.1.3.1 Have at all times a 'Lead Practitioner' who takes responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect;

6.1.4 Group care providers should employ at least one member of staff trained in the use of the Common Assessment Framework. Settings can elect to have more than one member of staff so trained;

6.1.5 Actively engage with the support provided by the EYQI Team to continually improve their provision;

6.1.6 Permit setting visits by any member of the EYQI Team to support and enhance quality provision. These visits may encompass observations of the learning environment and daily practice with the children;

6.1.7 Demonstrate self-reflective practice by completing a Self-Evaluation Framework (SEF) and engage with the Council to determine the level of support planned for the Provider;

6.1.8 Agree to advise the EYQI Team when any staff member achieves EYTS and when (these) staff members change provider;

6.1.9 Agree to work with the EYQI Team to develop a strategy for improvement if the Provider's Ofsted grade is not good or outstanding;

6.1.10 Report the Early Years Foundation Stage Profile scores to the nominated officer within EYQI Team, of any child at the setting in the Summer Term who will be 5 before the end of August and comply with the Council's moderation process.

- 6.2 Derby City Council will:
- 6.2.1 Deliver the FEEE through providers who are Ofsted registered and schools which are exempt from registration;
 - 6.2.2 Provide information, guidance, support and training to all providers on the Ofsted Early Years Register regarding meeting the requirements of the Early Years Foundation Stage, 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;
 - 6.2.3 Will promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to FEE places and working with parents to give each child support to reach their full potential;
 - 6.2.4 Strategically plan support for children with special educational needs and / or disabilities to meet the needs of all children in their local area as per the Special Educational Needs and Disability Code of Practice;
 - 6.2.5 Be clear about their role and publish information on the support on offer locally via the Local Offer to meet the needs of children with special educational needs and / or disability (SEND) as well as their expectation of providers;
 - 6.2.6 Work with partners, in an open and transparent way, to improve the outcomes and reduce inequalities for all children under five;
 - 6.2.7 Support transition for children between providers;
 - 6.2.8 Provide guidance on safer recruitment;
 - 6.2.9 Work in partnership with providers to offer a personalised and appropriate level of support according to the identified needs of the setting;
 - 6.2.10 Consider the withdrawal of funding from providers who do not meet the requirement for qualifying for the FEEE.

7 Partnership working, social mobility and disadvantage

- 7.1 The Council, in line with Part C of the Statutory Guidance 2018, shall work in partnership with parents and provide them with comprehensive information about their child's entitlement to FEEE and childcare options in their area so that all children are able to benefit from provision which meets their needs.
- 7.2 The Council will support parents who raise concerns where they are not satisfied that their child has received their FEEE in accordance with legislation or as set out in this Agreement and in Early Education and Childcare Statutory guidance for local authorities.
- 7.1.1 The Council will expect the parents to have followed the Provider's own complaints procedure and will only become involved where the parent's concerns have not been resolved directly with the Provider.
 - 7.1.2 If a parent is not satisfied with the way in which their complaint has been dealt with by the Council or believes that the Council has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such a complaint will only be considered when the local complaints procedures have been exhausted.
- 7.2 The Provider should ensure that they have a complaints procedure in place that is published and accessible for parents who are not satisfied that their child has received their FEEE in the correct way, as set out in this agreement and in the Early Education and Childcare Statutory guidance for local authorities.

- 7.3 The Council will aim to work in partnership with Providers individually and where Providers are working in local partnerships. The Council will aim to promote partnership working between different types of Providers, including childminders, across all sectors and encourage providers to offer flexible provision alongside other providers.
- 7.4 The Provider shall support parents to develop an understanding of the Early Years Foundation Stage so that parents can support their child's development and be of value as the child's first early educators.
- 7.5 The Provider should work in partnership with parents, carers and other providers to improve provision and outcomes for children in their setting. The Provider shall consult and obtain feedback from parents accessing their provision on how the service is being delivered.
- 7.6 The Provider should discuss and work closely with parents to agree how a child's overall care will work in practice when their FEEE is split across different Providers to ensure smooth transitions for child.
- 7.8 The Provider should ensure that they have identified the disadvantaged children in their setting as part of the process for checking Early Years Pupil Premium (EYPP) eligibility. Providers will use EYPP and any locally available funding streams or support to improve outcomes for this group.
- 7.9 The provider will work in partnership with the Council's Families Information Service (FIS) to actively promote the 2, 3 and 4 year old FEEE offer. The Provider should ensure that parents have access to information on the complete Government childcare offer and what they may be entitled to.
- 7.10 The provider must ensure that they give data protection permission to FIS to promote their service on the Enhanced Childcare Directory and via the public helpline, the provider must on a termly bases use the on-line provider portal to update their service information to ensure that parents can access pertinent information on funded places. Failure to give data protection permission to promote the provider's service or to update service information on a termly basis will jeopardise the provider's listing on the Directory of Providers. Certain Providers may request via Ofsted that their details be kept anonymous and the Council must ensure it complies with those requests.

8 Indemnity

- 8.1 Neither Party excludes or limits the liability to the other Party for:
 - 8.1.1 death or personal injury caused by its negligence
 - 8.1.2 fraud or fraudulent misinterpretation
 - 8.1.3 breach of its obligations in respect of the other's Confidential Information.
- 8.2 Subject to clauses 8.3 and 8.4 the provider shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and 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 Service or the performance or non-performance or poor performance by the provider its employees contractors or agents of its obligations under this Agreement or connected with the performance of those obligations or of any agreement between it and the users of the Service or

those contracting for the delivery of the Service, 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.

- 8.3 The indemnity provided in 8.2 above shall not apply in respect of injury, loss, damage, cost or expense to the extent that the injury etc is caused by the negligence or wilful misconduct of the Council or by material breach of the Council of its obligations under this Agreement.
- 8.4 Subject always to clause 8.1, in no event shall either Party be liable to the other for any loss of profits, business, revenue or goodwill and/or indirect or consequential loss or damage.

9 Insurance

- 9.1 The provider shall throughout the Contract Period of this Agreement affect and maintain insurance policies with a reputable insurance company and such insurances shall include but not be limited to:
- 9.1.1 Public liability insurance with a minimum limit of indemnity of ten million pounds (£10,000,000) in respect of any one (1) act or occurrence, or series of acts or occurrences, in any one (1) year except in the case of death or personal injury when the cover shall be unlimited; and
- 9.1.2 Employer's liability insurance with a minimum limit of indemnity of ten million pounds (£10,000,00) or to comply with all statutory requirements which ever is higher.
- 9.2 The Provider shall supply the Council with evidence of such insurances on request.

10 Intellectual property rights

- 10.1 All intellectual property owned by each of the Parties prior to entering into this Agreement shall remain with that Party. Any intellectual property rights created in any original material which is prepared under this Agreement or in the course of implementing or in order to implement this Agreement will belong to the Parties jointly perpetually and exclusively and may be used by both Parties without the consent of the other Party.
- 10.2 Subject to the rights of the Data Subject all data collected and created prior to the commencement of this Agreement shall belong exclusively to the Party that created or collected it; all data which is created by a Party in the course of implementing or in order to implement this Agreement shall remain the property of that Party who created or collected it; and all data which is shared by the Parties for the purpose of carrying out the Services and implementing the Contract shall belong to the Parties jointly on an exclusive and perpetual basis to be useable subject to the terms of this Agreement.

11 Confidentiality and freedom of information

- 11.1 Each Party undertakes that, it shall, at all times during the continuance of this Agreement and after its termination without time limit keep confidential all Confidential Information, and shall only use Confidential Information for any purpose as contemplated by and subject to the terms of this Agreement. Either Party may disclose any Confidential Information to its employees, sub-contractors and agents as strictly necessary for the performance of its obligations under this Agreement, provided that it remains liable for their acts and defaults in relation to Confidential Information.

- 11.2 The restrictions on confidentiality shall not apply to the extent only that at the date of this Agreement, or at any time after that date such Confidential Information becomes through no fault of the party disclosing such Confidential Information (the "Disclosing Party"), public knowledge, provided that in doing so the Disclosing Party does not disclose any part of that Confidential Information which is not public knowledge.
- 11.3 Nothing in this Clause 11 shall prevent the disclosure of Confidential Information in compliance with any request of a body with competent legal or regulatory authority with power to compel disclosure of information or that is required to be disclosed under the provisions of the Freedom of Information Act 2000 ("FOIA").
- 11.4 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to FOIA and these Regulations.
- 11.5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of this Agreement and any appendices to this Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of this Agreement or its appendices is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.6 Notwithstanding any other term of this Agreement, the Provider hereby gives its consent for the Council to publish this Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public.

12 Data protection and safeguarding

- 12.1 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that the Council is the Data Controller and that the Provider is the Data Processor as those terms are defined in the DPA.
- 12.2 Both Parties shall comply at all times with the Data Protection Requirements and shall not perform their obligations under this Agreement in such a way as to cause the other Party to breach any of its applicable obligations under the Data Protection Requirements.
- 12.3 Both Parties shall indemnify and hold harmless other Party from and against all liability (including any imposition of any monetary penalty under the DPA 2018) and loss suffered and any costs and expenses reasonably and properly incurred by the other Party which arise directly or in connection with the either Party's data processing activities under this Agreement, including without limitation those arising out of any third party demand, 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 Requirements by either Party, its employees, servants, agents or its sub-contractors.
- 12.4 When processing and publishing information both Parties must ensure that publication is compliant with the provisions of the Data Protection Act 2018 and the General Data Protection Regulations (GDPR), and have due regard to all information sharing principles set out under the legislation. Where personal information is processed, it will need to be kept up to date and both

Parties will need to ensure that the rights of their data subjects under the legislation are observed.

- 12.5 The Provider must carry out appropriate checks with the Disclosure and Barring Service (DBS) (previously CRB checks) on all staff (including volunteers and agency staff) engaged to provide, or supervise the provision of the service. If the checks reveal information which would make the person unsuitable for work with children the Provider shall not employ or otherwise use such as in a volunteering or training capacity such persons in any way.
- 12.6 In line with Ofsted requirements the Provider is responsible for assessing:
 - whether or not the registered person and day-to-day manager are suitable to be in charge of a day care setting,
 - that proper recruitment and employment procedures have been put in place,
 - and that staff working directly with children or having unsupervised access have enhanced checks and are not barred persons within the terms of the vetting and barring scheme operated by the disclosure and barring service.
- 12.7 If the Provider dismisses or removes an employee or other staff member because they have harmed a child, or the Provider would have dismissed them had they not left, the Provider must promptly notify the disclosure and barring service, Ofsted and the LADO.
- 12.8 The Provider shall be entirely responsible for the terms and conditions of employment of staff that provide the service. The Provider agrees that contracts of employment for childcare practitioners working at the childcare provision will not contain any terms that would restrict practitioners from working at other childcare provisions within Derby City should they wish to be employed by one or more provider or their employment with the Provider cease for any reason. If the Provider is a maintained school the terms and conditions of employment of staff who shall provide the service should comply with national guidelines and be subject to any policies and procedures set by the Council.
- 12.9 The Provider undertakes to ensure that the procedures for the safe recruitment and selection of staff and volunteers working with children accord with the minimum standards specified by the Council's Children and Young People's Service and guidance issued by the Derby City's Local Safeguarding Children's Board prior to the commencement of the service and continue to meet these standards on an on-going basis.
- 12.10 The Council has overarching responsibility for safeguarding and promoting the welfare of all children and young people in the City. The Council has 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 details. The Council will contribute to the safeguarding and promote the welfare of children and young people in the City. The Provider must ensure that if any issues arise in relation to child protection they shall be dealt with in line with the requirements of Working Together to Safeguard Children (2013) (or any replacement or supplementary guidelines), the Derby City Council Child Protection Policy and the protocols published by Derby City's Local Safeguarding Children Board.

- 12.11 The Provider shall have a practitioner designated to take lead responsibility for safeguarding. The Provider shall ensure that the lead practitioner has attended level one and level two safeguarding training or does so as soon as practicable after the date of this agreement. The Provider will ensure that all staff have up to date knowledge of safeguarding issues, can identify signs of possible abuse and neglect at the earliest opportunity and can respond in a timely and appropriate way.
- 12.12 The Provider shall have written policies to describe how it will safeguard and protect children attending the childcare provision from harm, which shall be made available to the Council on request. These must include policies on safer working practices, on dealing with allegations of harm to children by staff or other adults and on whistle blowing.
- 12.13 The Provider must provide all requested reports and information about any child attending the childcare provision for any multi-agency meeting in accordance with Derby City Council's Local Safeguarding Children's Board

13 Termination and withdrawal of funding

- 13.1 The Council may terminate this Agreement with immediate effect by written notice without liability for compensation or damages if the Provider:
- 13.1.1 fails to gain and or maintain the minimum Ofsted inspection outcome for delivering 2, 3 and 4 year old funded places; or
 - 13.1.2 is suspended by Ofsted from delivering a childcare service or
 - 13.1.3 is in breach of statutory requirements or
 - 13.1.4 safeguarding issues are identified by Ofsted or
 - 13.1.5 ceases to be registered with Ofsted on the Early Years Register; or
 - 13.1.6 is in material or persistent breach of this Agreement and, in the case of a breach capable of remedy, fails to remedy the breach in accordance with the process set out in clause 13.2 below after receipt of a written notice specifying the breach and requiring it to be remedied. For the avoidance of doubt if the Provider fails to meet the requirements set out in this Agreement this will amount to a material breach of this Agreement for the purposes of this clause; or
- 13.2 Where the Provider receives notice of material or persistent breach capable of remedy in accordance with clause 13.1 above the following process shall apply:
- 13.2.2 within 5 Business Days of receipt of the notice, the Provider shall acknowledge receipt of the notice in writing;
 - 13.2.3 if the Provider:
 - 13.2.3.1 acknowledges receipt of the notice in accordance with clause 13.2.2, the Provider and the Council will: or
 - 13.2.3.2 does not acknowledge receipt of the notice in accordance with clause 13.2.2 or does not co-operate with the Council as referred to in Cl 13.2.3.1 above, the Council alone will:
develop a Remediation Plan, which shall be formally issued to the Provider by the Council. The Provider shall comply with and deliver the requirements specified in the Remediation Plan within the timescale specified in such plan.

- 13.2.4 If the Provider:
- 13.2.4.1 completes such Remediation Plan to the satisfaction of the Council, the Council's nominated officer will write to the provider stating that, subject to no further related material or persistent breach of this Agreement, no further action will be taken by the Council;
 - 13.2.4.2 does not complete such Remediation Plan to the satisfaction of the Council, the Council's nominated officer will write to the Provider stating that from the start of the next academic term, the Provider will no longer be listed on the Directory of Providers and shall receive no further payments from the Council under this Agreement ("Devalidation Notice").
- 13.3 The Council may terminate the Agreement forthwith where:
- 13.3.2 The Provider is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into either voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over their assets; or
 - 13.3.3 The Provider is a charity or organisation which is dissolved, wound up or is otherwise brought to an end; or
 - 13.3.4 The Provider has been the subject of a change in ownership or control, which in the Council's opinion, acting reasonably, results in an effective change in the identity of the provider
 - 13.3.5 In the event of the Provider entering financial difficulties it must inform the Council as soon as possible. In the event that the provider has received any funding in advance from the Council, the Council shall be entitled to recover such funding.
- 13.4 The Council may terminate the Agreement forthwith if the Provider acts in a fraudulent manner, has an action for fraud brought against their business or is convicted of fraud by a recognised court of law.
- 13.5 If either Party delays in acting upon a breach of this Agreement, that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.
- 13.6 Either Party may terminate this Agreement by providing the other Party with one month's written notice, whereby the Provider shall cease to be registered on the Directory of Providers.
- 13.7 In the event that the Provider is removed from the Directory of Providers, the Provider may subsequently be re-instated provided that the Council is satisfied that the grounds for the removal no longer apply and have not been in evidence for a minimum period of one term.
- 13.8 The Council shall have no liability in respect of any costs incurred after the date of expiry or termination, howsoever arising.
- 13.9 Within ten days of the termination or expiry (howsoever arising) of this Agreement, the Provider shall return to the Council all manuals, information, data 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 Council, in connection with this Agreement, and any sums prepaid by the Council in respect of services not provided by the Provider by the date of expiry or termination of this Agreement.

14 Force Majeure

- 14.1 For the purposes of this Agreement "Force Majeure" means, in relation to either Party, any circumstances beyond the reasonable control of that party (including, without limitation, any act of God, strike or other form of industrial action).
- 14.2 If any Force Majeure 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. The Provider must also inform Ofsted as this will be a significant event within their registration. 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 obligations under, to the extent that the delay or non-performance, is due to any Force Majeure of which it has notified the other Party, and the time for performance of that obligation shall be extended accordingly. If the performance by either Party of any of its obligations under this Agreement is prevented or delayed by Force Majeure 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.
- 14.3 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.

15 Notices

- 15.1 Notices given under this Agreement must be in writing and must be delivered by hand (or by courier) or sent by recorded post to the address of the registered office set out in this Agreement or such other address as may have been notified to the other Party from time to time.
- 15.1.1 Privacy Notice - Under [The Data Protection Act 1998](#), when an organisation collects personal information about an individual it must make that information available to the individual. The Provider must ensure that parents are able to access and review all data held for their child.

16 Dispute resolution and appeals process

- 16.1 Any question or difference which may arise concerning the construction, meaning or effect of this Agreement or any matter arising out of it shall be in the first instance referred to the representatives of the Provider and the Council for resolution and discussion as soon as reasonably possible and in any event within twenty one days of such referral. If the matter is not resolved at this meeting, the escalation will continue through a further level of management as soon as reasonably possible and in any event within a further twenty one days.
- 16.2 If the Provider is not satisfied with the way in which their complaint has been dealt with by the Council or believes that the Council has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaint procedures have been exhausted.

- 16.3 Neither Party may initiate any legal action until the 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.

17 Entire agreement

- 17.1 This Agreement and its appendices contain the whole Agreement between the Parties relating to its subject matter and supersedes all previous terms, conditions or obligations oral or written expressed or implied to it. No amendment or variation to this Agreement shall take effect unless it is in writing and signed by authorised representatives of both Parties.
- 17.2 The Parties acknowledge and agree that in connection with this Agreement their only rights and remedies in relation to any representation, warranty or other assurance are for breach of this Agreement and that all other rights and remedies are excluded, except in the case of fraud.
- 17.3 If any provision of this Agreement shall be held void or unenforceable in whole or part by any Court or other competent authority, the remaining provisions, and the remainder of the provisions affected, shall remain in full force and effect.

18 Assignment and sub-contracting

- 18.1 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 Council. In any event, the Provider will remain liable for all the acts and defaults of its sub-contractor or any transferee.

19 Statutory requirements

- 19.1 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.
- 19.2 The Provider shall not act in contravention of the Equal Pay Act 1970 nor the Equality Act 2010 or any statutory modification or re-enactment thereof or any other law relating to discrimination in employment, other prohibited conduct or in the provision of services.
- 19.3 The Provider shall indemnify and hold harmless the Council from and against all losses, claims, liabilities, costs, expenses, proceedings or otherwise as a result of the Provider's non-compliance with its obligations set out in this Clause 19.

20 Bribery and corruption

- 20.1 The Council shall be entitled to cancel this Agreement with immediate effect and to recover from the Provider the amount of any loss resulting from such cancellation, if:
- 20.1.2 The Provider shall have offered or given to any person any gift or consideration of any kind as inducement for reward for doing or forbearing to do or having done or forborne to do any action in relation to this Agreement or any other contract with the Council; or
- 20.1.3 Any like act shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Provider); or

20.1.4 In relation to any contract with the Council, the Provider or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889-1916 or have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

21 Equalities Act

21.1 The Provider will be expected to observe and actively pursue the Council's policies on equalities and human rights.

22 Third party rights

22.1 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.

23 Governing law and jurisdiction

23.1 This Agreement and any claim or dispute of whatever nature (including non-contractual disputes) arising out of or relating to this Agreement or the breach, termination or validity of this Agreement shall be governed by and construed in accordance with English law.

23.2 The Parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

24 Counterparts

24.1 This Agreement may be executed in any number of counterparts by the different Parties on separate counterparts, each of which shall when executed and delivered constitute an original, but all of which shall together constitute one and the same instrument.

Signed on behalf of Derby City Council

Signature:



Print Name: Diane Whitehead

Designation: Head of Service – School Organisation and Provision

Date: 1st July 2019

Signature:



Printed name: Pauline Anderson

Designation: Head of Service – Quality Standards and Performance 0 - 19

Date: 1st July 2019

Signed on behalf of

Insert Full Registered Name of Provision

Insert Ofsted No /DfE Unique Reference Number:

Signature:

Signature:

Print Name:

Print Name:

Designation:

Designation:

Date:

Date: