

**DELIVERY OF THE FREE EARLY EDUCATION AND CARE ENTITLEMENT
FOR UNDER TWO'S, TWO, THREE- AND FOUR-YEAR OLDS – 2024-25**

THE TERMS AND CONDITIONS OF THE KIRKLEES AGREEMENT BETWEEN A PROVIDER AND THE COUNCIL

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following words and expressions shall have the following meanings:

“Administrative Charge”	means the administrative charge of £30 which is the sum calculated as the assessment of the cost of administration time and expenses to the Council in dealing with the defaults of the Provider referred to at clause 4.4;
“Agreement”	means the Kirklees Agreement;
“Agreement Period”	means the period from the Commencement Date to: (a) the date of expiry set out in clause 2.1; or (b) such earlier date of termination of this Agreement in accordance with the Law or the provisions of this Agreement.
“Authorised Officer”	means the Council's Service Director for Learning and Early Support or his/her authorised representative;
"Child"	means the child intending to receive, or receiving, the Services;
“Commencement Date”	means 1 st April 2024;
“Complaints Procedure”	means the process the Provider has for dealing with complaints from parents and the process parents have when they are not satisfied with the Provider’s response regarding their child’s free entitlement;
“Core Details”	means the core details of the Child including full legal name, date of birth, gender, address;
"Council"	means the Council of the Borough of Kirklees of the Town Hall, Ramsden Street, Huddersfield, West Yorkshire HD1 2TA, a party to this agreement and providing Early Years Funding to the Provider;
“DBS”	means Disclosure and Barring Service;
“Data Protection Legislation (DPL)”	means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or Supervisory Authority and applicable to a Party;
“Early Years Pupil Premium”	means additional funding for Providers where Children meet certain criterion as set out in the FEEC Guide, additional information is required in order to carry out eligibility checks;

“Eligibility Code”	means the 11-digit number used to verify parents’ eligibility for the Working Parent free entitlement;
“EYFS Statutory Framework”	means the Statutory Framework for the Early Years Foundation Stage effective from January 2024. This framework sets standards for the learning, development and care of children from birth to 5 years old. All schools and Ofsted registered early years providers must follow the EYFS Statutory Framework for Group and School-Based Providers; Ofsted registered Childminders must follow the EYFS Statutory Framework for Childminders
“FEEC”	means Free Early Education and Care;
“FEEC Funding”	means the funding released to the Provider in consideration of providing the Services pursuant to Clause 4.1 ;
“FEEC Guide”	means either the FEEC PVI Guide or the FEEC Maintained Guide, whichever is the relevant guide for a particular Provider;
“FEEC Maintained Guide”	means the Council’s Guide entitled “Delivery of Free Early Education and Care for Two, Three and Four year olds, a guide for local authority maintained schools” and dated April 2024 as amended from time to time. This Guide shall also apply to an Academy under the Academies Act 2010 provided that it provides pupil data to the Council’s School Data Quality Team in accordance with the FEEC Maintained Guide;
“FEEC PVI Guide”	means the Council’s Guide entitled “Delivery of Free Early Education and Care for Two, Three and Four year olds, a guide for private, voluntary and independent Providers” and dated April 2024 as amended from time to time. This guide shall also apply to an Academy under the Academies Act 2010 where pupil data is not provided to the Council’s School Data Quality Team in accordance with the FEEC Maintained Guide;
“Funding Period”	means the period for which the Provider is provided with funds for any school term in accordance with the FEEC Guides;
“Good Industry Practice”	means that degree of skill, care, prudence, foresight, diligence and operating practice which would commonly be expected from a skilled and highly experienced contractor engaged in the same type of undertaking as that of the Contractor seeking in good faith to comply with its contractual obligations hereunder;
“Headcount (or Census) Day”	means the Headcount Day or the Census Day in each school term used to determine FEEC funding as set out in the relevant FEEC Guide;
“Headcount Information”	means the details of the Children to receive, or receiving, the Services. This includes, but is not limited to, full legal name, date of birth, gender, address, funded hours;
“Information Sharing Agreement”	means an agreement between the parties which sets out how information will be shared;
“Intellectual Property Rights”	means all copyright, patents or patent rights registers, and unregistered design rights, trademarks, service marks, database rights, inventions, know-how and all other intellectual property rights whatsoever in the world enforceable;
“Kirklees Agreement”	means this Agreement between the Provider and the Council;
“Kirklees District”	means the borough of Kirklees in which the Services are to be performed;

“Kirklees List of Approved Providers”	means the council’s List of Approved Early Education and Care Providers eligible to provide the Services as governed by Sections 2 and 3 of the relevant FEEC Guide;
“Local Authority Maintained School”	means schools which are funded by the local authority, this includes community schools controlled by the local authority, voluntary controlled schools and voluntary aided schools;
"Parent Agreement"	the agreement to be entered into between the parent of the Child and the Provider referred to in the relevant FEEC Guide;
“Personal Data”	shall each have the same meaning as set out in the DPL;
“Personal Data Breach”	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This includes breaches that are the result of both accidental and deliberate causes;
“Provider”	means the party to this Agreement and a provider of the Services and who is included in the Kirklees List of Approved Providers;
“Provider Working Day”	means any day excluding weekends, Good Friday, Christmas Day, bank holidays, days designated as public holidays, or any day specified by the Provider as not a usual working day for that provider;
“PVI”	means private, voluntary & independent;
“Regulation”	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.
“Serious Breach”	means any substantiated report of improper conduct or attempted improper conduct of the Provider or any persons acting on behalf of the Provider including but not limited to fraud, theft or aggressive behaviour;
“Services”	means the provision of early education and care services for eligible children for a period of up to 15 or 30 hours each week (subject to eligibility) for a minimum of 38 weeks in the year (570 hours or 1140 hours subject to eligibility) during the period of this Agreement at all times in accordance with this Agreement, the relevant FEEC Guide, the Statutory Guidance, the EYFS Statutory Framework, the Parent Agreement and any additional instructions from time to time given by the Council;
“Statutory Guidance”	means the Early Education and Childcare Statutory Guidance for Local Authorities dated January 2024 and applicable from April 2024;
“Supervisory Authority”	means the relevant supervisory authority in the territories where the Parties are established;
“UK Data Protection Legislation”	means all applicable legislation and regulatory requirements relevant to the Parties which are in force relating to the use of personal data and the privacy of electronic communications, including, without limitation, (i) any data protection legislation in force in the United Kingdom including the Data Protection Act 2018 or any legislation which replaces it, and (ii) the Regulation;

- 1.2** In this Agreement, unless the context or relevant clause otherwise requires:
- 1.2.1** the expressions "Council" and "Provider" shall include their respective successors, personal representatives, employees and permitted sub-contractors and assigns;
 - 1.2.2** reference to any Order, Regulation or Statute whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it;
 - 1.2.3** words importing any gender shall include all genders and the singular includes the plural and vice versa;
 - 1.2.4** reference to Schedules and Clauses shall be construed as reference to schedules and clauses of this Agreement;
 - 1.2.5** Clause headings are included for ease of reference and shall not affect the interpretation or construction of this Agreement;
 - 1.2.6** To the extent that there is a conflict between or ambiguity relating to, on the one hand any or all of the terms in this Agreement and the relevant FEFC Guide or the Parent Agreement, the wording of the terms and conditions of this Agreement shall prevail.

2. AGREEMENT

- 2.1** The duration of this Agreement shall be for a period of 12 calendar months from the 1st of April in the year of commencement unless terminated sooner or varied in accordance with this Agreement.
- 2.2** This Agreement constitutes the entire contract between the Council and the Provider in respect of the Services and, except as may be expressly referred to or referenced in this Agreement, supersedes all prior representations, submissions, negotiations or understandings with respect to the Services, save that nothing in this Agreement purports to exclude liability for any fraudulent statement or act.
- 2.3** Subject to Clause 2.4, no variation or modification of this Agreement shall take effect unless it is in writing and signed by the Authorised Officer and the Provider.
- 2.4** The Council may revise these terms from time to time to reflect the changes in relevant laws, regulatory requirements and departmental guidance. References to legislation will apply to the legislation as amended, without significant changes to this Agreement.
- 2.5** If any provision of this Agreement or part thereof should be found to be invalid, ineffective or unenforceable under any applicable statute or regulation, the remainder of the provisions hereof shall stay in full force and effect.

2A. THE COUNCIL'S RESPONSIBILITIES

- 2A.1** The Council must secure a free place for every eligible child in their area.
- 2A.2** The Council will work in partnership with Providers to agree how to deliver places.
- 2A.3** The Council will be clear about their role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as their expectations of the Provider.
- 2A.4** The Council will contribute to the safeguarding and promote the welfare of children and young people in their area.

2B. THE PROVIDER'S RESPONSIBILITIES

- 2B.1** The Provider must comply with all relevant legislation and insurance requirements.
- 2B.2** The Provider must 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 that the 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 the provision.

- 2B.3 The Provider must follow the EYFS Statutory Framework and have clear safeguarding policies and procedures in place that link to the Council's guidance for recognising, responding, reporting and recording suspected or actual abuse.
- 2B.4 The Provider 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. THE SERVICES

- 3.1 The Council hereby engages the Provider to provide the Services and the Provider agrees to provide such Services in accordance with the terms and conditions set out in this Agreement.
- 3.2 The Provider warrants that the Services will in all respects comply with this Agreement and that the Provider shall exercise all due skill, care and diligence as would be expected of an experienced Provider undertaking work of similar size, scope and complexity to the Services.
- 3.3 The Provider shall employ a sufficient number of suitably skilled, experienced and competent qualified persons to provide the Services in accordance with the EYFS Statutory Framework within the timescales required under this Agreement and, as evidence of that, shall obtain for each of such persons who works directly with children or who is likely to have unsupervised access to them an enhanced DBS check, or other such check required by the Council, acting reasonably and shall keep sufficient records to demonstrate to the satisfaction of the Council that such checks have been undertaken.
- 3.4 The Provider shall liaise with the Authorised Officer and shall comply with the reasonable request of the Authorised Officer in connection with the Services and shall use his best endeavours to promote the interests of the Council in connection with the Services and shall keep the Authorised Officer fully informed of all changes to the Provider's relevant circumstances during the period of this Agreement.
- 3.5 A senior member of the Provider's staff must be nominated promptly by the Provider to act as the Provider's representative to liaise with the Authorised Officer as required in connection with the Services and to attend any officer and other meetings to be convened within the Kirklees District in respect of which the Provider has received prior notification whether under Clause 5 or otherwise.
- 3.6 The Provider must remain registered on the Early Years Register maintained by Ofsted for the duration of this Agreement and must comply with the statutory requirements of the Statutory Framework for the Early Years Foundation Stage, as may be amended.
- 3.7 Except as otherwise expressly specified in any Schedule to this Agreement:-
 - 3.7.1 the Provider shall communicate to the parents and ensure the parents understand details about the days and times that they offer free places along with their Services and Charges and any admissions criteria.
 - 3.7.2 the Provider shall provide everything necessary for the proper performance of the Services;
 - 3.7.3 all consents, permissions and Eligibility Codes necessary in connection with the Services shall be the responsibility of the Provider.
 - 3.7.4 the Provider shall check original copies of documentation to ensure that the Core Details of the Child are correct, and that the Child has reached eligible age on initial registration for all FEFC;
 - 3.7.5 the Provider shall enter into a Parent Agreement with the parent of each Child to whom it provides Services prior to commencement of the first school term and shall inform the Council as soon as practicable of any withdrawal of the Services prior to the Headcount Day under the Parent Agreement.
 - 3.7.6 the Provider shall inform the Council as soon as practicable of any amendments to the Parent Agreement during the term of this Agreement.

3.7.7 the Provider shall co-operate with other Providers and provide reasonable information, advice and assistance in connection with the Services in order to promote partnership working across all sectors and offer flexible provision alongside other Providers.

3.8 The Authorised Officer shall be entitled (but not unreasonably or vexatiously) to require the Provider forthwith upon issue of notice in writing (or upon expiry of 7 days' notice in writing where it is practicable to give 7 days' notice) to remove from the provision of the Services any personnel specified in such notice if the Authorised Officer has reasonable grounds for believing that such person's conduct or ability is not of a sufficient standard for the proper provision of the Services and the Provider shall forthwith remove such person from the provision of the Services and immediately provide a replacement unless the Council determines, in writing, otherwise. For the avoidance of doubt this clause does not require such personnel to be dismissed from the Provider's employment.

3.9 Provision must be offered in accordance with the national parameters on quality as set out in Section A3 of Early Education and Childcare Statutory Guidance for Local Authorities 2024 and the EYFS statutory framework.

4. FINANCIAL AND REPORTING ARRANGEMENTS

4.1 In consideration of the performance by the Provider of its obligations in accordance with this Agreement, the Council will pay the Provider the FEEC Funding in accordance with the terms and at the rates set out in the relevant FEEC Guide for each Funding Period and so long as this Agreement and the Parent Agreement subsists and the Provider is and remains eligible to be included in the Kirklees List of Approved Providers and at all times satisfies the conditions of eligibility to be included in the Kirklees List of Approved Providers as set out in the relevant FEEC Guide.

4.2 The FEEC Funding referred to in Clause 4.1 shall be payable subject to the Provider providing the information and documentation in accordance with the relevant FEEC Guide

4.3 Except as otherwise expressly set out in this Agreement and the FEEC Guide, the FEEC Funding shall be inclusive of all costs, expenses and disbursements in connection with the Services including without limitation, all fees, labour, equipment, goods, materials, transport, insurance, administration, operating costs, telephones, IT, profit and all general risks, taxation, duties, liabilities and obligations set out in or implied as necessary to comply with this Agreement.

4.4 In default of the Provider filing with the Council Headcount Information or other documentation which is incomplete or not received within the deadlines required by the relevant FEEC Guide, the Council may apply the Administrative Charge on each and every such occasion and which sums shall be deducted from the FEEC Funding due to be paid to the Provider under Clause 4.1 or if applicable be recoverable by the Council by the issue of separate invoices.

4.5 All sums payable under this Agreement are unless otherwise stated exclusive of Value Added Tax and at all times are subject to and conditional upon funds having been first received by the Council from its funders.

4.6 The Council shall not be liable in respect of any contractual or statutory claims in respect of late Funding of debts unless the Council has received written notice of such claim from the Provider within 60 days of the due date.

4.7 Save for Local Authority maintained schools, the Provider has no employee status with the Council and shall be responsible for making or procuring appropriate PAYE deductions for tax and national insurance or similar contributions in respect of the Provider's fees and from the remuneration which it pays to its personnel. The Provider agrees to indemnify the Council in respect of all claims or demands which may be made in respect of income tax or national insurance or similar contributions in connection with the provision of the Services.

4.8 The Council may at their discretion withhold and/or require repayment from the Provider any or all of the FEEC Funding referred to at Clause 4.1, at any time during the period of this Agreement and within 6 years thereafter, if;

- (a)** The Council's funders recoup monies from the Council;
- (b)** The Council has made Funding in excess of the FEEC Funding due to the Provider under Clause 4.1;
- (c)** The Provider has failed to take sufficient measures to investigate and resolve any irregularity in the course of its providing the Services;
- (d)** This agreement is terminated pursuant to Clause 13 or any of the grounds reasonably exist under clause 13;

- (e) The Provider has failed to employ any part of the said FEEC Funding in providing the Services in accordance with this Agreement;
- (f) The Provider is in Serious Breach of the terms of this Agreement or the relevant FEEC Guide;
- (g) The Council has reasonable evidence that the Provider is in financial difficulties by its failing to pay its debts or threatening to suspend its debts when they fall due;
- (h) The Council receives any information which leads the Council, acting reasonably, to conclude that it would be appropriate to withhold FEEC Funding.

4.9 The Authorised Officer or the Council's Director of Finance shall at all times have access to financial information about the Provider and to the accounts records and all other documentation of the Provider and be entitled to seek and receive explanations from officers of the Provider, or where applicable from the Department of Education, regarding the Provider's deployment of the FEEC Funding, within seven Provider Working Days of making a request to the Provider in writing.

5. **REVIEWS**

5.1 The Provider shall co-operate with any officers of the Council or any member of the Early Years Outcomes Team and attend meetings requested by the Council with a view to reviewing and promoting improvement in the Provider's performance of the Services.

6. **ASSIGNMENT**

6.1 The Provider shall not transfer, charge or assign directly or indirectly to any person or persons whatsoever this Agreement or any part thereof, without the prior written consent of the Council.

7. **STATUTORY AND OTHER REQUIREMENTS**

7.1 In the performance of this Agreement, the Provider shall comply with all statutory requirements, regulations and other provisions to be observed and performed in connection with the Services.

7.2 The Provider shall not do anything to cause any infringement by the Council of its obligations under the Human Rights Act 1998 or any other human rights law.

7.3 The Provider shall comply and shall procure that its employees, subcontractors and agents comply with the Freedom of Information Act (FOIA) 2000 and the Environmental Information Regulations (EIR) 2014 any Codes of Practice in so far as these place obligations upon the Provider in the performance of its obligations under this Agreement.

7.4 The Provider accepts that the Council may be required to disclose information (including commercially sensitive information) relating to this Agreement or Provider to a person in order to comply with its obligations under the Freedom of Information Act 2000 and/or other legislation without consulting or obtaining consent from the Provider. Such information may include, but shall not be limited to, the name of the Provider, the overall contract price and details of the provisions of this Agreement. The Council shall take reasonable steps to notify the Provider of a request for information (in accordance with the Secretary of State's section 45 code of practice on the discharge of the functions of public authorities under part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but the Council shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with FOIA and EIRs.

7.5 The Provider shall not do anything to cause any infringement by the Council of its obligations under the Freedom of Information Act 2000 and any Codes of Practice and shall facilitate the Council's compliance and comply with any reasonable request from the Council for that purpose.

7.6 For the purposes of this clause 7, the terms Controller, Processor, Data Subject, Personal Data, Process(ing) and Personal Data Breach shall have the meanings prescribed to them under the UK Data Protection Legislation.

7.7 The Parties agree that for the purposes of the UK Data Protection Legislation and with respect to their rights and obligations under the Contract, both shall be acting as Controller. These clauses 7.6 to 7.11 sets out the framework

for the sharing of Personal Data between the Parties in the course of providing/receiving the Services (the “Agreed Purposes”).

7.8 Each Party shall comply with all applicable requirements imposed on a Controller under the UK Data Protection Legislation and each Party shall:

- (a) ensure that it has all notices and consents in place to enable lawful transfer of the Personal Data to the other Party and their authorised representatives for the Agreed Purposes;
- (b) give full information to any Data Subject whose personal data may be processed under this Contract of the nature such Processing. This includes giving notice that, on the termination of this Contract, Personal Data relating to them may be retained by or, as the case may be, transferred to the other Party or their authorised representatives;
- (c) Process the Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Personal Data to anyone other than the other Party or their authorised representatives;
- (e) ensure any of its authorised representatives are subject to written contractual obligations concerning the Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
- (g) not directly or indirectly disclose Personal Data received from the other Party to a country or organisation located outside of the UK unless the prior written consent of the other Party has been obtained.

7.9 Each Party shall assist the other in complying with all applicable requirements of the UK Data Protection Legislation. In particular, each Party shall:

- (a) consult with the other Party about any notices given to Data Subjects in relation to the Personal Data;
- (b) promptly inform the other Party about the receipt of any Data Subject access request;
- (c) provide the other Party with reasonable assistance in complying with any Data Subject access request;
- (d) not disclose or release any Personal Data in response to a Data Subject access request without first consulting the other Party wherever possible;
- (e) assist the other Party, at the cost of the other Party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the UK Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with Supervisory Authorities or regulators;
- (f) notify the other Party without undue delay on becoming aware of any breach of the UK Data Protection Legislation;
- (g) at the written direction of the other Party, delete or return Personal Data and copies thereof to the other Party on termination of this Contract unless required by law to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with clauses 7.6 to 7.11; and
- (i) provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the UK Data Protection Legislation.

7.10 Each Party shall indemnify the other Party against all liabilities costs, expenses, damages and losses suffered or incurred by the other Party as a result of breaching this clause 7.

7.11 The provisions of this clause 7 shall apply during the Agreement Period and indefinitely after its expiry.

7A. PARTNERSHIP WORKING

7A.1 Partnerships will be supported by the Council on four levels between:

- a. The Council and Providers;
- b. Providers working with other providers, including childminders, schools and organisations;

- c. Providers and parents;
- d. The Council and parents.

7A.2 The Council will promote partnership working between different types of providers, including childminders, across all sectors and encourage more providers to offer flexible provision, alongside other providers.

7B. SPECIAL EDUCATIONAL NEEDS AND DISABILITIES

7B.1 The Council will strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in their local area as per the Special Educational Needs and Disability code of practice: 0 to 25 years.

7B.2 The Council will be clear and transparent about the support on offer in its area, through their local offer, so parents and Providers can access that support.

7B.3 The Council will promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to places and working with parents to give each child support to fulfil their potential. The Provider should ensure that they have identified the disadvantaged children in their setting as part of the process for checking EYPP eligibility. They will also use EYPP and any locally available funding streams or support to improve outcomes for this group.

8. ASSISTANCE IN LEGAL PROCEEDINGS AND OTHER INVESTIGATIONS

8.1 If requested to do so by the Authorised Officer, the Provider shall provide, if applicable through the Department of Education, to the Council any relevant information (including but not limited to documentation and statements from its personnel) in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved, or any relevant disciplinary hearing internal to the Council, arising out of or in connection with the provision of the Services or any other of the Provider's obligations under this Agreement, and the Provider shall give evidence in such enquiries, arbitrations, proceedings or hearings.

8.2 The Provider shall co-operate with any investigation of any complaint or other matter arising from actions of the Provider (including but not limited to investigations by the Local Government Ombudsman or the Council's internal or external auditors) and will comply with the Council's decisions relating to the outcome of such investigation.

8.3 The Provider will permit the Authorised Officer to inspect and examine the performance of the Services (including, without limitation, the processing of personal data over which the Council is a data controller (where applicable)) at any reasonable time wherever they occur.

9. INDEMNITY AND INSURANCE

9.1 The Provider shall hold the Council and its employees harmless and indemnified against all claims, costs, charges, damages and expenses due to loss, damage or injury (including death) which arises out of or in connection with any act, omission or neglect (including without limitation breach of this Agreement or of any enactment or subordinate legislation) on the part of the Provider, its employees, sub-contractors, agents or other persons for whom the Provider is responsible.

9.2 The Provider shall maintain the following comprehensive insurance(s);

9.2.1 Public liability insurance with a level of cover of not less than £10,000,000 (Ten Million Pounds) in respect of any one claim or series of claims arising out of any one incident and unlimited in any one year; and

9.2.2 Employers' liability insurance with a level of cover of not less than £10,000,000 (Ten Million Pounds) in respect of any one claim or series of claims arising out of any one incident and unlimited in any one year.

9.3 The Provider shall promptly produce to the Council satisfactory evidence of such insurance, when reasonably required.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 The Council agrees:

- 10.1.1** that all Intellectual Property Rights owned at the date of this Agreement by the Provider and used in the provision of the Services shall remain so owned;
- 10.1.2** to hereby grant to the Provider a non-exclusive, non-transferable, royalty-free licence to use the Council's Intellectual Property Rights only to the extent that and for so long as such use is necessary for the provision of the Services.

10.2 The Provider agrees:

- 10.2.1** that all Intellectual Property Rights owned at the date of this Agreement by the Council and used in the provision of the Services shall remain so owned;
- 10.2.2** to hereby grant to the Council a non-exclusive, non-transferable, royalty-free licence to use the Provider's Intellectual Property Rights;
- 10.2.3** The Provider hereby agrees to indemnify the Council against all actions, claims, demands, proceedings, damages and costs arising from or incurred by reason of any infringement or alleged infringement of Intellectual Property Rights owned by the Provider.

11. CONFIDENTIALITY

11.1.1 Except in any of the circumstances specified in Clause 11.2, all reports, data, designs, drawings and other documents and information relating to the Services and all documents and information relating to the Council's or its client's technology, business affairs or finances or those of its contractors or potential contractors whether supplied by the Council or derived therefrom or obtained by the Provider or which may come into its possession shall be treated in strict confidence and shall not be disclosed or made use of by the Provider during the course of this Agreement or after its expiry or termination, without the prior written consent of the Council and the Provider shall ensure that its employees, subcontractors and agents are under an equivalent duty of confidentiality in respect of such documents and information.

11.2 The obligations of confidentiality set out in Clause 11.1 shall not apply to:

- 11.2.1** any use or disclosure authorised in writing by the Council;
- 11.2.2** any use or disclosure necessary for the proper performance of the Provider's obligations under this Agreement;
- 11.2.3** documents and information:
 - 11.2.3.1** which is in, or has become part of, the public domain other than as a result of a breach of the Provider's obligations under this Agreement;
 - 11.2.3.2** which was lawfully in the possession of the Provider at the date of commencement of this Agreement;
 - 11.2.3.3** independently disclosed to the Provider by a third party entitled to disclose the same;
 - 11.2.3.4** required to be disclosed by law.

11.3 The Provider shall return to the Council within seven days of a written request all confidential information including all copies.

12. CONFLICTS OF INTEREST

- 12.1** In the event that the Authorised Officer reasonably considers there is a risk of actual or potential conflicts of interest in connection with or arising from this Agreement, a system for dealing with such conflicts of interest must be agreed with the Authorised Officer. The Provider shall ensure that its system meets all relevant professional Codes of Practice and if necessary shall amend it to ensure that it continues to do so throughout the period during which the Provider is responsible for providing the Services. The Provider shall also ensure its system is observed at all times during such period and that it prevents the occurrence of situations, not only where a conflict has arisen, but where one is likely to arise.
- 12.2** The Provider shall ensure that, in accordance with the requirements of this Agreement and the agreed system, it is loyal to the Council and avoids any situation which might be seen to put its loyalty in doubt.
- 12.3** All conflicts of interest must be declared promptly to the Authorised Officer.

13. TERMINATION

- 13.1** The Council may forthwith terminate this Agreement upon giving prior written notice to the Provider if the Provider:
- 13.1.1** has made any material misrepresentation prior to entering this Agreement;
 - 13.1.2** is in remediable breach of this Agreement and such breach is not remedied within a reasonable period stated in any notice issued by the Authorised Officer;
 - 13.1.3** commits a breach of this Agreement which is not in the opinion of the Council capable of remedy or is in persistent or recurrent breach of its obligations thereunder;
 - 13.1.4** undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of this Agreement;
 - 13.1.5** shall commit any act of bankruptcy, or if (the Provider being a company) proceedings shall be commenced for the winding up of the Provider or if the Provider shall make any arrangements or composition with its creditors, or if a Receiver or Administrative Receiver or Manager on behalf of a creditor is appointed, or if the Provider shall suffer any execution to be levied on its goods;
 - 13.1.6** does anything improper to influence the Council to give the Provider any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or under Section 117(2) of the Local Government Act 1972 or under the Bribery Act 2010;
 - 13.1.7** is guilty of any gross misconduct or guilty of any conduct which the Council reasonably considers to be prejudicial to the Council's interests;
 - 13.1.8** has its registration suspended by Ofsted or childminder agency, or a breach of statutory requirements or safeguarding concerns;
 - 13.1.9** any of the conditions listed in Regulation 7 (Termination of the arrangements) of The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 are met;
 - 13.1.10** any conditions listed in Regulation 37 (Arrangements between local authorities and early years providers: termination) of The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 are met.
- 13.2** A Provider may be denied approval to offer the free entitlements or have their funding withdrawn in accordance with Clause 13.1, the Provider may appeal to the Council for a review of that decision. The appeal process is set out in the relevant FEFC Guide 2024-2025.

- 13.3 If the Council terminates this Agreement in accordance with Clause 13.1 and following an unsuccessful appeal from the Provider, the Provider will be removed from the approved list of Early Education and Care Providers and funding will be withdrawn as soon as is practicable.
- 13.4 The Agreement shall terminate automatically if the Council is no longer in receipt of funding to enable the Provider to perform the Services.
- 13.5 Termination of this Agreement shall be without prejudice to the rights of the Council or liabilities of the Provider accrued hereunder.

14. COMPLAINTS

- 14.1 The Provider must have a clear Complaints Procedure made available to parents and shall deal with any Complaint it receives in a prompt, courteous and efficient manner and shall acknowledge each Complaint in writing to the complainant making a complaint. This Complaints Procedure shall also include a procedure for parents who are not satisfied their child has received their free entitlement in the correct way, as set out in this Agreement and in Early Education and Childcare Statutory guidance for Local Authorities.
- 14.2 Where a parent is not satisfied that their child has received their free entitlement in accordance with the legislation or as set out in this Agreement and in Early Education and Childcare Statutory guidance for Local Authorities, the Provider shall refer the parent to the Council.
- 14.3 Any complaint made by a parent to the Provider regarding any other matter not concerning their child's free entitlement shall be dealt with by the Provider's own Complaints Procedure and shall not be referred to the Council.
- 14.4 If a parent wishes to make a complaint to the Council in accordance with Clause 14.2, the parent shall send their complaint in writing to the Service Director for Learning and Early Support PO Box 1720, Huddersfield HD1 9EL or send an email to earlyeducation@kirklees.gov.uk The Council will investigate the complaint and provide a written response within a reasonable timeframe.
- 14.5 If a parent is not satisfied with the way in which their complaint has been dealt with by the Council or believes the Council has acted unreasonably, they can make a complaint to the Local Authority Ombudsman (www.lgo.org.uk). Such complaints will only be considered when the local complaints procedures have been exhausted.

15. EQUALITY

- 15.1 The Provider shall ensure that no recipient of the Services receives less favourable treatment on the grounds of gender, sexual orientation, colour, race, nationality, ethnic or cultural origin, religious persuasion, disability or age or any other grounds prohibited under the Equality Act 2010 or any other equality legislation and that the recipient of the Services is not disadvantaged by conditions or requirements which cannot be justified, to the satisfaction of the Council.

16. WAIVER

- 16.1 The failure by either party to enforce at any time any of the provisions of this Agreement or to require at any time performance by either party of any of the provision hereof, shall in no way be construed as a waiver of such rights nor in any way affect the validity of this Agreement or any part thereof or the right of either party thereafter to enforce each and every provision.

17. AGENCY

- 17.1 Except to the extent otherwise expressly stated in this Agreement the Provider, or in respect of Local Authority maintained schools, is not and shall in no circumstances hold itself out as being the servant or agent of the Council.
- 17.2 The Provider is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Council or in any other way bind the Council to the performance, variation, release or discharge of any obligations.

17.3 The Provider has not and shall in no circumstances hold itself out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

18. RECORDS AND INFORMATION

18.1 The Provider must maintain correspondence, accurate records, the Parent Agreement, Headcount information, invoices and other documents relating to the Services and retain these for at least seven years from the date of completion of the Services, with the exception of copies of Children's identification documents which must be retained for two years from the date of completion of the Services, and shall allow at all reasonable times access by the Authorised Officer or her agents to such records and documents, directly or where applicable through the Department of Education, which must be kept separately from records not relating to the Services and provide copies thereof.

18.2 The Provider shall promptly provide such information relating to the Services as is reasonably requested by the Authorised Officer from time to time.

19. EXCLUSION OF THIRD PARTY RIGHTS

19.1 This Agreement does not create any right enforceable by any party not a party to it, except that a person who is the permitted successor or assignee of the rights of a party to the Agreement is deemed to be a party to the Agreement.

20. NOTICES

20.1 All notices required by or relating to this Agreement shall be in writing and shall be sent by prepaid first class post, delivered by hand to the parties at their address specified in this Agreement or to such other address as may be notified in writing.

20.2 All notices shall be deemed duly given on the second Provider Working Day following the date of posting or if delivered by hand, immediately when the notice is transmitted.

21. LAW

21.1 This Agreement shall be considered as a contract made in England and subject to English law.

INFORMATION SHARING AGREEMENT

between KIRKLEES COUNCIL

and PROVIDERS delivering

FREE EARLY EDUCATION and CARE

for Under 2's 2, 3- and 4-YEAR OLDS

INCIDENTS

Any incidents occurring as a result of this agreement should be reported to the relevant officer of all affected organisations. They will then pass on the information in accordance with incident reporting procedures within their own organisation if appropriate. Organisations will agree to share information in order to help investigate any such incidents.

1. Parties to this agreement

Organisation's Name

Kirklees Council – Learning and Early Support Service – Childcare Sufficiency Team

Address

Kirklees Council, Learning and Early Support: Childcare Sufficiency Team, PO Box 1720, Huddersfield, HD1 9EL

Responsible Manager

Debbie Lea/Nina O'Connor

Contact Details

Telephone: 01484 225752

Source / Recipient or both?

Recipient

Organisation's Name

All Providers of free early education and care for Under 2's, 2, 3- and 4-year-olds

Source / Recipient or both?

Source

Date of Agreement

1st April 2024

2. Specific purpose(s) for which the data sharing is required (all intended purposes should be described)

- Kirklees Council will use the data to check eligibility for Early Years Pupil Premium, Disability Access Funding and the Working Parent Entitlement.
- Kirklees Council will use the data to calculate and pay the correct amount of early years funding due to the Provider each term.
- Kirklees Council will share data of out-of-area children with the relevant local authorities to reduce the risk of fraud.
- Kirklees Council will use the data to submit the Annual Early Years Census data return for each early years Provider (which have early years funded children at the time of the annual census on the third Thursday in January) to the Department for Education.

3. Type and status of data shared

Question	Answer
Is the data 'person identifiable'? (yes/no)	Yes
Has a Data Protection Impact Assessment (DPIA) been completed? (Yes/No)	Yes
If the answer to the above question is YES, please give the DPIA reference number.	FS34499397
Has the individual been provided with a privacy notice? (Yes/No)	Yes
Is the individual aware that sharing will take place? (yes/no)	Yes

4. Data Items shared

This list must be comprehensive and include ALL data items that are to be shared. All data items to be shared must be justifiable as necessary for the purpose.

Data category	Data details
Individuals' data	<ul style="list-style-type: none"> • Child details: full legal name, preferred surname, date of birth, address, gender, special educational need category (if applicable), funded hours claiming per week, non-funded hours attending per week, date attendance started, and date ended (if applicable), eligibility markers (and evidence where applicable) for Disability Access Funding, Early Years Pupil Premium and the Working Parent Entitlement. • Parent(s) details: name, date of birth, National Insurance (NI) number or National Asylum Support Service (NASS) number – not mandatory – parents give consent.
Identifying numbers	<ul style="list-style-type: none"> • Council Pupil Database (Synergy) child ID reference number • NI/NASS number of parent(s) (if provided) • 30 hour eligibility code • 2 year old eligibility code
Special category data	<ul style="list-style-type: none"> • Child ethnicity – not mandatory – parents give consent.

5a. Legal basis for sharing personal data

Category	Legal basis
<p>If processing personal data, what is the lawful basis for processing under Article 6 of the GDPR? (For further information go to the ICO page)</p>	<ul style="list-style-type: none"> • 6(1)(a) Consent • 6(1)(c) Legal obligation • 6(1)(e) - performance of a public task
<p>List all the relevant piece(s) of legislation that allows you to process and share the personal data.</p>	<p>Childcare Act 2006</p> <ul style="list-style-type: none"> • Section 7 (as substituted by section 1 of the Education Act 2011), which places a duty on English local authorities to secure early years provision free of charge. Regulations made under s7 set out the type and amount of free provision and the children who benefit from free provision. • Section 7A (as inserted by the Children and Families Act 2014). Regulations made under section 7A make provision about how local authorities should discharge their duty under section 7. • Section 99 allows for the collection of information about young children. <p>The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014</p> <ul style="list-style-type: none"> • Regulation 5(1) An English local authority must discharge its duty to a young child under section 7 of the 2006 Act by making arrangements which secure that an early years provider chosen by a parent of the child provides the early years provision to which the child is entitled. <p>Childcare Act 2016</p> <ul style="list-style-type: none"> • Section 1, which places a duty on the Secretary of State to secure the equivalent of 30 hours of free childcare over 38 weeks of the year for qualifying children. Children in England will qualify if they are under compulsory school age and meet the description set out in regulations made under Section 2. These regulations also set out the conditions to be met by parents in order for their children to qualify. • Section 2, which allows the Secretary of State to discharge their duty under section 1 of the Act by placing a duty on English local authorities to secure free childcare for qualifying children. This duty is set out at regulation 33 of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016. <p>The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016</p> <ul style="list-style-type: none"> • Regulation 33 An English local authority must secure that the early years provision described in regulation 34 is available on the basis described in regulations 35 and 36 free of charge for each child in the authority's area who is a qualifying child of working parents. <p>Childcare (Free of Charge for Working Parents) (England) Regulations 2022</p>

Category	Legal basis
	<ul style="list-style-type: none"> Regulation 44(1) An English local authority must secure that childcare is made available free of charge for every child in its area who is a qualifying child of working parents.

5b. Legal basis for sharing special categories of personal data

Category	Legal basis
<p>If processing special category data, what is the lawful basis for processing under Article 9 of the GDPR? (For further information go to the ICO page on special category data)</p>	<ul style="list-style-type: none"> 9(2)(a) Explicit Consent
<p>List all the relevant piece(s) of legislation that allows you to process and share the special category data.</p>	<p>Childcare Act 2006</p> <ul style="list-style-type: none"> Section 99 allows for the collection of information about young children.

6. Protective Marking

Question	Protective marking
<p>Please state the Kirklees Council protective marking label used for personal information being shared.</p>	<p>Kirklees Council will share data of out-of-area children with relevant Local Authorities using Official-Sensitive protective marking.</p>

7. Data Transfer Method

All parties to this agreement are responsible for ensuring that appropriate security and confidentiality procedures are in place to protect the transfer, storage and use of the shared, person-identifiable data.

Data	Method
<p>Regular flow (specify frequency)</p>	<ul style="list-style-type: none"> The Provider submits details of the children eligible to free early education and care on a termly basis i.e., school term. The Provider also submits their data for the Annual Early Years Census return by the deadline set in January. Providers must submit their data in accordance with the deadlines set out in the claim deadlines and payment schedule which can be downloaded here: www.kirklees.gov.uk/fundingdocuments

Give full details of how the transfer will be made and what security measures will be in place.

Data	Method
<p>Other (please state method)</p>	<ul style="list-style-type: none"> Transfer of child data from the Provider/Academy to Kirklees Council is via a secure online portal provided by Servelec. Each Provider has a secure login https://educationandchildcare.kirklees.gov.uk/SynergyWebsite_Live/ Transfer of Early Years Pupil Premium eligibility confirmation from Kirklees Council to Academies is via AnyComms+, authorised officers/staff have a secure login https://sst.kirklees.gov.uk/Login.aspx Transfer of eligibility evidence from the Provider to Kirklees Council is via a secure document upload www.kirklees.gov.uk/feecupload Transfer of eligibility evidence from Academies to Kirklees Council is via Anycomms+, authorised officers/staff have a secure login https://sst.kirklees.gov.uk/Login.aspx Transfer from Kirklees Council to the Department for Education is via a secure online portal, authorised officers have a secure login https://services.signin.education.gov.uk

Has a risk assessment been carried out on the chosen methods of transfer?

Yes

What are the identified risks?

- Council network violation
- Department for Education network violation
- Login details accessed by unauthorised officers/staff
- Data sent to the incorrect recipient

8. Audit and Review

Organisation's Name

Kirklees Council – Learning and Early Support Service – Childcare Sufficiency Team

Address

Kirklees Council, Learning and Early Support: Childcare Sufficiency Team, PO Box 1720, Huddersfield, HD1 9EL

Responsible Managers

Debbie Lea/Nina O'Connor

Contact number

01484 225752

Review Date

January 2025

9. Access to Information

Information	Access
Subject Access Requests will be directed to	Erin Wood, Governance Manager and Data Protection Officer, Kirklees Council
Special Arrangements for Subject Access Requests	None

10. Retention and Disposal

Information	Method
Retention Period for Data	<ul style="list-style-type: none">• Providers must keep all records associated with early years funding for 7 financial years with the exception of copies of Child identification which must be kept for a minimum of 2 years.• Records include attendance registers, Parent Agreements, copies of Child Identification, copies of parents' invoices, Disability Access Funding Application Forms, and 30 hours Eligibility Check Consent Forms.
Disposal Method for Data	<ul style="list-style-type: none">• Where information is held in paper format, documents must be destroyed via secure shredding after the retention period.• Where information is held in electronic format either on a secure network or password-protected, files must be deleted securely after the retention period.