

**DELIVERY OF THE FREE EARLY EDUCATION AND CARE ENTITLEMENT
FOR TWO, THREE- AND FOUR-YEAR OLDS – 2023-24**

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;
“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;
“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;
“Data Controller”	means the natural or legal person, public authority, agency or other body which alone or jointly with others, determines the purpose and means of processing of personal data;
“DBS”	means Disclosure and Barring Service;
“DPL”	means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulations ((EU) 016/679); the Data Protection Act 2018 (and regulations made thereunder) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019/419 and any legislation which may amend or replace any of the above, and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory 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 extended free entitlement;
“EYFS Statutory Framework”	means the Statutory Framework for the Early Years Foundation Stage published March 2021 which came into force in September 2021. 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 Framework;
“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 October 2022 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 October 2022 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;
“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 June 2018;

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 FEEC 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.

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.

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 FEEC;
 - 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.

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 said 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, telephonesit , 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 The Parties agree that the Provider shall not Process any Personal Data on the Council's behalf (and vice versa) and any Personal Data which is passed to the Provider by the Council is given because it is strictly necessary for the performance of the Agreement (and vice versa). The Provider and the Council shall each refuse to accept any Personal Data which is not strictly required for it to perform this Agreement and confirms that each act as Data Controllers regarding the Personal Data which it does accept from each other. In performing this Agreement, the Provider and the Council shall act in accordance with the DPL and shall not do anything which might place the Council or the Provider in breach of its obligations under the DPL.

Consequently:

7.6.1 each party disclosing Personal Data shall be entirely responsible for ensuring that it is permitted to share the Personal Data; and

7.6.2 each party disclosing Personal Data shall be responsible for the Personal Data while it is in transit to the receiving party; and

7.6.3 each party receiving Personal Data shall be entirely responsible for ensuring that it processes the Personal Data it receives in accordance with the DPL.

7.7 If the Provider processes any Personal Data which is given to it by the Council in furtherance of the Services, without prejudice to any other terms and conditions elsewhere within this Agreement, the Provider shall (and shall procure that any of its employees, workers, agents, representatives and/or subcontractors involved in the provision of the Services shall) comply with the DPL and Good Industry Practice.

7.8 To use "**Good Industry Practice**" in relation to Personal Data is to include following all relevant guidance issued by the UK Information Commissioner's Office (or any successor body) and, without limitation, to secure digital data with at least 256 bit AES encryption or unattended hard copy data in a strong secure storage facility, to use out of bands password exchange, to use anti-malware products that have a good reputation within the information security industry and to take measures against brute force password attacks (such as locking accounts/target applications for 15 minutes after 20 consecutive invalid password entries).

7.9 Transportation of Personal Data shall:-

7.9.1 in electronic format only be made in one of the following ways:-

7.9.1.1 through an encrypted VPN connection, or

7.9.1.2 through a secure file transfer facility provided by the Council (at the date of this Agreement such a facility is the Council server hosted AVCO AnyComms), or

7.9.1.3 through such other method set out in an Information Sharing Agreement which is appended to this Agreement (Appendix A).

7.9.2 in a physical form only be delivered by hand by the Provider or a courier approved by the Council.

7.10 The Provider will notify the Council of any Personal Data Breach immediately after becoming aware of such Breach.

7.11 Whenever the Provider notifies the Council of a Personal Data Breach as aforesaid, the Provider will provide the Council with such information about such Personal Data Breach as the Council reasonably requires including the nature of such Personal Data Breach, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned, and provide the Council with details of the likely consequences of such Personal Data Breach, and the measures taken or proposed to be taken by the Provider to address such Personal Data Breach including, where appropriate, measures to mitigate its possible adverse effects.

7.12 It is agreed and acknowledged by the parties that a transfer of the Personal Data referred to in this Agreement by the Provider to the Council upon the expiry or other termination of this Agreement or any Placement arranged hereunder is necessary for the exercise of statutory functions conferred on the Council, and that such transfer is lawful under the DPL, and therefore the Provider will transfer such Personal Data to the Council as aforesaid using an appropriately secure means of transfer. The Provider will delete any copy of such Personal Data unless required by law to continue to store such Personal Data.

- 7.13** The Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, costs, fines, expenses and any other liabilities which may arise out of, or in consequence of a breach or purported breach of the DPL or the performance or non-performance by the Provider of its obligations under this Agreement in relation to the DPL, including loss of or damage to property, financial loss arising from any breach of the DPL, or any other loss which is caused directly or indirectly by any act or omission of the Provider arising from any breach of the DPL. The Provider shall not be responsible for any loss, damage, cost, or expense if and to the extent that it is caused by the negligence or willful misconduct of the Council or by breach by the Council of its obligations under this Agreement.
- 7.14** The provisions of Clauses 7.6 to 7.14 (inclusive) above shall apply during the continuance of the Agreement and after its expiry or termination until the Personal Data which the Council has responsibility for has been returned and / or verified as securely destroyed in accordance with DPL.

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.
- 13.2** If the Council terminates this Agreement in accordance with Clause 13.1, 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.
- 13.3** The Agreement shall terminate automatically if the Council is no longer in receipt of funding to enable the Provider to perform the Services.
- 13.4** 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

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 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	01484 225752
Source / Recipient or both?	Recipient

Organisation's Name	All Providers of free early education and care for 2, 3- and 4-year olds
Source / Recipient or both?	Source

Date of Agreement	1 st April 2023
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2. Specific purpose(s) for which the data sharing is required (all intended purposes should be described)

<ul style="list-style-type: none"> • Kirklees Council will use the data to check eligibility for Early Years Pupil Premium, Disability Access Funding and the Extended Free Entitlement (30 hours). • 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

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.

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 Extended Free Entitlement (30 hours). • 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

<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>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.

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

<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

<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>
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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.

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

Other (please state method)	<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
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Has a risk assessment been carried out on the chosen methods of transfer?	Yes
What are the identified risks?	<ul style="list-style-type: none"> • Council network violation • Department for Education network violation • Login details accessed by unauthorised officers/staff • Data sent to 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 2024

9. Access to Information

Subject Access Requests will be directed to	Lindsay Foody, Information Access & Security Officer, Kirklees Council
Special Arrangements for Subject Access Requests	None

10. Retention and Disposal

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, 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.