



Funding Agreement for the Provision of Early Education and Childcare

September 2017 Version 2.0

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1. Agreement and Services

- 1.1 This Agreement is between Lancashire County Council (LCC) and Eligible Providers ("Provider") offering Free Early Education and Childcare within the administrative boundaries of Lancashire County Council.
- 1.2 The Provider will, during the Contract Period:
 - a. provide Childcare and Early Education places to eligible two year olds and/or eligible three and four year old children from within the boundary of Lancashire County Council in accordance with this Agreement;
 - b. ensure Early Years Pupil Premium funding is used to improve the education they provide for disadvantaged three and four year old children.

2. Definitions

- 2.1 In this Agreement, unless the context otherwise requires, the terms referred to throughout the Agreement are defined in Annex A.
- 2.2 The words include, including, particularly and in particular, are to be construed without limitation.
- 2.3 Words importing one gender include all other genders and words denoting the singular number include the plural and vice versa.
- 2.4 The clause headings and sub-clause headings will not affect the interpretation of this Agreement and all references to clauses, sub-clauses or schedules are to clauses and sub-clauses of and schedules to, this Agreement.
- 2.5 References to, or to a provision of, a document are references to it as amended, supplemented or replaced before or after the date of this Agreement.
- 2.6 References to, or to a provision of, any law, regulation or guidance include any amendment, extension, re-enactment or replacement made before or after the date of this Agreement.
- 2.7 Subject to the terms of this Agreement, any reference in this Agreement to the Local Authority or the Provider or any other party referred to herein will include their permitted respective successors and assigns.
- 2.8 Wherever provision is made for the giving or issuing of any notice, consent, approval, certificate, confirmation or determination by any person, unless otherwise specified, such notice, consent, approval, certificate, confirmation or determination will be in writing and all cognate expressions will be construed accordingly.
- 2.9 References to materials, information, data and other records will be to those things whether stored in electronic, written or other form.

3. Commencement and Duration

- 3.1 This Agreement will commence on the 1 September 2017 and will continue in full force until 31 August 2018, unless terminated earlier by giving notice of termination in accordance with the provisions of clause 18 herein.
- 3.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

4. Key Local Authority Responsibilities

- 4.1 The Local Authority must secure a free entitlement place for every eligible child in their area.
- 4.2 The Local Authority should work in partnership with the Provider to agree how to deliver free entitlement places.
- 4.3 The Local Authority should 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 providers.
- 4.4 The Local Authority must contribute to the safeguarding and promote the welfare of children and young people in their area.

5. Key Provider Responsibilities

- 5.1 The Provider must comply with all relevant legislation and insurance requirements.
- 5.2 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 must be clear and communicate to parents details about the days and times that they offer free places, along with their services and charges. Those children accessing the free entitlements should receive the same quality and access to provision.
- 5.3 The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that link to the Local Authority's guidance for recognising, responding, reporting and recording suspected or actual abuse.
- 5.4 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.

6. Safeguarding

- 6.1 The Local Authority has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. It has a number of statutory functions under the 1989 and 2004 Children Acts which make this clear and the 'Working together to safeguard children' 2015 guidance sets these out in detail.
- 6.2 The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that are in line with local guidance and procedures for responding to and reporting suspected or actual abuse and neglect. A lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider must have regard to 'Working Together to Safeguard Children' 2015 guidance.

7. Eligibility

- 7.1 The Provider must check original copies of documentation to confirm a child has reached the eligible age on initial registration for all free entitlements. The Provider must retain paper or digital copies of documentation to enable the Local Authority to carry out audits and fraud investigations. The Provider must ensure that any documentation that is retained is stored securely and deleted only when there is no longer a good reason to keep the data.
- 7.2 The Provider must offer places to eligible two-year-olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for three- and four-year-olds.
- 7.3 The Local Authority must ensure that a child has a free entitlement place no later than the beginning of the term following the child and the parent meeting the eligibility criteria for the free entitlements.
- 7.4 Alongside the 30 hours eligibility code, which is the child's unique 11-digit number and original copies of documentation (see clause 7.1), a Provider must acquire written consent from, or on behalf of, the parent to be able to receive confirmation and future notifications from the Local Authority of the validity of the parent's 30 hours eligibility code. The Provider must use the Parental Agreement at Annex B which asks the parent for the necessary information and consents.
- 7.5 Once a Provider has received written consent from the parent, they should verify the 30 hours eligibility code with the Local Authority.
- 7.6 The Local Authority will confirm the validity of 30 hours eligibility codes to allow providers to offer 30 hour place for eligible three and four year olds. The Local Authority will provide a validity checking service to providers to enable them to verify the 30 hours eligibility code.
- 7.7 The Local Authority checking service will be facilitated through the on-line Provider Portal which the Provider must use to check the validity of the 30 hours eligibility code.

7.8 Thereafter the Local Authority should complete audit checks to review the validity of eligibility codes for children who qualify for the 30 hours free childcare at six fixed points in the year, both at half term and at the end of term across the year (in line with the dates listed at Table A). It is the Local Authority's responsibility to notify the Provider where a parent has fallen out of eligibility and inform them of the grace period end date.

Table A: Grace Periods

Validity End Date	Local authority audit window dates	Grace period end date
1 January – 10 February	11 -18 February	31 March
11 February – 31 March	24 March - 1 April	31 August
1 April – 26 May	27 May – 2 June	31 August
27 May – 31 August	24 August -1 September	31 December
1 September – 21 October	22 October – 29 October	31 December
22 October – 31 December	24 December - 1 January	31 March

- 7.9 All two, three and four year old children who meet the prescribed criteria as outlined in Annex C are able to take up a free place regardless of a parent's ability to pay for any additional hours or services.
- 7.10 Two year old children (or their parent) who become eligible after the beginning of the term following the child's second birthday will not be entitled to a free place until the beginning of the next term.
- 7.11 The Provider must ensure each two year old child meets the eligibility criteria as specified in Annex C, by requesting, from the parent, a copy of the Local Authority two year old eligibility letter for each child. The Provider must retain a copy of this letter as outlined in clause 7.1.
- 7.12 Parents of three and four year old children who become eligible for the extended entitlement after the beginning of the term following the child's third birthday will not be entitled to the extended entitlement until the beginning of the next term.
- 7.13 Three and four year old children accessing the universal 15 hours free early education will attract the Early Years Pupil Premium (EYPP) providing they meet the prescribed criteria as outlined in Annex C. The Provider is responsible for identifying children who may be eligible for EYPP as outlined in clause 12.2.
- 7.14 All eligible two year old children and all three and four year old children moving to England from another country can access a free place on the same basis as any other child in the Local Authority area.

- 7.15 An Early Education funded place cannot be provided to a child by a Provider if the child is related, (as defined in the Childcare Act 2006 (Ch21, pt1.18)) to the registered owner of the childcare setting, where the registered owner is directly providing the childcare to the related child. This clause is of particular relevance to childminders. It will not apply in a pre-school or nursery setting provided the registered owner is not included in the ratios of staff providing childcare directly to a group that includes their related child/ren (e.g. key person).
- 7.16 The Provider shall on request provide the Local Authority with such further information, explanations and documents as the Local Authority may reasonably require in order for it to establish that the funding has been used properly in accordance with the terms of this Agreement.

8. Grace Period

- 8.1 A child will enter the grace period when the child's parents cease to meet the eligibility criteria set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016, as determined by HMRC or a First Tier Tribunal in the case of an appeal.
- 8.2 Local Authorities will be able to access information about whether a child has ceased to meet the eligibility criteria and entered the grace period via the Eligibility Checking Service. The grace period end date will automatically be applied to eligibility codes.
- 8.3 The Local Authority should continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory guidance for Local Authorities 2017.
- 8.4 The Local Authority will undertake termly audits, in line with the audit dates specified in Table A.
- 8.5 Where the Local Authority identifies a child has entered the grace period, the Local Authority will notify the Provider within 10 Working Days of the audit window end date specified in Table A.
- 8.6 The Provider should inform parents that if they fall back into eligibility during the grace period, the extended hours for their child beyond the grace period, are subject to availability.

9. Flexibility

- 9.1 Provision must be offered within the national parameters on flexibility as set out in Section A2 of Early Education and Childcare Statutory guidance for Local Authorities. A copy of this can be found at Annex D.
- 9.2 The Provider should work with the Local Authority and share information about the times and periods at which they are able to offer free entitlements to support the Local Authority to secure sufficient stretched and flexible places to meet Parental demand in the Local Authority. The Provider must also make information about their offer and admissions criteria available to parents at the point the child first accesses provision at their setting.

- 9.3 Evidence shows that continuous provision is in the best interests of the child. Where it is reasonably practicable, the Provider should ensure children are able to take up their free hours in continuous blocks and avoid artificial breaks being created in the day, particularly during the lunch time hour/session which should form part of the free provision where the child is attending a morning and afternoon session.
- 9.4 Children may take up their free entitlement at more than one provider providing it does not exceed more than two sites in any single day.
- 9.5 Where a child takes up their free entitlement at more than one site, funding will be allocated in line with clauses 16.19 - 16.23.

10. Partnership Working

- 10.1 Partnerships should be supported by local authorities on four levels between:
- i. Local Authorities and providers
 - ii. Providers working with other providers, including childminders, schools and organisations
 - iii. Providers and parents
 - iv. Local authorities and parents
- 10.2 The Local Authority should promote partnership working between different types of providers, including childminders, across all sectors and encourage more providers to offer flexible provision, alongside other providers.
- 10.3 The Provider should work in partnership with parents, carers and other providers to improve provision and outcomes for children in their setting. An interactive toolkit has been developed to help providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring. This can be found at <http://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit>
- 10.4 The Provider should discuss and work closely with parents to agree how a child's overall care will work in practice when their free entitlement is split across different providers, such as at a maintained setting and childminder, to ensure a smooth transition for the child.
- 10.5 The Provider must enter into a Parental Agreement as provided at Annex B with all parents whose children are taking up the free entitlement to ensure the necessary information and consents are in place to allow the Provider to claim funding from the Local Authority.
- 10.6 The Provider may choose to add additional fields to the Parental Agreement as provided at Annex B, providing such fields do not contravene any of the national requirements as set out in the Early Education and Childcare Statutory Guidance for Local Authorities. The Provider should not remove or amend any fields contained in the Parental Agreement provided at Annex B, with the exception of section 4 and section 10, where the Provider is permitted to amend/remove fields that are not applicable.

11. SEND

- 11.1 The Local Authority must 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 (January 2015).
- 11.2 The Provider must ensure owners and all staff members are aware of their duties in relation to the SEND Code of Practice and the Equality Act 2010.
- 11.3 The Local Authority must be clear and transparent about the support on offer in their area, through their Local Offer, so parents and providers can access that support.
- 11.4 The Provider must be clear and transparent about the SEND support on offer at their setting and make information available about their offer to support parents to choose the right setting for their child with SEND.

12. Social Mobility and Disadvantage

- 12.1 The Local Authority should promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to free places and working with parents to give each child support to fulfil their potential.
- 12.2 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. The Provider must ensure all prescribed information is included in the headcount or supplementary claim for any children they wish to claim EYPP for, to enable the Local Authority to check if the child is eligible for EYPP.

13. Quality

- 13.1 The Early Years Foundation Stage (EYFS) statutory framework is mandatory for all schools that provide early years provision and Ofsted-registered early years providers in England. The EYFS sets the standards that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe.
- 13.2 Ofsted are the sole arbiter of quality for all free entitlements and Ofsted and inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.
- 13.3 Local authorities have a legal duty to provide information, advice and training on meeting the requirements of the EYFS, meeting the needs of children with SEND and on effective safeguarding and child protection for providers who are rated less than 'Good' by Ofsted or newly registered providers.

- 13.4 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 and the EYFS statutory framework.
- 13.5 Where the Provider fails to meet the quality standards as detailed in clause 13.4, the Local Authority may withdraw funding as outlined in clause 18.

14. Business Planning and Claims

- 14.1 The Local Authority should clearly set out the documentation that they need to receive from providers to support payment and delivery of free entitlements and the timetable which providers should follow when submitting their documentation, this includes setting out the importance of timely and accurate census returns.
- 14.2 The Local Authority should not charge providers disproportionate penalties for providing late or incomplete information leading to additional administration in the processing of free entitlements. Any charges should be reasonable and proportionate to the inconvenience or costs incurred to the Local Authority as a result of the lateness and local authorities will ensure charges are clearly communicated to providers. The Provider should refer to clause 14.8 for details of the administration charges.
- 14.3 The Local Authority should not carry out audit regimes which are disproportionate or are unnecessarily burdensome to providers. The Local Authority's audit arrangements are set out in clause 17.
- 14.4 The Provider should ensure they submit timely and accurate information, including, but not limited to, headcount data, census data, parental declarations and invoices, as per the financial guidelines of their Local Authority. Failure to do so may result in inaccurate, delayed or suspended funding.
- 14.5 The Provider should maintain accurate financial and non-financial records relating to free entitlement places and should give the Local Authority access on reasonable notice to all financial and non-financial records relating to free entitlement places funded under the Provider agreement, subject to confidentiality restrictions.
- 14.6 The Local Authority will notify the Provider by email and via information published on the Local Authority website, the dates in each term by which the headcount and supplementary Funding Claims must be submitted.
- 14.7 It is the sole responsibility of the Provider to submit accurate headcount Funding Claims, supplementary Funding Claims, census returns or other information and documentation as requested by the Local Authority, within the deadlines as notified to the Provider outlined in clause 14.6.
- 14.8 In the event that the Provider submits an incomplete or inaccurate headcount claims, supplementary claims and/or any other returns associated with Early Education Funding (e.g. Census) the Local Authority may apply an administration charge on each and every such occasion, as outlined in Tables B and C. All administration charges will be deducted from the Early Education funding due to be paid to the Provider, or, if applicable, be recoverable by the issue of separate invoices.

Table B: Inaccurate and Incomplete Claims

Provider Type	Type of Charge	Amount Per Term
Childminder	Inaccurate headcount claims	£10.00
Childminder	Inaccurate supplementary claims	£10.00
Childminder	Inaccurate or late Census returns (or any other return associated with Early Education Funding)	£10.00
Early Years Providers (excluding childminders)	Inaccurate headcount claims	£20.00
Early Years Providers (excluding childminders)	Inaccurate supplementary claims	£20.00
Early Years Providers (excluding childminders)	Inaccurate or late Census returns (or any other return associated with Early Education Funding)	£20.00

Table C: Late Headcount Submissions

No. of Children on Headcount Claim	Total Charge Per Term
1 to 5	£ 10.00
6 to 10	£ 20.00
11 to 20	£ 40.00
21 to 30	£ 60.00
31 to 40	£ 80.00
41 to 50	£100.00
51 to 70	£135.00
70+	£150.00

- 14.9 The Provider can only make headcount and supplementary Funding Claims for eligible children as prescribed in clause 7.

- 14.10 The Provider cannot make a headcount or supplementary Funding Claim for any children where a signed Parental Agreement, as provided at Annex B, is not in place as detailed in clause 10.5.
- 14.11 The Headcount Week is the week when a child must be registered before funding can be paid to a Provider and is ordinarily the week in which the third Thursday of term falls.
- 14.12 The Provider must submit the headcount Funding Claim, via the on-line Provider Portal, for all eligible children as specified in clauses 7 and 14.10 who are present or planned present during the headcount week. The Provider cannot submit a headcount Funding Claim for any children who are not present or planned present in the headcount week.
- 14.13 Where a parent has given written notice to the Provider, prior to the headcount week, that they no longer wish their child/ren to access an Early Education place, the Provider must only claim Early Education funding up to the end of the agreed notice period, to enable parents to secure alternative childcare provision for their child, if required.
- 14.14 In the event of non-attendance, for the full 2 week period leading up to the Monday of headcount week, for any eligible child, the Provider must gain written confirmation from the parent that they wish to continue accessing their child's free place from the Provider, otherwise the Provider cannot include the child in the headcount Funding Claim.
- 14.15 The Provider must submit the headcount Funding Claim for all children specified in clause 7 by the specified deadlines as notified in clause 14.6.
- 14.16 If the Provider fails to make an accurate headcount claim for any eligible children described in clause 14.12, or fails to claim for all eligible children described in clause 14.12, the Provider is permitted to submit a supplementary Funding Claim for such children.
- 14.17 In addition to those children described in clause 14.16 the Provider is permitted to submit a supplementary claim for the following children:
- a. three and four year old children who take up a free universal place after the headcount week;
 - b. two year old children who take up a free place after the headcount week **providing** the child (or their parent) was found to be eligible by the Local Authority **prior** to the beginning of the term the child became age eligible;
 - c. three and four year old children who take up the extended entitlement after the headcount week **providing** the child's parent was found to be eligible by HMRC **prior** to the beginning of the term the child became age eligible;
 - d. two, three and four year old children who increase their hours of attendance after the headcount week.

- 14.18 The Provider is only permitted to make a supplementary claim for those children described in clauses 14.16 and 14.17 for the remaining termly funded weeks/hours, with effect from the Monday after headcount week, or the date on which a signed Parental Agreement was in place as provided at Annex B, whichever is the latest.
- 14.19 The Provider must submit all headcount and supplementary claims within the term for which they relate. Headcount or supplementary claims received after the end of term for which they relate will not be processed by the Local Authority.
- 14.20 If the Provider fails to comply with clause 14.19, the Provider cannot subsequently charge the parent for any funded hours that the Provider should have claimed from the Local Authority.

15. Charging

- 15.1 Government funding is intended to cover the cost to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.
- 15.2 The Provider can charge for meals and snacks as part of a free entitlement place and they can also charge for consumables such as nappies or sun cream and for services such as trips and yoga. These charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free entitlements are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals.
- 15.3 The Provider should deliver the free entitlements consistently so that all children accessing any of the free entitlements will receive the same quality and access to provision, regardless of whether they opt to pay for optional hours, services, meals or consumables.
- 15.4 The Local Authority should not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent's ability to take up their child's free place. The Provider should be completely transparent about any additional charges.
- 15.5 The Provider must publish their admissions criteria and ensure parents understand which hours/sessions can be taken as free provision. Not all providers will be able to offer fully flexible places, but the Provider should work with parents to ensure that as far as possible the pattern of hours are convenient for parents' working hours.
- 15.6 The Provider can charge parents a deposit to secure their child's free place but should refund the deposit in full to parents within a reasonable time scale, and no later than 4 weeks after the child has taken up their free place.
- 15.7 The Provider cannot charge parents "top-up" fees (the difference between the Provider's usual fee and the funding they receive from the Local Authority to deliver

free places) or require parents to pay a registration fee as a condition of taking up their child's free place.

- 15.8 The Provider should ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their free entitlement completely free of charge and understand fees paid for additional hours. The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific Provider.
- 15.9 The Provider cannot ask the parent to pay for their child's Early Education place in advance and be refunded at a later date e.g. when the Provider receives the funding for their child's free place from the Local Authority.
- 15.10 The Provider must ensure that Early Education places are delivered completely free of charge to the parent and other than deposit fees as outlined in clause 15.6 the Provider cannot ask the parent to pay any fee associated with accessing their child's free entitlement (e.g. uniform fee, administration costs associated with stretching or banking free hours, fees for offering the free places flexibly etc).

16. Funding

- 16.1 The Local Authority will pay the Provider an Early Education funding rate that is in line with the Local Authority's approved Early Years Funding Formula.
- 16.2 Before agreeing to fund the Provider the Local Authority will consider any information published by Ofsted about the Provider, including recent history about childcare provision by the Provider or childcare provision at a particular premise of the Provider.
- 16.3 The Local Authority will pay the Provider the Early Education funding in accordance with the conditions and rates detailed in this Agreement, for so long as the Provider is and remains an eligible Provider.
- 16.4 The Local Authority's decision to fund the Provider to deliver Early Education places will be based on the Provider's Ofsted registration status and inspection judgement.
- 16.5 The Local Authority should pay all Providers, particularly childminders, monthly by September 2018 unless the Provider requests and the Local Authority agrees to continue an existing alternative sustainable method of payment. Monthly payments will commence no later than 20 September 2018, and will be made on the 20th day of each month thereafter. Where the 20th day of the month falls on a Non-Working Day, payment will be made on the next Working Day.
- 16.6 The Provider should accurately complete and submit headcount and other necessary data returns by the agreed date to support the Local Authority to make payment.
- 16.7 Until such time as outlined in clause 16.5, the Local Authority will make a termly interim headcount payment, calculated as a percentage of the previous terms actual headcount hours claimed, followed by a balancing payment, as detailed in Table D.

In administering the termly interim payment the Local Authority may require the Provider to submit an estimate of the funded hours they expect to claim in the term.

- 16.8 The termly interim headcount payment will be paid on the 20th day of the first month of each term, providing the Provider has submitted an estimate where requested, as outlined in clause 16.7, where requested to do so by the Local Authority. Where the 20th day of the month falls on a Non-Working Day, payment will be made on the next Working Day.
- 16.9 The termly headcount balancing payment will be paid as outlined in Table D, providing:
- a. the Provider submits a headcount claim using the on-line Provider Portal;
 - b. the claim is free from errors/queries;
 - c. the Provider includes all required information;
 - d. the Provider submits the headcount claim by the deadlines as notified to them in clause 14.6.

Table D: Interim Payments

Term	Interim % Payment	Interim Payment Date	Balancing Payment Date
Autumn	40%	20 th September	20 th November
Spring	30%	20 th January	20 th February
Summer	40%	20 th April	20 th June

- 16.10 The Local Authority will make supplementary payments for those children described in clauses 14.16 and 14.17 on a pro-rata basis depending on the hours already taken and the number of hours remaining in the term.
- 16.11 The Provider must ensure all claims for supplementary payments are submitted by the end of the term for which the claim relates as the Local Authority will not pay backdated claims from previous terms.
- 16.12 The Local Authority will make supplementary payments as outlined in Table E, providing the claim is accurate, complete and received within the timescales specified in clause 14.7.

Table E: Supplementary Payment Dates

Term	Claims received by:	Payment Date
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Autumn	30 November	31 December
	31 December	20 January
Spring	28 February	31 March
	31 March	20 April
Summer	31 July	31 August
	31 August	20 September

- 16.13 The Local Authority will make a termly Early Years Pupil Premium payment, for any eligible children included in the Provider's headcount claim, by the last Working Day of term and by the dates specified in Table E, for any eligible children claimed through the supplementary process, providing all relevant information was submitted to the Local Authority as specified in clause 12.2.
- 16.14 Where the Provider fails to include any information specified in clause 11.2, EYPP funding will not be paid to the Provider for such children, in that term.
- 16.15 The Provider must ensure that parents are aware that if their child moves after the headcount week then additional/residual funding for that term will not be made available for the child at another setting unless the move relates to a child in public care (i.e. a looked after child) or a child at risk of becoming looked after.
- 16.16 The Provider accepts that the movement of children after the headcount week for a child who is in public care, as described in clause 16.15, will not necessarily result in additional/residual funding being made available and will only be considered by the Local Authority following a written request by the child/family social worker. In such cases the request for additional/residual funding to be made available should be made by the Provider and must include written confirmation from the child's social worker.
- 16.17 Where the Provider subsequently fails to meet the quality provisions detailed in clause 13 the Local Authority may, at its sole discretion, make additional funding available for eligible children to continue to take up their Early Education place at an alternative Provider for the remainder of the term.
- 16.18 Where the Provider is no longer able to offer an eligible child an Early Education place the Local Authority will recover any unused funding and make such funding available to the child's new Provider. In such cases the original Provider must provide the parent of the child with reasonable notice in writing of their intention to withdraw the offer of an Early Education place. The Provider must also provide written notification to the Local Authority within 1 week of the notice being given to the parent.
- 16.19 Where the Provider makes an Early Education Funding Claim and another Provider also makes such a claim for the same child:

- a. both claims will be regarded as valid provided the combined hours claimed do not exceed the termly maximum hours allowable;
- b. where the combined hours claimed by both providers exceed the termly maximum hours allowable, then the Local Authority will reduce each claim on a pro-rata basis to the termly maximum hours allowable;
- c. on such an occasion the Local Authority will notify each provider of their number of eligible hours being claimed and the pro-rata amount to be paid.

16.20 Where an Early Education Funding Claim is made by the Provider on behalf of a child whose residence is outside of the administrative boundary of the Local Authority, such a claim will be deemed valid provided the hours claimed do not exceed the termly maximum hours allowable.

16.21 Where a Provider makes an Early Education Funding Claim on behalf of a child that a Provider from outside the administrative boundaries of the Local Authority has also made a claim, then such a claim will be deemed valid provided the combined hours claimed by both providers does not exceed the termly maximum hours allowable:

- a. where the combined hours claimed by the providers exceeds the termly maximum, the Local Authority will regard only the balancing hours (i.e. the difference between the hours claimed by the non-Lancashire provider and the termly maximum hours allowable) as a valid claim;
- b. in the event that an over payment is made the Local Authority will reclaim the value of the over-claim from the Lancashire provider.

16.22 Where an Early Education Funding Claim is made by the Provider for a three and four year old child that also attends a maintained school:

- a. The claim will be deemed valid providing the combined hours claimed by the Provider and the maintained school involved in the child's care do not exceed the termly maximum hours allowable.
- b. Where the combined hours claimed by the Provider and the maintained school exceeds the termly maximum allowable:
 - i. in the event that the child started at the Provider before or during the Headcount Week and the maintained school after the Headcount Week then the value of any over-claim will be reclaimed from the maintained school;
 - ii. in the event that the child started at the maintained school before or during the Headcount Week and the Provider after the Headcount Week then the value of any over-claim will be reclaimed from the Provider; and
 - iii. in the event that the child was in attendance at both the Provider and the maintained school before or during the headcount week

the Local Authority will reduce each claim on a pro-rata basis to the termly maximum hours allowable.

- 16.23 In the event that the child is in the academic year in which he/she turns five then all hours claimed by the Provider will be deemed not valid and repaid by the Provider in accordance with clause 16.25.
- 16.24 The Provider must ensure all Early Education Funding received from the Local Authority is used in accordance with the terms of this Agreement.
- 16.25 In the event that an over payment is made to the Provider the Local Authority will reduce the value of any future Early Education Funding payments, until the overpayment has been fully recovered.
- 16.26 In the event that the Provider, for whatever reason, becomes unable to offer Early Education Funding, the registered Provider will repay to the Local Authority the balance of any outstanding Early Education Funding or overpayment against an invoice raised by the Local Authority.
- 16.27 In the event of a funding dispute between the Provider and the parent, where the Provider cannot provide a copy of the signed Parental Agreement as provided at Annex B the Local Authority may re-claim the total number of funded hours from the Provider, for the period in dispute.
- 16.28 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 Local Authority from its funders.
- 16.29 The Local Authority may at its discretion withhold and/or require repayment from the Provider any or all of the Early Education Funding at any time during the contract period and within 3 years of the contract commencing if;
- a. the Local Authority has made funding in excess of the Early Education Funding actually due to the Provider;
 - b. the Provider has failed to take sufficient measures to investigate and resolve any irregularity in the course of it providing the Service;
 - c. this Agreement is terminated pursuant to clause 18 or any of the grounds reasonably exist under clause 18;
 - d. the Provider has failed to employ any part of the Early Education Funding in providing the Services in accordance with this Agreement;
 - e. the Provider is in serious breach of the terms of this Agreement or the relevant Statutory Guidance;
 - f. the Local Authority has reasonable evidence that the Provider is in financial difficulties by its' failing to pay its debts when they fall due.

17. Compliance

- 17.1 The Local Authority can carry out checks and/or audits on providers to ensure compliance with the requirements of delivering the free entitlements.
- 17.2 The Provider must keep a satisfactory standard of records (e.g. supporting documentation, registers of attendance, parental agreements, copies of evidence of child's date of birth, two year old eligibility and eligibility for the extended entitlement etc.) in order to support its Early Education funding claims and to ensure satisfactory audit trails.
- 17.3 The Provider will allow the Local Authority access to financial records, documents and other materials relating to the use of the funding and provide such assistance with their interpretation as the Local Authority may require.
- 17.4 In carrying out its checks and/or audits the Local Authority may require the Provider to supply copies of all relevant information, including but not limited to the information described in clause 17.2, relating to the use of Early Education funding.
- 17.5 The Local Authority will provide the Provider with reasonable notice of any such checks and/or audits.
- 17.6 The Provider must retain all information and documents relating to the use of Early Education Funding for a minimum period of 6 years and ensure such information is handled in line with the Data Protection Act 1998.

18. Termination and Withdrawal of Funding

- 18.1 Suspension of registration by Ofsted or a breach of statutory requirements or safeguarding issues may result in the termination of the arrangement and withdrawal of funding.
- 18.2 The Agreement may be terminated in line with the Local Authority's duties required by regulation 7 (Termination of the arrangements) of the Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 and regulation 37 (Arrangements between local authorities and early years providers: termination) of The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016].
- 18.3 The Provider must have an active Ofsted registration status. Where the Provider's registration status becomes 'inactive' the Local Authority may withdraw Early Education funding from the date the Provider became 'inactive', unless the registration status returns to 'active' within 2 weeks.
- 18.4 Where the registration status reverts to 'active' within 2 weeks of the date specified in clause 18.3 the Provider must offer the equivalent Early Education funded hours that were lost due to the 'inactive' status, to all parents who were accessing a free place at

the time the Provider became 'inactive, to enable them to access their full annual entitlement.

- 18.5 Where the Provider is given an Ofsted rating of 'requires improvement' the Provider must submit an Action Plan to the Local Authority within 6 weeks of the judgement being published. Where the Provider fails to submit an Action Plan by the required date or where the Provider fails to engage with the Local Authority on what action is being taken to improve, the Local Authority may provide 8 weeks written notice of its intention to withdraw Early Education Funding.
- 18.6 Where the Provider is given three consecutive inspection ratings of 'requires improvement' the Local Authority may provide written notice of its intention to withdraw Early Education Funding with effect from 8 weeks after the inspection publication date.
- 18.7 In the event that Ofsted publish an 'Inadequate' inspection judgement for the Provider, the Local Authority will withdraw funding from the Provider as soon as is practicable. The Local Authority will generally consider this to be 8 weeks after the date the inspection judgement is published, but reserves the right to reduce or extend this period, as the Local Authority in its absolute discretion, considers appropriate.
- 18.8 In such cases outlined in clause 18.7:
- a. the Provider must inform parents as soon as the Ofsted inspection rating is published and must signpost parents to Lancashire County Council's Family Information Service to enable parents to secure alternative childcare for their child, if they choose to;
 - b. where a parent chooses to secure alternative childcare before the date the Local Authority would ordinarily cease funding, as outlined in clause 18.7 the Local Authority will only fund the Provider for a period of 4 weeks after the date the inspection judgement was published. Any remaining funding after this date will be made available for parents to access their child's free entitlement with a different Provider;
 - c. the Local Authority will only re-instate Early Education Funding with effect from the date the Provider has a published Ofsted inspection rating of 'requires improvement' or better, providing a Funding Agreement for the Provision of Free Early Education and Childcare is in place between the Provider and the Local Authority.
- 18.9 Each party will be entitled to terminate this Agreement by giving at least 3 months written notice to the other party.
- 18.10 The Local Authority will be entitled to terminate this Agreement with immediate effect if the Provider:
- a. commits a material breach of any of the terms of this Agreement which is incapable of remedy or which, being capable of remedy, is not remedied within

3 months after receipt of notice from the Local Authority specifying the nature of the breach set out in clause 25.1a;

- b. enters into any composition or arrangement with its creditors or enters into any liquidation whether compulsorily or voluntarily or has a receiver or administrator appointed over all or any part of its assets or undertaking or an administration order is made in relation to it.

18.11 The Local Authority, regardless of the provisions in clauses 18.9 and 18.10 will be entitled to terminate this Agreement with immediate effect if the Secretary of State advises the Local Authority that the Provider has been rated by Ofsted as "Inadequate";

18.12 Upon notice of termination of this Agreement, for whatever reason, the Provider will repay to the Local Authority the balance of outstanding Early Education Funding within 28 days of termination and provide appropriate accountancy evidence on the level of unspent Early Education Funding.

18.13 Upon notice of termination of this Agreement, for whatever reason, the Local Authority will reimburse the Provider the balance of outstanding Early Education Funding within 28 days of termination providing the Provider has submitted a valid Headcount or Supplementary Funding Claim as specified in clause 14.

19. Appeals Process

19.1 The Provider may be denied approval to offer the free entitlements or have their funding withdrawn as set out in clause 18 above. The Provider can appeal against that decision.

19.2 Where the Provider wishes to appeal the decision described in clause 19.1 they must appeal to the Local Authority within 2 weeks of receiving the Local Authority's notification that funding will be withdrawn.

20. Complaints Process

20.1 Where a parent is not satisfied that their child has received their free entitlement in accordance with this Agreement and/or the Early Education and Childcare Statutory Guidance for Local Authorities, and is unable to resolve their complaint or dispute directly with the Provider, the parent may contact the Local Authority in order for the Local Authority to investigate the parent's complaint.

20.2 Where a parent contacts the Local Authority in the event that they are unable resolve their complaint or dispute directly with the Provider, the Local Authority may request relevant information from the Provider in order for the dispute/complaint to be investigated by the Local Authority. The Local Authority will give the Provider a reasonable amount of time to provide such information to the Local Authority.

20.3 In the event that the Provider fails to provide information requested by the Local Authority, as outlined in clause 20.2, the Local Authority may re-claim the total number of funded hours from the Provider, for the period in dispute.

- 20.4 The Provider should ensure they have a complaints procedure in place that is published and accessible 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.
- 20.5 If a parent or Provider is not satisfied with the way in which their complaint has been dealt with by the Local Authority or believes the Local Authority has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.

21. Monitoring and Tracking

- 21.1 The Provider must promote good attendance and must record the attendance of all funded children in a register which meets the requirements of Ofsted e.g. a daily record of the names of the children being cared for on the premises, their hours of attendance and the names of each child's key person.
- 21.2 The Provider needs to be aware of potential safeguarding issues surrounding non-attendance and reduced attendance as well as the impact on a child's development.
- 21.3 The Provider must monitor the attendance records of all Early Education funded children.
- 21.4 The Provider must refer any family to the local children's centre where there are concerns arising from the child's absence and/or where a child cannot be effectively supported to improve outcomes because attendance is poor in the view of the Provider.

22. General Obligations

- 22.1 The Provider in the performance of this Agreement, will comply with all statutory requirements, regulations and other provisions to be observed and performed in connection with the Services to be provided, including but not limited to:
- a. Early Education and Childcare Statutory Guidance for Local Authorities 2017;
 - b. Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014;
 - c. The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016;
 - d. The Childcare Acts 2006 and 2016;
 - e. Statutory Framework for Early Years Foundation Stage 2014;
 - f. Special Educational Needs and Disability Code of Practice: 0 to 25 years 2014;
 - g. School Admissions Code 2014;
 - h. The Health and Safety at Work etc. Act 1974 and associated regulations;
 - i. The Common Law Duty of Care;

- j. Equality Act;
- k. Civil Law;
- l. Prevent Duty Guidance 2015;
- m. Data Protection Act 1998.

- 22.2 The Provider will comply with all the conditions and terms of registration requirements as set out in the Statutory Guidance.
- 22.3 The Provider will offer Early Education provision at premises within the administrative boundary of the Local Authority.
- 22.4 The Provider must complete, on the on-line Provider Portal, all documentation in connection with and appertaining to the Early Education Funding, including but not limited to, acceptance of this Agreement in full and Early Education Funding Claims.
- 22.5 The Provider must have an inclusive admission policy.
- 22.6 The Provider must not do anything to cause any infringement by the Local Authority of its obligation under the Human Rights Act 1998 or any other human rights law.
- 22.7 The Local Authority will ensure that the Early Education Funding is administered promptly, fairly and in a way that promotes equal opportunities and inclusion.
- 22.8 The Local Authority will maintain and keep an up-to-date a directory of all childcare providers and make available relevant details, through the Family Information Service to parents, where requested, of all those providers within the administrative boundary of the Local Authority who are eligible to claim funding for the provision of Early Education places for two, three and four year old children.
- 22.9 The Local Authority will keep up-to-date information relating to the provision of Early Education Funding on the Local Authority's website www.lancashire.gov.uk.
- 22.10 The Local Authority will ensure that providers are made aware of the requirements and process for applying for Early Education Funding.

23. Confidentiality, Freedom of Information and Data Protection

- 23.1 Subject to clause 23.3 (Freedom of Information), each party shall during the Contract Period and thereafter keep secret and confidential all Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
- 23.2 The obligation of confidentiality contained in clause 23.1 shall not apply or shall cease to apply to any, Know-How or other business, technical or commercial information which:

- a. at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
- b. is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
- c. is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

23.3 The Provider acknowledges that the Local Authority is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and shall assist and co-operate with the Local Authority (at the Provider's expense) to enable the Local Authority to comply with these information disclosure requirements.

23.4 The Provider shall:

- a. transfer the request for information to the Local Authority as soon as practicable after receipt and in any event within 2 Working Days of receiving a request for information;
- b. provide the Local Authority with a copy of all information in its possession or power in the form that the Local Authority requires within 5 Working Days (or such other period as the Local Authority may specify) of the Local Authority requesting that information; and
- c. provide all necessary assistance as reasonably requested by the Local Authority to enable the Local Authority to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

23.5 The Local **Authority** shall be responsible for determining at its absolute discretion whether the information:

- a. is exempt from disclosure in accordance with the provisions of the FOIA; and
- b. is to be disclosed in response to a request for information.

23.6 In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Local Authority.

23.7 The Provider shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Local Authority to inspect such records as requested from time to time.

23.8 The Provider notes the Local Authority's obligations under the Data Protection Act 1998 and it will comply with this legislation in so far as it places obligations on the

Provider as well as facilitating the Local Authority's compliance. In particular, the Provider notes that the Local Authority may be required to provide information relating to this Agreement or the Provider to a person in order to comply with the Local Authority's obligations under such legislation.

24. Procedure For Dealing With Disputes About This Agreement

- 24.1 If either party is dissatisfied with this Agreement or the Services or the payments which are the subject matter of this Agreement and that party is not able to resolve its dissatisfaction in informal discussion with the other party then it may at its option give notice to the other party in writing of its intention to invoke the dispute procedure set out in clauses 24.2 and 24.3.
- 24.2 Within 10 days of receipt of the said notice or any other period agreed between the parties the Local Authority's nominated representative and the Provider's representative will meet together to attempt to resolve the said dispute.
- 24.3 In the event that the parties referred to in clause 24.2 fail to resolve the said dispute the Head of School Improvement Service, Room C27, C Floor, County Hall, Preston, PR1 0LD and a Director of the Provider will meet within 10 days of the meeting referred to in clause 24.2 (or such other period agreed between the parties) in a further attempt to resolve the said dispute.
- 24.4 If the dispute cannot be resolved by the parties within 1 month of being escalated as referred to in clause 24.3, the dispute may by agreement between the parties be referred to a mediator (the "Mediator") chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in the further proceeding.
- 24.5 If the parties fail to appoint a Mediator within 1 month, or fail to enter into a written agreement resolving the dispute within 1 month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.
- 24.6 In the event that a parent is not satisfied that their child has received their Early Education place or with any aspect of the way in which they have received it, they should discuss their issues with the Provider. If the parent remains dissatisfied the Provider should direct the parent to the Local Authority's Corporate Complaints Procedure at www.lancashire.gov.uk.

25. Procedure For Dealing With Breaches Of Any Terms Of The Agreement

- 25.1 Where concerns are highlighted by the Provider's continual failure to meet the statutory requirements of the EYFS the Local Authority will:
- a. give written notice to the Provider setting out any concerns the Local Authority may have;
 - b. where the Local Authority considers that its concerns are capable of being addressed set out the actions that must be taken to remedy such concerns.

- 25.2 Any actions required by the Local Authority in accordance with clause 25.1b will be carried out by the Provider within 3 months of the date of the recommendations (or such other period as may be stipulated by the Local Authority or agreed by the parties).
- 25.3 The Local Authority will visit the Provider's premises from which the Services are being delivered and meet the Provider within 3 months of the written notice to ensure that the Local Authority's required actions are being implemented and that the concerns identified by the Local Authority are being remedied to the reasonable satisfaction of the Local Authority.
- 25.4 The Provider may ask for a meeting with the Local Authority where the Provider has any concerns in relation to any aspect of service delivery or the manner in which the Local Authority is meeting its obligations under this Agreement.

26. Notices

- 26.1 Any notice or other document to be given under this Agreement will be to the registered address, in which case written notification will be deemed received if sent by second class recorded delivery service to the following names and addresses:

In the case of the Local Authority to:

Free Early Education Manager, School Improvement Service, Children's Services, Room C27, C Floor, County Hall, PR1 0LD.

In the case of the Provider to the registered address as contained in the details provided by Ofsted.

- 26.2 In proving the notice was served, it will be sufficient to prove that the envelope containing such notice was properly addressed and posted and any receipt issued by the postal authorities will be conclusive evidence of the fact and date of posting of any such notice.
- 26.3 The Provider will notify the Local Authority in writing in the event that it changes its address and will provide such notice within 14 days of any such change.

27. Assignment

- 27.1 The Provider may not, without the prior written consent of the Local Authority, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Agreement, transfer or pay to any other person any part of the funding.

28. Indemnity

- 28.1 The Provider will indemnify the Local Authority from and against all loss or damage or liability (whether criminal or civil) together with any legal costs incurred by the Local Authority resulting from a breach of this Agreement by the Provider, its employees or agents including:

- a. any act, neglect or default of the Provider, its employees or agents; and
- b. any claim by a third party based on any facts which if substantiated would constitute a breach of any of the Provider's obligations under this Agreement.

28.2 The indemnities contained in this clause will be continuing indemnities and will be without prejudice to any other right or remedy of the Local Authority whether arising under the terms of this Agreement or otherwise.

29. Insurance

The Provider will:

- 29.1 During the contract period the Provider will maintain in force with a reputable insurance company comprehensive policy of insurance to cover all liabilities arising out of or in connection with this Agreement.
- 29.2 Display a copy of the current policy/policies and inform the Local Authority in writing if the Provider ceases to hold valid insurance through cancellation, non-payment, breach of the insured terms or any other means.

30. No Waiver of Rights

- 30.1 No failure on the part of either party to exercise and no delay on its part in exercising any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any or further exercise thereof or the exercise of any right or remedy. The rights and remedies provided in this Agreement are in addition to and not exclusive of any rights and remedies provided by law.
- 30.2 Any express waiver by the Local Authority of any breach of any of the obligations of the Provider under this Agreement will not be a waiver of any continuing breach or of any breach of any of these obligations.

31. Severance

- 31.1 If any term, provision or part of this Agreement become or be declared illegal, invalid or unenforceable for any reason whatsoever such term, provision or part will be divisible and deemed to be deleted from this Agreement; provided always that if such deletion substantially affects or alters the basis of this Agreement the parties will negotiate in good faith to amend and modify the remaining terms as may be necessary or desirable in the circumstances.

32. Variation

- 32.1 In the event that the Local Authority needs to make any changes to this Agreement due to statutory changes or instructions from the Secretary of State then the Local Authority reserves the right to do so without Agreement from the Provider.

33. Entire Agreement

33.1 This Agreement will constitute the entire Agreement and understanding between the parties in respect of all matters which are referred to and will supersede any previous Agreement between the parties in relation to the matters referred to herein. Both parties acknowledge that they have not relied upon any representation or statement not expressly incorporated into this Agreement.

34. Collusion/Corruption

34.1 The Provider shall not and shall ensure that any person employed by it or acting on its behalf, shall not:

- a. offer, or give, or agree to give, any person employed by the Authority, or any person employed by it or acting on its behalf, any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done, or forborne to do, any act in relation to the obtaining or performance of this Agreement or any other agreement with the Authority or for showing, or forbearing to show, favour or disfavour to any person in relation to this Agreement or any other agreement with the Authority; or
- b. commit any offence under the Bribery Act 2010; or
- c. give any fee or reward, the receipt of which is an offence under section 117(2) the Local Government Act 1972.

34.2 If the Provider or any person employed by it or acting on its behalf, breaches clause 34.1 such breach shall be deemed to be a material breach of this Agreement which is not capable of remedy and the Authority may terminate this Agreement immediately by notice in writing to the Provider.

34.3 Without prejudice to its other rights and remedies under this clause 34, the Authority shall be entitled to recover in full from the Provider and the Provider shall on demand indemnify the Authority in full from and against any and all Losses suffered, incurred, awarded against and/or agreed to be paid or sustained by the Authority in consequence of any breach of clause 34.1.

34.4 Notwithstanding clause 25, any dispute relating to the interpretation of clauses 34.1 to 34.3 inclusive of the amount or value of any gift, consideration or commission shall be determined by the Local Authority and the decision of the Local Authority shall be final and conclusive (provided that, in so determining, the Local Authority shall act reasonably and in good faith).

35. Non-discrimination

35.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

35.2 The Provider shall take all reasonable steps to secure the observance of clause 35.1 by all servants, employees or agents of the Provider and all Providers and sub-contractors.

36. Law and Jurisdiction

36.1 The provisions of this Agreement will be governed by and construed in accordance with English Law. In respect of all matters arising under this Agreement the parties hereby submit to the exclusive jurisdiction of the Courts of England.

Annex A - Definitions

"Action Plan"	means the plan of action, prepared by a Provider rated by Ofsted as "Requires Improvement" that details the Provider's intended actions to raise the settings quality rating at the settings next Ofsted inspection. The Action Plan has to be submitted to the Local Authority within 6 weeks of the Ofsted Inspection publication date must detail targets, actions, responsibilities, costs, timescales and evaluation.
"Agreement"	means this Agreement.
"Administration Charge"	means the administration charge which is the sum calculated as the assessment of the cost of administration time and expenses to the Local Authority in dealing with defaults of the Provider referred to at 14.8.
"Authorised Signatory"	means such a person with the appropriate authority or permission from the Provider to bind the Provider to the terms of this Agreement. The Local Authority reserves the right to request evidence of this permission from time to time, and the Provider must provide this immediately upon request.
"Childcare"	<p>In accordance with the Childcare Act 2006 (Ch21, pt1.18), and clause 9.14;</p> <p>A. Childcare means any form of care for a child and subject to subsection "B" care includes –</p> <ul style="list-style-type: none">a. education for a child, andb. any other supervised activity for a child. <p>B. Childcare does not include –</p> <ul style="list-style-type: none">a. Education (or any other supervised activity) provided by a school during school hours for a registered pupil who is not a young child, orb. Any form of health care for a child. <p>C. Childcare does not include care provided for a child by-</p> <ul style="list-style-type: none">a. a parent or step-parent of the child;b. a person with parental responsibility for the child;c. a relative of the child; (which means a grandparent, aunt, uncle, brother or

- sister, whether of the full blood or half blood or by marriage or civil partnership).
- d. a person who is a Local Authority foster parent in relation to the child;
 - e. a person who is a foster parent with whom the child has been placed by a voluntary organisation;
 - f. a person who fosters the child privately.
- D. Childcare **does not** include care provided for a child if the care –
- a. Is provided in any of the following establishments as part of the establishment's activities –
 - i. An appropriate children's home
 - ii. A care home
 - iii. A hospital in which the child is a patient
 - iv. A residential family centre, and
 - b. Is so provided by the person carrying on the establishment or a person employed to work at the establishment.

"Contract Period"	means the period stipulated in clause 3.
"DfE"	means the Department for Education.
"Directory"	means the record of all providers eligible to claim funding for the provision of funded Early Education childcare places for two, three and four year old children.
"Early Education"	means early years provision free of charge.
"Early Years Pupil Premium" (EYPP)	means additional funding for early years settings to improve the education they provide for disadvantaged three and four year old children.
"Eligible Provider"	<p>means a childcare Provider that:</p> <ul style="list-style-type: none"> • has an "Active" registration status with Ofsted, or the equivalent body for Independent Schools, as an early years Provider; • is a childminder (excluding childminder agencies) with an active registration with Ofsted; • an independent school or academy taking children age two or over and which are exempt from registration with Ofsted as an early years Provider. • fulfils the required Quality Provision, in clause 13.

"Early Education Funding"	means the funding to be paid by the Local Authority to the Provider determined in accordance with the Early Education Funding Claim.
"Early Education Funding Claim"	means the claim to be completed on the online Provider Portal by the Provider.
"Electronic Signature"	means a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document.
"EYFS"	means Early Years Foundation Stage.
"Headcount day"	means the day on which the headcount is carried out or the census day in each term as set out by the Local Authority in this Agreement (clause 14) when a child must be registered before the Early Education funding can be paid to a Provider. Headcount day normally occurs on the third Thursday following the start of term.
"Headcount Week"	means the week in which headcount day falls.
"Local Authority"	means Lancashire County Council
"Named Contact"	means the name of the person(s) from the Provider that is approved and authorised by the Provider to complete and submit the online Early Education claim form.
"Ofsted"	means Office for Standards in Education, Children's Services and Skills or the equivalent body for Independent Schools.
"Provider"	means an eligible childcare Provider situated within the administrative boundary of Lancashire County Council.
"Provider Data"	means any data provided to the Local Authority for the purposes of this Agreement relating to the Provider's finances.
"Online Provider Portal"	means the Local Authority's on-line/web-based portal for the submission of Early Education Funding Claims.
"Parent"	means the person/s who have parental responsibility
"Parental Agreement"	means the Agreement between the Provider and Parent, which gives parental authorisation for the

Provider to claim Early Education Funding on the Parent's behalf.

"School"

means an **independent** school claiming free Early Education Funding, for two, three and four year old children. This Agreement excludes all **maintained** schools offering childcare provision for two, three and four year old children.

"Services"

means those services stated in clause 1.

"Term"

for the purpose of this Agreement term dates and funded hours are as follows:

Term	Start Date	End Date	Maximum Funded Hours	
			Universal	Extended
Autumn	1 st September	31 st December	210	210
Spring	1 st January	31 st March	165	165
Summer	1 st April	31 st August	195	195
Total Funded Hours Per Year			570	570

"Working day"

means Monday to Friday (excluding public, bank and statutory holidays) in England.

Annex B – Parental Agreement

1. Childcare Provider Details

Childcare Provider/School Name:	
Childcare Provider/School Address:	

2. Child Details

Legal Family Surname:		Legal Forename(s):	
Name by which the child is known: (if different from above):			
Date of Birth:		Male/Female	
Home Address:		Post Code:	
Documentary proof of DoB seen: e.g. Birth Certificate/Passport		Document recorded by: (name of staff member)	
Date document recorded:		Child ethnicity:	

3. Placement Start Date

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4. Additional details for children claiming the extended 15 hours free childcare or 2 Year old funding:

30 hours eligibility code: e.g. 12345678912 – 11 digits	
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Parent/Carer National Insurance Number:	
Proof of Parent/Carer ID seen: e.g. Passport, Driving Licence	
2 Year old eligibility reference number:	

5. Early Years Pupil Premium (EYPP) for Three and Four Year Old Children

Some three and four year olds are entitled to EYPP which is paid to the childcare provider to enhance the quality of your child's early years' experience by improving the teaching and learning, facilities and resources, with the aim of impacting positively on your child's progress and development. For more information regarding EYPP speak to your childcare provider.

If you believe that your child may qualify for the EYPP please provide the following information for the **main benefit holder** to enable the Local Authority to confirm your eligibility.

	Parent/Carer 1:	Parent/Carer 2: (optional)
Legal Family Surname:		
Legal Forename(s):		
National Insurance Number or NASS Number:		
Date of birth:		

6. Disability Access Fund (DAF)

Three and four year old children who are in receipt of child Disability Living Allowance and are receiving the free early education are eligible for the Disability Access Fund (DAF). DAF is paid to the childcare provider where the child attends as a fixed annual rate of £615 per eligible child per financial year.

I understand that the funding is a one-off lump sum payment and is not transferable if my child moves to a different provider part way through the financial year. Subsequent providers will not receive any funding if the DAF has already been paid in that financial year.

Is your child eligible and in receipt of Disability living Allowance (DLA)	YES / NO
Date copy DLA letter kept on file:	

If your child is splitting their free early education across two or more childcare providers, please nominate the main childcare provider/school where the Local Authority should pay the DAF.

Childcare Provider/School Name:	Ofsted registration/LCC School Number:

7. Agreed Free Early Entitlement Hours Additional Hours/Services

Free Early Entitlement Hours								
Universal Free 15 Hours								
Please enter total <u>Universal</u> Free entitlement hours attended per day: (cannot exceed 10 hours per day/15 hours per week)							Total number of hours per week	Number of weeks per year (e.g. 38, 45, 51)
Mon	Tues	Wed	Thurs	Fri	Sat	Sun		
Total Annual Universal Hours Claimed (cannot exceed 570)								
Extended Free 15 Hours								
Please enter total <u>Extended</u> Free entitlement hours attended per day: (cannot exceed 10 hours per day/15 hours per week)							Total number of hours per week	Number of weeks per year (e.g. 38, 45, 51)
Mon	Tues	Wed	Thurs	Fri	Sat	Sun		
Total Annual Extended Hours Claimed (cannot exceed 570)								

8. Banked days/hours

Where the provider chooses to offer the ability for parents to bank days/hours to be used over other periods such as school holidays etc. these days/hours need to be agreed between parent and provider and the following applies:-

- There is no transfer of any banked FEE entitlement should the child move to a new childcare provider.
- There will be no charge to the parent if the provider offers this flexibility option.
- The maximum free entitlement within any week, including the banked hours/days cannot exceed 30 hours per week.

9. Additional Hours and Services

The provider can charge for meals and snacks as part of a free entitlement place and they can also charge for consumables such as nappies or sun cream and for services such as trips and yoga. These charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free entitlements are responsible for setting their own policy on how to respond, with options waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals.

The provider should ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their free entitlement completely free of charge and understand fees paid for additional hours. The provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider.

The provider cannot ask the parent to pay any fee associated with their child's free entitlement place other than a refundable deposit, required to initially secure the place.

10. Grace Period of Entitlement for the Extended FEE 15 hours

For children whose parent ceases to meet the eligibility criteria for the extended 15 hours of FEE, the child's placement will continue to be funded for the extended 15 hours of FEE until the grace period end date as detailed below:-

Date Parent/Carer receives ineligible decision on reconfirmation:	Grace Period End date:
1 January – 10 February	31 March
11 February – 31 March	31 August
1 April – 26 May	31 August
27 May – 31 August	31 December
1 September – 21 October	31 December
22 October – 31 December	31 March

I understand that the extended 15 hours will not be funded beyond the grace period end date. If I fall back into eligibility during the grace period, I also understand that my child's extended 15 hours beyond the grace period are subject to availability.

11. Notice Period and Transfer of Entitlement

As the parent/carer/guardian of the above named child I understand that;

I shall be entitled to move my child from the above named childcare provider to a new childcare provider, providing I give the childcare provider at least [] **weeks written notice** of my intention.

Where the required written notice **has been given** prior to the term's "Headcount" week, any remaining FEE entitlement **will be** made available to a new childcare provider, from the end of the written notice period to the last day of the current term.

Where **written notice** is given after the term's "Headcount" week, there **will be no transfer of** any remaining FEE entitlement for the current term to a new childcare provider.

12. Accessing FEE Entitlement Across Multiple Childcare Providers

A Parental Agreement must be completed at each childcare provider where your child claims their free entitlement. Your child can attend a maximum of two childcare sites in a single day. If your child attends more than one childcare provider, the free entitlement will be split between the childcare providers in line with the information recorded in each Parental Agreement.

Does your child take up any FEE hours at any other childcare provider? **YES / NO**

If yes, please complete the following for the other providers that your child is accessing their free entitlement hours.

Childcare Provider/School Name:	Universal 15 Hours		Extended 15 Hours	
	Per Week	Per Year	Per Week	Per Year
Total Hours Across All Other Providers FEE Being Claimed				

Note: the total number of free hours in Section 7 and Section 12 cannot exceed a maximum of 570 universal hours and 570 extended hours per year.

13. Declaration

I (Name)

of (Address)

confirm that the information I have provided above is accurate and true. I understand and agree to the conditions set out in this document and I authorise (Name of Childcare Provider)

.....to claim free early

education funding as agreed above on behalf of my child.

In addition I also understand and agree that:

- The information I have provided can be shared with Lancashire County Council (LCC) and Department for Education, who will access information from other government departments to confirm my child's eligibility and enable this childcare provider to claim Early Years Pupil Premium (EYPP) or Disability Access Fund (DAF) on behalf of my child.
- In the event that Ofsted publish an inadequate inspection judgement for the provider, the local authority will withdraw funding from the provider as soon as is practicable. The local authority would generally consider this to be eight weeks after the date the inspection judgement was published, but reserves the right to reduce or extend this period, as the local authority in its absolute discretion, considers appropriate.
- In such cases outlined above where I choose to secure alternative childcare before the date the local authority would ordinarily cease funding, the local authority will only fund the provider for a period of four weeks after the date the inspection judgement was published. Any remaining funding after this date will be made available for me to access my child's free entitlement with a different provider which LCC's Family Information Service can assist me in finding, if required.
- If I register my child at a childcare provider for 2 year old funding and my child is found not to be eligible, I understand that I will be liable for the full cost of the placement.
- For my child to receive the greatest benefit from the FEE entitlement, it is important my child's attendance is in line with the agreed hours detailed above. Whilst it is appreciated that absences may occur due to unforeseen circumstances, I understand that the childcare provider may report my child's absence, to my local children's centre, in accordance with the childcare provider's safeguarding policy.

Parent/Carer with legal responsibility:		Childcare Provider/School:	
Signed:		Signed:	
Print name:		Print name:	
Date:		Date:	

14. Data privacy

The Data Protection Act 1998 puts in place certain safeguards regarding the use of personal data by organisations, including the Department for Education (DfE), local authorities and schools. The Act gives rights to those (known as data subjects) about whom data is held, such as pupils, their parents and teachers. This includes:

- the right to know the types of data being held
- why it is being held
- and to whom it is being communicated

Annex C - Eligibility for free early education for two-, three- and four-year- olds

Three-year-olds (and two-year-olds who meet the eligibility criteria below) are entitled to 15 hours of free early years provision from the start of the term beginning on or following the date set out below (up to a maximum of 570 hours per year):

- Children born in the period 1st January to 31st March: 1st April following the child's third birthday, or second birthday, as applicable;
- Children born in the period 1st April to 31st August: 1st September following the child's third birthday, or second birthday, as applicable;
- Children born in the period 1st September to 31st December: 1st January following the child's third birthday, or second birthday, as applicable.

These dates are consistent with those used for determining the start of compulsory education.

Two Year Olds:

A child will be entitled to the free hours **the term after both** of the following criteria are met:

- a. The child has attained the age two
- b. The child or parent meets the eligibility criteria set out below:
 - the child comes within the criteria used to determine eligibility for Free School Meals (FSM) (as set out in section 512ZB(4) of the Education Act 1996 - see the 'Free School Meals' section of Annex E below);
 - the parent of the child is entitled to Working Tax Credit under Part 1 of the Tax Credits Act 2002 by virtue of an award which is based on an annual income not exceeding £16,190;
 - the child has a statement of special educational needs made under section 324 of the Education Act 1996;
 - the child has an Education, Health and Care plan prepared under section 37 of the Children and Families Act 2014;
 - the child is entitled to Disability Living Allowance under section 71 of the Social Security and Contributions and Benefits Act 1992;
 - they are looked after by a local authority (under section 22(1) of the Children Act 1989); or
 - they are no longer looked after by a local authority as a result of an adoption order, a special guardianship order or a child arrangement order (within the meaning of section 8(1) of the Children Act 1989) which relates to either or both of the following:
 - with whom the child is to live;
 - when the child is to live with any person

The Department for Education's eligibility checking service provides a mechanism for local authorities to verify whether children meet the qualifying criteria for Free School Meals.

Two year old children residing in Lancashire and attending a setting within Lancashire's administrative boundaries are also eligible if they are:

- children in need;
- children with a child protection plan;
- children of Gypsy Roma Traveller Heritage residing in Lancashire;
- children of serving armed forces personnel residing in Lancashire;
- children who meet the criteria for portage from Lancashire County Council.

NOTE: Where the child or parent is found to be eligible by the Local Authority **after** the beginning of the term the child became age eligible the funded two year old place cannot be taken up until the beginning of the next term.

Eligibility for free childcare for three- and four-year- olds of working parents

A child is entitled to the additional 15 hours per week (up to a maximum of 570 hours per year) from **the term after both** of the following criteria are met:

- a. the child has attained the age of three and is under compulsory school age, and;
 - b. the child's parent(s) meets the eligibility criteria set out below
- the parent of the child (and their partner where applicable) should be seeking the free childcare to enable them to work;
 - the parent of the child (and their partner where applicable) should also be in qualifying paid work. The definition of qualifying paid work is set out at regulation 5. Each parent or the single parent in a lone parent household will need to expect to earn the equivalent of 16 hours at the national living wage or their national minimum wage rate over the forthcoming quarter;
 - where one or both parents are in receipt of benefits in connection with sickness or parenting, they are treated as though they are in paid work;
 - where one parent (in a couple household) is in receipt or could be entitled to be in receipt of specific benefits related to caring, incapacity for work or limited capability for work that they are treated as though they are in paid work;
 - where a parent is in a 'start-up period' (i.e. they are newly self-employed) they do not need to demonstrate that they meet the income criteria for 12 months in order to qualify for the extended entitlement.
 - if either or both parents' income exceeds £100,000 they will not be eligible for the extended entitlement.

The relevant dates in relation to the age criterion are the same as for the three-year-olds eligible for 15 hours of free provision.

NOTE: Where the child or parent is found to be eligible by HMRC **after** the beginning of the term the child became age eligible the extended entitlement cannot be taken up until the beginning of the next term.

Eligibility for Early Years Pupil Premium:

Three and four year olds receiving a universal Early Education funded place will attract EYPP funding if they meet at least 1 of the following criteria:

- their family gets 1 of the following:
 - Income Support;
 - income-based Jobseeker's Allowance;
 - income-related Employment and Support Allowance;
 - support under part VI of the Immigration and Asylum Act 1999;
 - the guaranteed element of State Pension Credit;
 - Child Tax Credit (provided they're not also entitled to Working Tax Credit and have an annual gross income of no more than £16,190);
 - Working Tax Credit run-on, which is paid for 4 weeks after they stop qualifying for Working Tax Credit;
 - Universal Credit.
- they are currently being looked after by a local authority in England or Wales
- they have left care in England or Wales through:
 - an adoption;
 - a special guardianship order;
 - a child arrangement order.

Children must receive an early education funded place in order to attract EYPP funding. They do not have to take up the full 570 universal hours of early education they are entitled to in order to get EYPP.

Annex D – Flexibility

As detailed in clause 9 provision must be offered in line with Section A2 of the Early Education and Statutory Guidance for local authorities as detailed below:

Section A2: Flexibility

Outcome: children are able to take up their full entitlement to a free place at times that best support their learning and development, and at times which fit with the needs of parents to enable them to work or increase their hours of work if they wish to do so.

Two-year-olds and three- and four-year-olds (universal and extended entitlement):

To secure flexible delivery, local authorities **should**:

A2.1 Consult with parents and involve them in local assessments of demand for flexibility.

A2.2 Act as a broker between overall parental demand in the area and provider capacity, seeking to provide the maximum possible flexibility for parents. Support providers to establish parental declarations setting out their hours and patterns of take up of free places.

A2.3 Encourage strong partnership working between providers from all sectors (maintained schools, academies and free schools, private, voluntary and independent providers and childminders) to ensure the market offers maximum flexibility for parents to access free hours to meet their needs and the needs of their child.

A2.4 Encourage providers to offer flexible packages of free hours, subject to the following standards which will enable children to access regular, high quality provision in keeping with the evidence of the benefits of doing so, whilst maximising flexibility for parents and ensuring a degree of stability for providers.

- no session to be longer than 10 hours;
- no minimum session length (subject to the requirements of registration on the Ofsted Early Years Register);
- not before 6.00am or after 8.00pm;
- a maximum of two sites in a single day.

A2.5 Evidence shows that continuous provision is in the best interests of the child. Where it is reasonably practicable local authorities should ensure that children are able to take up their free hours in continuous blocks and avoid artificial breaks being created throughout the day, for example over the lunch period.

A2.6 Ensure that parents and providers are aware that free places can be delivered:

- over up to 52 weeks of the year;
- outside of maintained school term times;
- at weekends.

A2.7 Ensure that parents and providers are aware that, subject to the standards set out in A2.4, there is no requirement that free places must be taken on or delivered on particular days of the week or at particular times of the day.

A2.8 Ensure that parents and providers are aware that there is no requirement that providers must be open for at least 38 weeks of the year, or that providers must offer 30 hours in order to receive funding to deliver free places.

A2.9 Ensure that providers are aware that they can choose not to deliver free places.

A2.10 Ensure parents are aware that the entitlement to a free place does not offer a guarantee of a place at any one provider or a particular pattern of provision.

A2.11 Enable parents to take up their child's free place in patterns of hours that "stretch" their child's entitlement by taking fewer hours a week over more weeks of the year, where there is provider capacity and parental demand, for example just under 12 hours a week for 48 weeks of the year for the universal 15 hour entitlement or around 23 hours a week for 48 weeks of the year for the extended 30 hour entitlement.

A2.12 Support parents to identify providers who can offer free places on the days and at the times needed by the parent.

A2.13 Encourage providers to work with parents to ensure continuity of care for children and effective transitional arrangements to support children's learning and wellbeing when enabling children to take up their free place at more than one provider or on more than one site.

A2.14 Refer to page 14 of the Department's early years national funding formula operational guidance for the circumstances in which an authority can provide a flexibility supplement (see A4.5).

A2.15 Use their Family Information Service and children's centres, as well as local childminder agencies, if available, to publicise the childminders and other flexible wraparound provision in their areas and help match childminders with parents.

A2.16 Make full use of their maintained nursery schools, if they have them. Maintained nursery schools are almost exclusively good or outstanding, the majority are located in disadvantaged areas and they have early years expertise and experience that can be used to benefit the whole local area. Local authorities should ensure that they have a role in the pedagogical leadership for the local early years system. What this means in practice will depend on local need, but it might include for example: commissioning nursery schools to develop and deliver a quality improvement strategy for the area; having nursery schools work with other providers to share their experience and expertise to raise the overall quality of provision across the area; helping nursery schools to work in partnership with other providers

to offer the 30 hours entitlement; and providing funding to nursery schools to allow them to deliver family support services.