



## **FUNDING AGREEMENT**

**For the Provision of Early Education for Two, Three and  
Four Year Old Children: 2016-2017.**

**between**

**Lancashire County Council**

**and**

**Providers of Early Education Places for Two, Three and  
Four Year Old Children**

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**THIS AGREEMENT** is made **BETWEEN:**

1) **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ ("**the Council**")

and

2) **ELIGIBLE SERVICE PROVIDERS** of free Early Education Funding for two, three and four year old children ("**the Service Provider**")

**NOW IT IS AGREED AS FOLLOWS:**

## **1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement unless the context otherwise requires, the following terms shall have the following meanings:

<b>"Action Plan"</b>	means the plan of action, prepared by a Service Provider rated by Ofsted as "Requires Improvement", that details the Service Providers intended actions to raise the settings quality rating at the settings next Ofsted inspection. The Action Plan has to be submitted to the Council within six weeks of the Ofsted Inspection publication date must detail targets, actions, responsibilities, costs, timescales and evaluation.
<b>"Agreement"</b>	means this agreement.
<b>"Administrative Charge"</b>	means the administrative charge which is the sum calculated as the assessment of the cost of administration time and expenses to the Council in dealing with defaults of the Service Provider referred to at 10.18.
<b>"Authorised Signatory"</b>	means such a person with the appropriate authority or permission from the Service Provider to bind the Service Provider to the terms of this Agreement. The Council reserves the right to request evidence of this permission from time to time, and the Service Provider must provide this immediately upon request.
<b>"Childcare"</b>	<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"><li>a. education for a child, and</li><li>b. any other supervised activity for a child.</li></ul> <p>B. Childcare <b>does not</b> include –</p> <ul style="list-style-type: none"><li>a. Education (or any other supervised activity) provided by a school during school hours for a registered pupil who is not a young child, or</li><li>b. Any form of health care for a child.</li></ul> <p>C. Childcare <b>does not</b> include care provided for a child by-</p>

- 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.

<b>"Contract Period"</b>	means the period stipulated in Clause 4.
<b>"DfE"</b>	means the Department for Education.
<b>"Directory"</b>	means the record of all service providers eligible to claim funding for the provision of funded Early Education childcare places for two, three and four year old children.
<b>"Early Education"</b>	means early years provision free of charge.
<b>"Early Years Child Protection Policy"</b>	means the Lancashire Early Years and Children's Centre – Child Protection Policy and Procedures by Lancashire County Council March 2014. <a href="http://www.lancashire.gov.uk">www.lancashire.gov.uk</a>
<b>"Early Years Pupil Premium" (EYPP)</b>	means additional funding for early years settings to improve the education they provide for disadvantaged three and four year old children.
<b>"Eligible Service Provider"</b>	means a childcare provider that: <ul style="list-style-type: none"> <li>• has an "Active" registration status with Ofsted, or the equivalent body for Independent Schools, as an early years provider;</li> <li>• is a childminder (excluding childminder agencies) with an active registration with Ofsted;</li> <li>• holds an exemption from the Early Years Foundation Stage by the Secretary of State;</li> <li>• fulfils the required Quality Provision, in Clause 5.</li> </ul>

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"Early Education Funding"	means the funding to be paid by the Council to the Service 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 Service 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 Council in this Agreement (Clause 8), when a child must be registered before the Early Education funding can be paid to a Service Provider. Headcount day normally occurs on the third Thursday following the start of term.
"Headcount Week"	means the week in which Headcount day falls.
"Lancashire Service Provider"	means an eligible Service Provider situated within the administrative boundary of Lancashire County Council.
"Named Contact"	means the name of the person(s) from the Service Provider that is approved and authorised by the Service 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 Data"	means any data provided to the Council for the purposes of this Agreement relating to the Service Provider's finances.
"Online Provider Portal"	means the Council'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 Service Provider and Parent, which gives parental authorisation for the Service Provider to claim Early Education Funding on the Parent's behalf.
"School"	means an <b>independent</b> school claiming free Early Education Funding, for two, three and four year old children. This Agreement excludes all <b>maintained</b> schools offering childcare provision for two, three and four year old children.

**"Services"** means those services stated in Clause 2.

**"Term"** for the purpose of this agreement term dates are as follows

Term	Start Date	End Date
Autumn	1 <sup>st</sup> September	31 <sup>st</sup> December
Spring	1 <sup>st</sup> January	31 <sup>st</sup> March
Summer	1 <sup>st</sup> April	31 <sup>st</sup> August

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

- 1.2. The words include, including, particularly, and in particular, are to be construed without limitation.
- 1.3. Words importing one gender include all other genders and words denoting the singular number include the plural and vice versa.
- 1.4. The clause headings and sub-clause headings shall 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.
- 1.5. 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.
- 1.6. 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.
- 1.7. Subject to the terms of this Agreement, any reference in this Agreement to the Council or the Service Provider or any other party referred to herein shall include their permitted respective successors and assigns.
- 1.8. 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 shall be in writing and all cognate expressions shall be construed accordingly.
- 1.9. References to materials, information, data and other records shall be to those things whether stored in electronic, written or other form.

## 2. THE SERVICE

- 2.1. The Service Provider shall during the Contract Period provide:
  - 2.1.1. Childcare; and
  - 2.1.2. Early Education places to eligible two, three or four year old children from within the administrative boundary of Lancashire County Council in accordance with this Agreement. ("Services")
  - 2.1.3. EYPP funding to improve the education they provide for disadvantaged three and four year old children.
- 2.2. The Service Provider must ensure that:
  - 2.2.1. Early Education places are delivered completely free of charge;
  - 2.2.2. Early Education places are provided flexibly in a pattern which meets the needs of parents;
  - 2.2.3. The Early Education Funding provided is used in accordance with this Agreement.
  - 2.2.4. The needs of disabled children and children with special educational needs are met
  - 2.2.5. Children will be kept safe.

## 3. NOMINATED REPRESENTATIVES

For the purposes of this Agreement, the Council's nominated representative shall be the Head of School Improvement Service or such other officer as the Council may nominate in his place and the Service Provider's representative shall be such officer as the Service Provider shall nominate on the online acceptance form or such other officer as the Service Provider may nominate in his/her place.

## 4. COMMENCEMENT AND DURATION

This Agreement shall commence on the 1<sup>st</sup> day of September 2016 and shall continue in full force until the 31<sup>st</sup> day of August 2017 unless terminated earlier by giving notice of termination in accordance with the provisions of Clause 17 herein.

## 5. QUALITY OF PROVISION AND OFSTED IMPLICATIONS

- 5.1. The decision to fund the Service Provider to deliver Early Education places will be based on the Service Provider's Ofsted registration status and inspection judgement.
- 5.2. The Service Provider must have an active registration status and a published Ofsted inspection judgement as follows:
  - 5.2.1. "Outstanding", "Good" "Satisfactory" or "Requires improvement"; or
  - 5.2.2. "Met" until its Ofsted quality judgement is published; or
  - 5.2.3. Be awaiting the publication of its first full Ofsted inspection judgement.
- 5.3. Where a Service Provider is given an Ofsted rating of "Requires Improvement":
  - 5.3.1. the Service Provider must submit an Action Plan to the Council within six weeks of the publication date of the inspection report containing the "Requires Improvement" judgement notification;
  - 5.3.2. Where the Service Provider fails to submit an Action Plan by the required date specified in 5.3.1, or where the Service Provider fails to engage with the Council by the required date specified in 5.3.1, on what action is being taken to improve, the Council may provide four weeks written notice of its intention to withdraw Early Education Funding, including EYPP, to enable parents to secure an alternative Service Provider for their child, if required.
  - 5.3.3. through its annual visit the Council shall review progress being made against the Action Plan and provide feedback to the Service Provider of any concerns;
  - 5.3.4. where a Service Provider is given three consecutive Ofsted ratings of "Requires Improvement" up to a maximum of four weeks Early Education Funding, including EYPP, may be made available to the Service Provider, from the date of publication of the Ofsted report containing the overall Inadequate judgement, to enable parents to secure an alternative Service Provider for their child, if required.
- 5.4. Where an "Outstanding", "Good", "Requires Improvement" or "Satisfactory" Service Provider is given an Ofsted rating of "Inadequate", up to a maximum of four weeks Early Education Funding, including EYPP, may be made available to the Service Provider, from the date of publication of the Ofsted report containing the overall Inadequate judgement, to enable parents to secure an alternative Service Provider for their child, if required.
  - 5.4.1. The Service Provider must inform parents as soon as the Ofsted rating of "Inadequate" is published.
  - 5.4.2. The Service Provider must signpost parents to Lancashire County Council's Family Information Service as soon as the Ofsted rating of "Inadequate" is published, to enable parents to secure an alternative Service Provider for their child, if required.
- 5.5. Where a Service Provider's registration status becomes "inactive" the Council will withdraw Early Education funding from the date the Service Provider became "inactive", unless the registration status returns to "active" within two weeks of the date the Service Provider became "inactive".
- 5.6. Where the registration status reverts to "active" within two weeks of the date specified in 5.5, the Service Provider must offer the equivalent Free Early Education hours that were lost due to the "inactive" status, to all parents who were accessing a free place at the time the Service Provider became "inactive", to enable them to access their full annual entitlement.

## 6. ELIGIBLE CHILDREN

- 6.1. All children who meet the prescribed criteria (Clause 7) are able to take up the Early Education entitlement at no more than two eligible service providers, regardless of their parent's ability to pay
- 6.2. The Statutory Guidance regards a two year old child to be eligible if:
  - 6.2.1. He/she is looked after by the local authority; or
  - 6.2.2. He/she comes within the criteria used to determine eligibility for Free School Meals (Education Act 1996 section 512ZB(4)); or

- 6.2.3. Their family receives Working Tax Credits and have an annual gross income of no more than £16,190 per year; or
- 6.2.4. He/she has a current statement of Special Educational Needs or an Education Health and Care plan; or
- 6.2.5. He/she is entitled to Disability Living Allowance; or
- 6.2.6. He/she is no longer looked-after by the local authority as a result of an adoption order, a special guardianship order or a residence order.

In addition the Council has at its sole discretion expanded the statutory eligibility criteria for those children living within the administrative boundary of the Council to include those children described at [www.lancashire.gov.uk](http://www.lancashire.gov.uk)

- 6.3. Three and four year old children in state funded early education will attract EYPP funding providing they are in receipt of free early education and meet at least one of the following criteria:
  - 6.3.1. Their family receives one of the following:
    - 6.3.1.1. Income Support;
    - 6.3.1.2. Income-based Jobseeker's Allowance;
    - 6.3.1.3. Income-related Employment and Support Allowance;
    - 6.3.1.4. Support under part VI of the Immigration and Asylum Act 1999;
    - 6.3.1.5. The guaranteed element of State pension Credit;
    - 6.3.1.6. Child Tax Credit, (providing they are not also entitled to Working Tax Credit and have an annual gross income of no more than £16,190.00);
    - 6.3.1.7. Working Tax Credit run-on, which is paid four weeks after they stop qualifying for Working Tax Credit;
    - 6.3.1.8. Universal Credit.
  - 6.3.2. They have been in local-authority care for 1 day or more in England or Wales.
  - 6.3.3. They have been adopted from care in England or Wales.
  - 6.3.4. They have left care under a special guardianship order or residence order in England and Wales.

## 7. PRESCRIBED CRITERIA

### 7.1. For three and four year old children

- 7.1.1. A child born between the following periods is entitled to receive an Early Education place for a maximum of 570 hours a year over no fewer than 38 weeks of the year until the child reaches compulsory school age.

Child born in the period	Relevant start date
1 <sup>st</sup> January to 31 <sup>st</sup> March	The start of term beginning on or following 1 <sup>st</sup> April after the child's third birthday
1 <sup>st</sup> April to 31 <sup>st</sup> August	The start of term beginning on or following 1 <sup>st</sup> September after the child's third birthday
1 <sup>st</sup> September to 31 <sup>st</sup> December	The start of term beginning on or following 1 <sup>st</sup> January after the child's third birthday

### 7.2. For two year old children

- 7.2.1. An eligible child born between the following periods is entitled to receive an Early Education place for a maximum of 570 hours a year over no fewer than 38 weeks of the year until the end of the term in which the child reaches three years of age.

Child born in the period	Relevant start date
1 <sup>st</sup> January to 31 <sup>st</sup> March	The start of term beginning on or following 1 <sup>st</sup> April after the child's second birthday
1 <sup>st</sup> April to 31 <sup>st</sup> August	The start of term beginning on or following 1 <sup>st</sup> September after the child's second birthday
1 <sup>st</sup> September to 31 <sup>st</sup> December	The start of term beginning on or following 1 <sup>st</sup> January after the child's second birthday



7.2.2. Two year old children who become eligible after the beginning of the term following their second birthday are entitled to an Early Education place on request.

7.2.3. Two year old children who have met the eligibility criteria will continue to receive their Early Education entitlement once they have taken it up even if the child no longer comes within the eligibility criteria.

All eligible two year old children, and all three and four year old children moving to England from another country can access a place on the same basis as any other child in the local authority area.

**8. HEADCOUNT AND CLAIMS**

8.1. The Headcount Week or the census day in each term as set out by the Council in this Agreement, is the week when a child must be registered before funding can be paid to a provider. It is the sole responsibility of the Service Provider to complete and submit the Early Education Funding Claim using the Online Provider Portal during the Headcount Week.

8.2. The Council will send a reminder of the Provider Portal opening, by email to the Service Provider's nominated email address at least one week before Headcount Day.

8.3. The Council will provide access to the On-line Provider Portal on the following dates:

Term	Headcount Day	On-Line Provider Portal will be open for Headcount Funding Claims between:		Payment Date	Max Claimable Hours
		Open 7:00am	Close 11:00pm		
Autumn	Thursday, 15 <sup>th</sup> September 2016	Thursday, 8 <sup>th</sup> September 2016	Sunday, 18 <sup>th</sup> September 2016	Friday, 7 <sup>th</sup> October 2016	210 hrs
Spring	Thursday, 19 <sup>th</sup> January 2017	Thursday, 12 <sup>th</sup> January 2017	Sunday, 22 <sup>nd</sup> January 2017	Friday, 10 <sup>th</sup> February 2017	165 hrs
Summer	Thursday, 20 <sup>th</sup> April 2017	Thursday, 13 <sup>th</sup> April 2017	Tuesday, 25 <sup>th</sup> April 2017	Wednesday, 17 <sup>th</sup> May 2017	195 hrs

8.4. The Service Provider shall submit, via the On-line Provider Portal, Early Education Funding claims, together with any requested statistical data, in a prescribed format and within the prescribed dates as determined by the Council in 8.3. Failure to supply such information will result in an administrative charge being levied.

8.5. The Service Provider can only make a Headcount Funding Claim for eligible children as prescribed in 7.1 and 7.2 who are present or planned present during the headcount week, and providing a signed Parental Agreement is in place between the Service Provider and the parent.

8.6. The Service Provider must submit a Headcount Funding Claim for all children specified in 8.5 by the deadlines determined by the Council in 8.3.

8.7. If the Service Provider fails to make an accurate Headcount Funding Claim for any eligible children, the Service Provider must make a Supplementary Funding Claim, for such children, for the remaining termly weeks/hours, commencing the Monday following headcount week, provided such children have not already taken up their full Early Education entitlement for that term.

8.8. Where the Service Provider makes a Supplementary Funding Claim for any eligible children that were present or planned present in the headcount week, an administrative charge will be levied.

8.9. Where a parent has given written notice to the Service Provider, prior to the headcount week, that they no longer wish their child/ren to access an Early Education place, the Service Provider

- must only claim Early Education funding up to the end of the agreed notice period, to enable parents to secure an alternative Service Provider for their child, if required.
- 8.10. If the Service Provider fails to include, with the Headcount Funding Claim, accurate information that enables the Council to undertake an EYPP eligibility check for a child, EYPP funding will not be made available for that child, in that term.
- 8.11. If the Service Provider accepts eligible children who: start after the Headcount Week; or part-way through a term; or those wishing to increase their hours of attendance, then the Service Provider must make a Supplementary Funding Claim, provided such children have not already taken up their full Early Education entitlement for that term.
- 8.12. The Service Provider is only permitted to make a Supplementary Funding Claim for the remaining termly weeks/hours, commencing the Monday after headcount week; or commencing the date the Parental Agreement was signed by the Service Provider and parent; or commencing the date the child became eligible for a Free Early Education place; whichever is the latest.
- 8.13. If the Service Provider fails to include, with the Supplementary Funding Claim, all information that enables the Council to undertake an EYPP eligibility check for a child, EYPP funding will not be made available for that child, in that term.
- 8.14. The Council will notify Service Providers by email of the dates when the Provider Portal is open for the submission of Supplementary Early Education Funding Claims which are:

Term	On-line Provider Portal for Supplementary Funding Claims			
	Submissions Open 7:00am	Submissions Close 11:00pm	Payment Dates	
Autumn	Monday, 17 <sup>th</sup> October 2016	Friday, 30 <sup>th</sup> December 2016	Friday, 30 <sup>th</sup> December 2016*  <i>*claims received by Wednesday 30<sup>th</sup> November 2016</i>	Friday, 10 <sup>th</sup> February 2017*  <i>* claims received between Thursday 1<sup>st</sup> December 2016 and Friday 30<sup>th</sup> December 2016</i>
Spring	Monday, 13 <sup>th</sup> February 2017	Friday, 31 <sup>st</sup> March 2017	Friday, 31 <sup>st</sup> March 2017*  <i>*claims received by Tuesday, 28<sup>th</sup> February 2017</i>	Wednesday, 17 <sup>th</sup> May 2017*  <i>*claims received between Wednesday, 1<sup>st</sup> March 2017 and Friday, 31<sup>st</sup> March 2017</i>
Summer	Monday, 22 <sup>nd</sup> May 2017	Thursday, 31 <sup>st</sup> August 2017	Thursday 31 <sup>st</sup> August 2017*  <i>*claims received by Monday, 31<sup>st</sup> July 2017</i>	Friday, 13 <sup>th</sup> October 2017*  <i>*claims received between Tuesday, 1<sup>st</sup> August 2017 and Thursday, 31<sup>st</sup> August 2017</i>

- 8.15. The Service Provider shall ensure that parents are aware that if their child moves after the Headcount day 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. The request should be made by the Service Provider and should include written confirmation from the child's social worker.
- 8.16. The Service Provider accepts that the movement of children after the Headcount day will not necessarily result in movement of funding. Movement of funding after the Headcount day will only be considered following a written request by the child/family social worker.
- 8.17. Where an Eligible Service Provider subsequently fails to meet the quality provisions detailed in Clause 5, additional funding may be made available for Eligible Children to continue to take up

their Early Education place at an alternative Eligible Service Provider for the remainder of the term.

- 8.18. Where an Eligible Service Provider is no longer able to offer an eligible child a Free Early Education place then any unused funding will be recovered by the Council and made available to the child's new Eligible Service Provider. In such cases the original Service Provider must provide the parent of the child with reasonable notice in writing of their intention to withdraw the offer of a Free Early Education place. The Service Provider must also provide written notification to the Council within one week of the notice being given to the parent.

## 9. SERVICE PROVIDERS OBLIGATION

- 9.1. The Registered Service provider shall accept the terms and conditions of this Agreement by completing and submitting via the on-line Provider Portal the Service Providers Statement to this Agreement.
- 9.2. The Service Provider must offer, all eligible children, the Early Education entitlement, which is: Up to a maximum of 15 hours each week (to a maximum of 570 hours per year) for no fewer than 38 weeks a year;
- 9.3. The Service Provider must deliver the Early Education entitlement within the national limits set out in the Statutory Guidance. These limits are:
- 9.3.1. No session longer than 10 hours
  - 9.3.2. No session shorter than 2.5 hours
  - 9.3.3. No session before 7.00 am or after 7.00 pm
- 9.4. The Service Provider must work in partnership with the Council to meet local demand for flexible delivery of the Early Education entitlement by offering as a minimum:
- 9.4.1. 3 hours a day over 5 days of the week, or
  - 9.4.2. 5 hours a day over 3 days of the week, or
  - 9.4.3. 570 hours over more than 38 weeks per year.
- 9.5. The Service Provider must ensure that parents are aware there is no requirement for all Early Education places to be delivered only over 38 weeks of the year or in line with maintained school term dates.
- 9.6. The Service Provider must enable parents to take up their child's Early Education place in patterns of hours that "stretch" their child's entitlement by taking fewer hours a week over more weeks of the year, subject to the service provider's capacity.
- 9.7. The Service Provider is responsible for identifying children who may be eligible for EYPP and providing the Council with the required information in order for the Council to undertake an EYPP eligibility check.
- 9.8. The Service Provider must ensure that when children are accessing Early Education places over the lunch period, any charge made for lunch:
- 9.8.1. is reasonable; and,
  - 9.8.2. has been agreed with parents in advance; and,
  - 9.8.3. that parents are given the option of providing a packed lunch if this is more affordable for parents.
- 9.9. The Service Provider must provide parents with clear information on the scale of charges to be applied in the event that a parent wishes to purchase additional childcare services for their child. In such circumstances parent's bills should set out clearly what hours they have accessed in relation to the Early Education entitlement and how any fees relate to additional hours.
- 9.10. The Service Provider must not impose on parents any conditions of access to which they must agree in order to take up their Early Education entitlement, i.e. parents must not be required to purchase additional hours or pay lunchtime charges in order to secure free provision.
- 9.11. The Service Provider must not charge "top up" fees (the difference between what the provider would normally charge and the funding received from the Council) to deliver the Early Education entitlement).
- 9.12. The Service Provider must not require parents accessing an Early Education place for their child, to pay in advance and be refunded at a later date for the entitlement.
- 9.13. The Service Provider must not require parents to pay a fee associated with their child's Early Education place, e.g. no registration fee or uniform fees.
- 9.14. A Free Early Education place cannot be provided to a child by a Service 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.
- 9.15. For all three and four year old children, the Service Provider must ensure each child is age eligible as specified in 7.1 and retain a copy of proof of date of birth for the minimum period as specified in 11.1.
- 9.16. For all two year old children the Service Provider must
- 9.16.1. ensure each child is age eligible as specified in 7.2 and retain a copy of proof of date of birth as specified in 11.1;
- 9.16.2. ensure each child meets the eligibility criteria as specified in 6.2 by requesting, from the parent, a copy of the LCC two year old eligibility letter for each child as specified in 11.2.
- 9.17. The Service Provider must enter into a parental agreement for each child, with the parent, which authorises the Service Provider to claim Free Early Education Funding on the parent's behalf, and authorises the use of child/parental information in processing future Early Education and EYPP claims. The parental agreement must contain, as a minimum, the information that is set out in the Council's Model Parental Agreement, a copy of which is available at [www.lancashire.gov.uk](http://www.lancashire.gov.uk)
- 9.18. Where the normal pattern of Free Early Education falls on a bank holiday, and the Service Provider is closed, the equivalent hours lost as a result of the bank holiday closure should be made available at an alternative time, which is agreeable to the parent and Service Provider, to enable the parent to take up the full annual entitlement, if required.

## 10. PAYMENT OF ENTITLEMENT

- 10.1. The Council shall use the Council's Cabinet Member for Children and Schools approved Early Years Single Funding Formula ("EYSFF") to determine the rate at which Early Education Funding shall be paid to the Service Provider in connection with each eligible child the Service Provider provides Early Education and Childcare to. A copy of the EYSFF can be seen at [www.lancashire.gov.uk](http://www.lancashire.gov.uk)
- 10.2. Before agreeing to fund the Service Provider, the Council will consider any information published by Ofsted about the Service Provider, including recent history about childcare provision by the Service Provider or childcare provision at a particular premise of the Service Provider.
- 10.3. The Council will pay the Service Provider the Early Education Funding in accordance with the conditions and rates detailed in this Agreement, for so long as the Service Provider is and remains an Eligible Service Provider.
- 10.4. The Council shall make Early Education Funding payments for eligible children against valid Early Education Funding Claims.
- 10.5. The Council will make payment for the termly headcount claim within 15 working days from the date the termly headcount closes on the proviso that the submitted information is free from errors/queries and that all required data is provided.
- 10.6. The Council will make payment for any Supplementary Funding Claims in line with the dates specified in 8.14.
- 10.7. The Council will make payment for any children eligible for the Early Years Pupil Premium by the last working day of each term, where the eligible child was included in the Headcount Funding Claim.
- 10.7.1. Where the eligible child was included in a Supplementary Funding Claim, the Council will make payment for the Early Years Pupil Premium as specified in 8.14.
- 10.8. In the event that an over payment is made to the Service Provider the Council will reduce the value of any future Early Education Funding payments, until the overpayment has been fully recovered.
- 10.9. In the event that the Service Provider, for whatever reason, becomes unable to offer Early Education Funding, the Registered Service Provider shall repay to the Council the balance of any outstanding Early Education Funding or overpayment against an invoice raised by the Council.
- 10.10. Where the Service Provider makes an Early Education Funding Claim and another service provider also makes such a claim for the same child:
- 10.10.1. Both claims will be regarded as valid provided the combined hours claimed do not exceed the termly maximum hours allowable;

- 10.10.2. Where the combined hours claimed by both Service Providers exceeds the termly maximum hours allowable, then the Council will reduce each claim on a pro-rata basis to the termly maximum hours allowable.
- 10.10.2.1. On such an occasion the Council will notify each service provider of their number of eligible hours being claimed and the pro-rata amount to be paid.
- 10.11. Where an Early Education Funding Claim is made by the Service Provider on behalf of a child whose residence is outside of the administrative boundary of the Council:
- 10.11.1. Such a claim will be deemed valid provided the hours claimed do not exceed the termly maximum hours allowable.
- 10.12. Where a Service Provider makes an Early Education Funding Claim on behalf of a child that a Service Provider from outside the administrative boundaries of Lancashire has also made a claim, then such a claim will be deemed valid provided the combined hours claimed by both Service Providers does not exceed the termly maximum hours allowable.
- 10.12.1. Where the combined hours claimed by the Service Providers exceeds the termly maximum, the Council will regard only the balancing hours (i.e. the difference between the hours claimed by the non-Lancashire Service Provider and the termly maximum hours allowable) as a valid claim
- 10.12.2. In the event that an over payment is made the Council will reclaim the value of the over-claim from the Lancashire Service Provider.
- 10.13. Where an Early Education Funding Claim is made by the Service Provider for a three and four year old child that also attends a maintained school:
- 10.13.1. The claim will be deemed valid provided the combined hours claimed by the Service Provider and the maintained school involved in the child's care do not exceed the termly maximum hours allowable.
- 10.13.2. Where the combined hours claimed by the Service Provider and the maintained school exceeds the termly maximum allowable:
- 10.13.2.1. In the event that the child started at the Service 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
- 10.13.2.2. In the event that the child started at the maintained school before or during the Headcount Week and the Service Provider after the Headcount Week then the value of any over-claim will be reclaimed from the Service Provider
- 10.13.2.3. In the event that the child was in attendance at both the Service Provider and the maintained school before or during the Headcount Week the Council will reduce each claim on a pro-rata basis to the termly maximum hours allowable
- 10.14. In the event that the child is in the academic year in which he/she turns five then all hours claimed by the Service Provider will be deemed not valid and repaid by the Service Provider in accordance with 10.8.
- 10.15. The Council may accept requests for supplementary payments after a term's Headcount day for new children or those children transferring from other settings, either from within Lancashire or from outside the administrative boundary of the Council or those children increasing their hours of attendance, in line with 8.7 and subject to the following conditions:
- 10.15.1. All supplementary payments will be made on a pro-rata basis depending on the hours already taken and the number of available hours remaining in the term;
- 10.15.2. All claims for supplementary payments must be submitted before the end of the term for which the claim relates;
- 10.15.3. The Council will only pay eligible Supplementary Funding Claims during the term for which such claim relates. The Council will not pay backdated claims from previous terms;
- 10.16. The Council may, in exceptional circumstances, provided it is approved in advance by the Council, allow the Service Provider to deliver less than the full funded entitlement. Parents will be allowed to choose a reduced entitlement at the establishment of the Service Provider if they wish, but parents must be made aware that the Council is under no obligation to offer the rest of the child's funded entitlement at another service provider.
- 10.17. All sums payable under this Agreement are unless otherwise stated exclusive of Value Added Tax and at all times are subject to and conditional upon funds having been first received by the Council from its funders.
- 10.18. In default of the Service Provider filing with the Council the Early Education Headcount Funding Claim, Supplementary Funding Claims, information or other documentation which is incomplete,

inaccurate or not received within the deadlines required, the Council may apply an Administrative Charge which will be deducted from the value of the total accurate claim value, on each and every such occasion, as follows:

- 10.18.1. For errors including, but not restricted to, the submission of incomplete or inaccurate headcount claims a £25.00 Administrative Charge will be deducted from the Early Education Funding due to the Service Provider under 10.4
- 10.18.2. For errors including, but not restricted to, the submission of incomplete or inaccurate supplementary claims a £25.00 Administrative Charge will be deducted from the Early Education Funding due to the Service Provider under 10.4
- 10.18.3. In the event that the Service Provider fails to submit an Early Education Funding claim within the time frames described at 8.3 the following scale of Administrative Charges may be applied and deducted from the Early Education Funding due to the Service Provider under 10.4

Number of children on the headcount claim	First late submission	Second Late submission (on a rolling 3 term period)			Third Late submission (on a rolling 3 term period)		
	Total Charge	Late charge	Portal re-opening charge	Total charge	Late charge	Portal re-opening charge	Total charge
1 to 6	<b>£ 10.00</b>	£ 20.00	£ 30.00	<b>£ 50.00</b>	£ 40.00	£ 60.00	<b>£ 100.00</b>
6 to 10	<b>£ 20.00</b>	£ 40.00	£ 50.00	<b>£ 90.00</b>	£ 80.00	£100.00	<b>£ 180.00</b>
11 to 20	<b>£ 40.00</b>	£ 80.00	£100.00	<b>£180.00</b>	£160.00	£200.00	<b>£ 360.00</b>
21 to 30	<b>£ 60.00</b>	£120.00	£150.00	<b>£270.00</b>	£240.00	£300.00	<b>£ 540.00</b>
31 to 40	<b>£ 80.00</b>	£160.00	£200.00	<b>£360.00</b>	£320.00	£400.00	<b>£ 720.00</b>
41 to 50	<b>£100.00</b>	£200.00	£250.00	<b>£450.00</b>	£400.00	£500.00	<b>£ 900.00</b>
51 to 70	<b>£135.00</b>	£270.00	£350.00	<b>£620.00</b>	£540.00	£700.00	<b>£1,240.00</b>
70+	<b>£150.00</b>	£300.00	£400.00	<b>£700.00</b>	£600.00	£800.00	<b>£1,400.00</b>

10.18.4. All Administrative Charges shall be deducted from the Early Education Funding due to be paid to the Service Provider under 10.4 or, if applicable, be recoverable by the Council by the issue of separate invoices

- 10.19. The Council may at its discretion withhold and/or require repayment from the Service Provider any or all of the Early Education Funding at any time during the Contract Period and within 6 years thereafter, if;
- 10.19.1. the Council has made funding in excess of the Early Education Funding actually due to the Service Provider;
- 10.19.2. the Service Provider has failed to take sufficient measures to investigate and resolve any irregularity in the course of its providing the Service;
- 10.19.3. this Agreement is terminated pursuant to Clause 17 or any of the grounds reasonably exist under Clause 17;
- 10.19.4. The Service Provider has failed to employ any part of the Early Education Funding in providing the Services in accordance with this Agreement;
- 10.19.5. The Service Provider is in serious breach of the terms of this Agreement or the relevant Statutory Guidance;
- 10.19.6. The Council has reasonable evidence that the Service Provider is in financial difficulties by its' failing to pay its debts when they fall due.

## 11. RECORD KEEPING AND AUDIT

- 11.1. The Service Provider shall keep a satisfactory standard of records (e.g. supporting documentation, registers of attendance, copy of evidence of child's date of birth (i.e. child's birth or passport) and parental agreements to support its Early Education Funding Claim in order to ensure satisfactory audit trails and retain such supporting documentation for a minimum period of five years plus the current year;
- 11.2. The Service Provider must retain a copy of a child's two year old eligibility letter supplied to the parent, by the Free Early Education Team, Lancashire County Council.

- 11.3. Where a Service Provider is claiming EYPP for a child adopted from care, or a child on a special guardianship order the service provider shall keep a record of the adoption order reference number, or the special guardianship reference number.
- 11.4. The Service Provider must keep financial accounts of the receipt and use of the Early Education Funding and work within the audit and record keeping arrangements as set out by the Charity Commission in its guidance captioned "Internal Financial Controls for Charities" – <http://www.charitycommission.gov.uk/media/530593/cc8text.pdf>
- 11.5. In addition the Service Provider agrees to:
  - 11.5.1. be audited by officers from the Council to ensure Early Education funding is being used to provide the Early Education entitlement to eligible children;
  - 11.5.2. allow access to all financial records, documents and other materials relating to the use of the funding and provide such assistance with their interpretation as shall be required. The Council will provide reasonable notice of any such inspection;
  - 11.5.3. make available a signed copy of the parental agreement entered into with each parent. A copy of which should be retained by the Service Provider for 6 years from the date the parental agreement is entered into.

## 12. GENERAL OBLIGATIONS

- 12.1. The Service Provider in the performance of this Agreement, shall 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:
  - 12.1.1. The Health and Safety at Work etc. Act 1974 and associated regulations;
  - 12.1.2. The Common Law Duty of Care;
  - 12.1.3. Race Relations Act;
  - 12.1.4. Equality Act;
  - 12.1.5. Civil Law;
  - 12.1.6. The Childcare Act.
  - 12.1.7. Local Authority ( Duty to Secure Early Years Provision Free of Charge) Regulations 2014
  - 12.1.8. Special Educational Needs and Disability Code of Practice: 0 to 25 years 2014.
  - 12.1.9. Prevent Duty Guidance 2015.
- 12.2. The Service Provider shall comply with all the conditions and terms of registration requirements as set out in the Statutory Guidance
- 12.3. The Service Provider shall offer Early Education provision at premises within the administrative boundary of the Council.
- 12.4. The Service Provider must complete, on the Online Provider Portal, all documentation in connection with and appertaining to the Early Education entitlement, including but not limited to, acceptance of this Agreement in full and Early Education Funding Claims.
- 12.5. The Service Provider shall demonstrate a commitment to the principles of the EYFS and have regard to the Practice Guidance document for practitioners on meeting the requirements of the EYFS framework.
- 12.6. The Service Provider must operate within the Early Years Child Protection Policy and follow all procedures detailed by the Lancashire Safeguarding Children's Board (LSCB)
- 12.7. The Service Provider shall have an inclusive admission policy
- 12.8. The Service Provider shall not do anything to cause any infringement by the Council of its obligation under the Human Rights Act 1998 or any other human rights law.
- 12.9. The Service Provider must work within the current Referral Process for two year old children, a copy of which can be found at [www.lancashire.gov.uk](http://www.lancashire.gov.uk) .
- 12.10. The Council shall ensure that the Early Education Funding is administered promptly, fairly and in a way that promotes equal opportunities and inclusion.
- 12.11. The Council shall maintain and keep an up to date a directory of all Service Providers and make available relevant details, through the Family Information Service to parents, where requested, of all those service providers within the administrative boundary of the Council who are eligible to claim funding for the provision of Early Education places for two, three and four year old children.
- 12.12. The Council shall keep up to date information relating to the provision of early education funding on the Council's website [www.lancashire.gov.uk](http://www.lancashire.gov.uk)
- 12.13. The Council shall ensure that Service Providers are made aware of the requirements and process for applying for Early Education Funding.

- 12.14. The Council shall offer relevant support to the Service Provider on EYFS to ensure that the Service Provider develops a good knowledge and understanding of the principles of the EYFS and deliver high quality Childcare and Early Education provision.

### **13. MONITORING AND TRACKING**

- 13.1. The Service 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.
- 13.2. The Service 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.
- 13.3. The Service Provider must monitor the attendance records of all Early Education funded children.
- 13.4. The Service 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.
- 13.5. In the event of non-attendance, for the full two week period leading up to the Monday of headcount week, for any eligible child, where the non-attendance has not been previously agreed between the Service Provider and the parent, the Service Provider must gain written confirmation from the parent that they wish to continue accessing their child's free place from the Service Provider, otherwise the Service Provider cannot include the child in the Headcount or Supplementary Funding Claims.

### **14. CONFIDENTIALITY**

- 14.1. Except where there is a legal obligation to do so, such as in the case of a court order or in response to a Freedom of Information Act 2000 ("Act") request, a party to this Agreement who comes into possession of confidential information relating to the other party during the Contract Period must not disclose that information to any third party without the authorisation of the party to whom the confidential information relates. Each party must use reasonable endeavours to prevent any such unauthorised disclosure and the provisions of the clause survive the termination of the agreement.
- 14.2. In the event that the Council receives a request under the Act relating to this Agreement or the Services it shall consult with the Service Provider before responding. The Service Provider shall respond to any consultation within 5 working days of receipt of a letter seeking that party's views. The Service Provider acknowledges and accepts that the Council has discretion to disclose information pursuant to a request under the Act if it determines that it is in the public interest to do so notwithstanding that the Service Provider may object to such disclosure.

### **15. PROCEDURE FOR DEALING WITH DISPUTES ABOUT THIS AGREEMENT**

- 15.1. 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 15.2 to 15.3.
- 15.2. Within 10 days of receipt of the said notice or any other period agreed between the parties the Council's Nominated Representative and The Service Provider's representative shall meet together to attempt to resolve the said dispute.
- 15.3. In the event that the individuals referred to in 15.2 above fail to resolve the said dispute the Head of School Improvement Service, 2<sup>nd</sup> Floor, 58-60 Guild Hall Street, Preston, PR1 3NU and a director of the Service Provider shall meet within 10 days of the meeting referred to in 15.2 (or such other period agreed between the parties) in a further attempt to resolve the said dispute.
- 15.4. In the event that the individuals referred to in 15.3 above fail to resolve the said dispute then it shall be determined by a single arbitrator to be nominated by the president of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 and the arbitration shall take place in Lancashire.
- 15.5. 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 Service Provider. If the parent remains dissatisfied the Service Provider should direct the parent to the Councils Corporate Complaints Procedure at [www.lancashire.gov.uk](http://www.lancashire.gov.uk)

## **16. PROCEDURE FOR DEALING WITH BREACHES OF ANY TERMS OF THE AGREEMENT**

- 16.1. Where concerns are highlighted by the Service Provider's continual failure to meet the statutory requirements of the EYFS the Council will:
  - 16.1.1. give written notice to the Service Provider setting out any concerns the Council may have;
  - 16.1.2. where the Council considers that its concerns are capable of being addressed set out the actions that must be taken to remedy the Council's concerns.
- 16.2. Any actions required by the Council in accordance with 16.1.2 shall be carried out by the Service Provider within three months of the date of the recommendations (or such other period as may be stipulated by the Council or agreed by the parties).
- 16.3. The Council will visit the Service Provider's premises from which the Services are being delivered and meet the Service Provider within three months of the written notice to ensure that the Council's required actions are being implemented and that the concerns identified by the Council are being remedied to the reasonable satisfaction of the Council.
- 16.4. The Service Provider may ask for a meeting with the Council where the Service Provider has any concerns in relation to any aspect of service delivery or the manner in which the Council is meeting its obligations under this Agreement.

## **17. TERMINATION**

- 17.1. Each party shall be entitled to terminate this Agreement by giving at least three months written notice to the other party.
- 17.2. The Council shall be entitled to terminate this Agreement with immediate effect if the Service Provider:
  - 17.2.1. 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 three months after receipt of notice from the Council specifying the nature of the breach set out in 16.1.1 above;
  - 17.2.2. 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;
- 17.3. The Council, regardless of the provisions in 17.1 and 17.2.1, shall be entitled to terminate this Agreement with immediate effect if:
  - 17.3.1. the Secretary of State advises the Council that the Service Provider has been rated by Ofsted as "Inadequate";
- 17.4. Upon notice of termination of this Agreement, for whatever reason, the Service Provider shall repay to the Council 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.
- 17.5. Upon notice of termination of this Agreement, for whatever reason, the Council will reimburse the Service Provider the balance of outstanding Early Education Funding within 28 days of termination providing the Service Provider has submitted a valid Headcount or Supplementary Funding Claim as specified in Clause 8.

## **18. NOTICES**

- 18.1. Any notice or other document to be given under this Agreement shall 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 Council to:

Free Early Education Manager, School Improvement Service, Children's Services - Start Well, Second Floor, 58-60 Guild Hall Street, Preston, PR1 3NU.

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

- 18.2. In proving the notice was served, it shall be sufficient to prove that the envelope containing such notice was properly addressed and posted and any receipt issued by the postal authorities shall be conclusive evidence of the fact and date of posting of any such notice.
- 18.3. The Service Provider shall notify the Council in writing in the event that it changes its address and shall provide such notice within fourteen days of any such change.

## **19. ASSIGNMENT**

- 19.1 Neither party may assign nor otherwise dispose of any interest, benefit, or right in this Agreement without the prior written agreement of the other party.

## **20. INDEMNITY**

- 20.1. The Service Provider shall indemnify the Council from and against all loss or damage or liability (whether criminal or civil) together with any legal costs incurred by the Council resulting from a breach of this Agreement by the Service Provider, its employees or agents including:
- any act, neglect or default of the Service Provider, its employees or agents; and
  - any claim by a third party based on any facts which if substantiated would constitute a breach of any of the Service Provider's obligations under this Agreement.
- 20.2. The indemnities contained in this clause shall be continuing indemnities and shall be without prejudice to any other right or remedy of the Council whether arising under the terms of this Agreement or otherwise.

## **21. INSURANCE**

The Service Provider shall:

- 21.1. During the Contract Period the Service Provider shall 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.
- 21.2. Display a copy of the current policy/policies and inform the Council in writing if the Service Provider ceases to hold valid insurance through cancellation, non-payment, breach of the insured terms or any other means.

## **22. NO WAIVER OF RIGHTS**

- 22.1. 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.
- 22.2. Any express waiver by the Council of any breach of any of the obligations of the Service Provider under this Agreement shall not be a waiver of any continuing breach or of any breach of any of these obligations.

## **23. SEVERANCE**

- 23.1 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 shall 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 shall negotiate in good faith to amend and modify the remaining terms as may be necessary or desirable in the circumstances.

**24. VARIATION**

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

**25. ENTIRE AGREEMENT**

- 25.1 This Agreement shall constitute the entire agreement and understanding between the parties in respect of all matters which are referred to and shall 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.

**26. COLLUSION/CORRUPTION**

If the Service Provider in relation to this Agreement or any other contract with the Council shall do or have done any act:

- 26.1. which amounts to an inducement or reward to any person for doing or omitting to do any act relating to the obtaining of this Agreement and or/Early Education Funding;
- 26.2. which is an offence under The Prevention of Corruption Acts, 1889 to 1916; or
- 26.3. which amounts to the giving of a fee or award, the receipt of which is an offence under Section 117 Local Government Act, 1972;
- 26.4. which is a breach of the Bribery Act
- the Council shall be entitled to terminate this Agreement forthwith with immediate effect and recover from the Service Provider all losses, costs, damages and expenses incurred from such termination.

**27. LAW AND JURISDICTION**

- 27.1 The provisions of this Agreement shall 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 and Wales.