

Sheffield City Council

Funded Early Learning Provider Funding Agreement (FEL Funding Agreement)

2021-22



THIS AGREEMENT is made

BETWEEN

(1) SHEFFIELD CITY COUNCIL.

of Town Hall, Pinstone Street, Sheffield, S1 2HH (the “Council”).

And

(2) THE PROVIDER

(Each a “Party” and together the “Parties”)

BACKGROUND

- A. The Education & Skills Funding Agency (ESFA) requires every Council to have a funding agreement in place with Childcare Providers who supply any Funded Early Learning (FEL).
- B. All Providers who are registered on the FEL Register within Sheffield City Council’s Register must agree to this agreement in order to receive FEL funding.
- C. By accepting the conditions set out in this agreement the Provider is accepting the criteria from the Department for Education’s (DfE) Statutory Guidance for Local Authorities and the Council’s Code of Practice for Funded Early Learning.
- D. The following frameworks and legislation underpin this model agreement and the Parties must ensure that they comply with them:
- Early Education and Childcare, Statutory guidance for Local Authorities 2018
 - Childcare Act 2006
 - Equality Act 2010
 - Freedom of Information Act 2000
 - Environmental Information Regulations 2017
 - School Admissions Code 2014
 - Statutory Framework for the Early Years Foundation Stage 2017
 - Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2018
 - The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2018
 - Special Educational Needs and Disability Code of Practice: 0 to 25 years 2015
 - General Data Protection Regulation 2018
 - Data Protection Act 2018
- E. References to legislation will be to that legislation as amended from time to time, without express change in this agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

Within this Agreement the following words and expressions are defined as meaning;

“Agreement”	this Agreement between the provider and the Council.
“Authorised Officer”	the Council's authorised representative.
"Child"	the child intending to receive or receiving, the services.
“Clawback”	the requirement for the Provider to repay some or all of the funding due to the failure of the Provider to ensure compliance with the agreement or failure to adhere to the relevant codes or statutory provision applicable.
“Code of Practice for Funded Early Learning” or FEL Code”	the Code of Practice for Providers of Funded Early Learning 2021-2022 as produced by Sheffield City Council referred to as the FEL Code dated 2021, and subsequent versions when issued.
“Contractor”	Anyone who enters into an agreement with either Party, outside of the scope of this Agreement. This may include a Childminder working with, or receiving services from, the Provider.
"Council"	Sheffield City Council, a party to this agreement and paying FEL Funding.
“Data Controller”	the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.
“Data Security Breach”	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.
“Data Subject”	an identified or identifiable natural person, for the purposes of this agreement is information

	about a child and their parents and/or carers.
“Data Protection Legislation”	all applicable data protection and privacy legislation in force in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC), the Law Enforcement Directive (Directive (EU) 2016/680, and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).
“EYFS Statutory Framework”	the Statutory Framework for the Early Years Foundation Stage. This framework sets standards for the learning, development and care of children from birth to 5 years old. All schools and Ofsted-registered Early Years Providers must follow the EYFS Framework.
"FEL"	Funded Early Learning.
“FEL Funding”	means the funding released to the Provider in consideration of providing the services pursuant to Clause 4.1.
“Headcount (or Census)”	the number of children of a Provider each term who are eligible for a funded place according to their date of birth.
“Headcount (or Census) Day”	the Headcount Day or the Census Day in each school term as set out in the relevant FEL Code.
“Material Breach”	a breach of this Agreement as set out in clause 24.1, giving the Council the right to terminate at its discretion, as opposed to any other remedy.
"Parent/Carer Agreement"	the Agreement to be entered into between the parent of the Child and the Provider referred to in the relevant FEL Code.
“Personal Data”	any information relating to a data subject.
“Personal Data Breach”	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

“Provider”	the Provider of the Services and who is included in the Sheffield City Council’s List of Approved Register of Providers.
“Register of Providers”	means the Sheffield City Council Register of Providers of Services as governed by the relevant sections in the FEL Code of Practice.
“Senior Member of staff”	a member of staff with sufficient seniority to make binding decisions on behalf of the Provider.
“Services”	the provision of early education and care services for eligible children for a period of up to 15 hours each week for a minimum of 38 weeks in the year (570 hours), or up to 30 hours each week for a minimum of 38 weeks in the year (1,140 hours) for children eligible for Extended Free Entitlement, during the period of this Agreement at all times in accordance with this Agreement, the relevant FEL Code, the Statutory Guidance, the EYFS Statutory Framework, the Parent / Carer Agreement and any additional instructions from time to time given by the Council
“Shared Personal Data”	the Personal Data and sensitive Personal Data/Special Category Data to be shared between the parties under section 22 of this Agreement.
“Statutory Guidance”	the Early Education and Childcare Statutory Guidance for Local Authorities.
“Subject Access Request”	a request made by, or on behalf of, a Data Subject to access their Personal Data, in accordance with rights granted pursuant to the Data Protection Legislation.

THIS AGREEMENT is made between the Council and the Provider, whereby it is agreed as follows:

2. Agreement

- 2.1 This Agreement shall be considered as a contract made in England and subject to English law.
- 2.2 The duration of this Agreement shall be for a period of 12 calendar months or less, to commence on the date the Provider accepts this Agreement on the Sheffield City Council Provider Portal and ending no later than the following 31 March, unless terminated sooner or varied in accordance with this Agreement.
- 2.3 This Agreement constitutes the entire contract between the Council and the Provider in respect of the Services and, except as may be expressly referred to or referenced in this Agreement, supersedes all prior representations, submissions, negotiations or understandings with respect to the Services, save that nothing in this Agreement purports to exclude liability for any fraudulent statement or act.
- 2.4 The Council has the right to unilaterally vary this Agreement but only in so far as those changes are reasonably necessary to reflect changes in legislation or Department for Education guidance, and upon reasonable notice.
- 2.5 If any provision of this Agreement or part thereof should be found to be invalid, ineffective or unenforceable under any applicable statute or regulation, the remainder of the provisions hereof shall stay in full force and effect.
- 2.6 The FEL Code of Practice (FEL Code) is incorporated into this agreement in its entirety and it is a requirement of this Agreement that the Provider shall at all times adhere to and follow the FEL Code.
- 2.7 Any failure by the Provider to comply with this Agreement and the FEL Code may result in the Provider being removed from the Register of Providers.

3. Key Council Responsibilities

- 3.1 The Council must secure a funded entitlement place for every eligible child in their area;
- 3.2 The Council will work in partnership with Providers to agree how to deliver funded entitlement places;
- 3.3 The Council will be clear about its role and the support on offer to meet the needs of children with special educational needs and/or disabilities (SEND) as well as their expectations of Providers; and
- 3.4 The Council will contribute to the safeguarding and promote the welfare of children and young people in the area.

4. Key Provider Responsibilities

- 4.1 The Provider must comply with all relevant legislation and insurance requirements.
- 4.2 The Provider will oversee delivery of the funded early entitlements consistently to all parents, whether in receipt of 15 or 30 hours and regardless of whether they opt to pay for optional services or consumables. This means that the Provider should be clear and communicate to parents details about the days and times that they offer their free/funded sessions, along with their services and charges. Those children accessing the FEL should receive the same quality and access to provision.
- 4.3 The Provider may contract with individual childcare professionals in order to supply the Services. The Provider and its contractors must follow the Early Years Foundation Stage (EYFS) statutory framework and have clear safeguarding policies and procedures in place that link to the Council's guidance for recognising, responding, reporting and recording suspected or actual abuse.
- 4.4 Where a Contractor chooses to have their claim managed by the Provider, the Council will only discuss the claim with the Provider. Any disputes must be resolved between the Provider and their Contractor.
- 4.5 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. The Provider should utilise the SEN Inclusion Fund and Disability Access Fund (DAF) to deliver effective support, whilst making information available about their SEND offer to parents.
- 4.6 The Provider agrees to supply the Services in accordance with the terms and conditions set out in this Agreement and the Council's FEL Code including supporting parents with the 2 year old Funded Early Learning online application process and signposting for further support and guidance.
- 4.7 The Provider warrants that the Services will in all respects comply with this Agreement and that the Provider and its contractors shall exercise all due skill, care and diligence in delivery of the Services.
- 4.8 A senior member of the Provider's staff must be nominated by the Provider to act as the Provider's representative to liaise with the Authorised Officer as required in connection with the Services.
- 4.9 The Provider, or its contractors, shall enter into a Parent / Carer Agreement with the parent of each Child to whom it supplies Services prior to commencement of the first term and shall inform the Council as soon as practicable of any withdrawal of the Services prior to the Headcount Day under the Parent / Carer Agreement.

5. Business Planning

- 5.1 The Council requires all Providers to ensure that a signed parent/carer agreement is in place before a funded early learning place is allocated. This serves as a contract between the parents and the Provider/Provider's contractor and establishes that both parties agree to the terms and conditions

of FEL and records that eligibility checks have been completed including the pattern of delivery. This agreement must be reviewed termly. A copy of the agreement must be given to parents and the Council will request a copy in the event of any funding discrepancies as part of compliance visit (audit) or other investigation.

- 5.2 The FEL Funding shall be payable subject to the Provider supplying the information and documentation in accordance with Section 9 of the FEL Code and the *Providers Guide to Claiming Funding for Funded Early Learning and the Extended Funding Entitlement* available at:
<https://www.sheffield.gov.uk/home/schools-childcare/fel-funding-providers>
- 5.3 To validate claims the Council will carry out reasonable checks by requesting further eligibility information in a timely manner.
- 5.4 The Provider must have and maintain such information and communication technologies (ICT) to facilitate the exchange of information between the Council and the Provider.
- 5.5 The Parties shall each inform the other as soon as is practically possible in the event of an ICT failure and in the event that ICT services are down for over 24 hours; notification should be given within 2 Provider working days in any event.
- 5.6 The Provider must maintain a business bank account for their setting which provides the FEL. The Provider must give the details of this account to the Council to enable the Council to pay the FEL funding. The account must have a dual signatory except if the Provider is a sole trader.
- 5.7 The Provider should ensure they submit timely and accurate information, including, but not limited to, headcount data, census date, parental declarations and invoices, as per the financial guidelines of the Council. Failure to do so may result in inaccurate, delayed or suspended funding.
- 5.8 The Provider should maintain accurate financial and non-financial records relating to FEL places and should give the Council access on reasonable notice to all financial and non-financial records relating to FEL places funded under the Provider agreement, subject to confidentiality restrictions.

6. Funding

- 6.1 The Council has a responsibility to protect Government money and ensure that funding is administered appropriately. In consideration of the performance by the Provider of its obligations in accordance with this Agreement, the Council will pay the Provider the FEL Funding in accordance with the terms set out in this Agreement for so long as the Provider is and remains eligible to be included in the Council's Register of Providers and at all times satisfies the conditions of eligibility to be included in the Council's Register of Providers, as set out in the FEL Code.
- 6.2 The Council produces an annual indicative FEL budget for both 2 year olds and 3 and 4 year olds. The indicative budget shows the hourly FEL funding rate including any deprivation funding if applicable. The budget shows an estimated number of FEL hours for each term which are based on the

previous year's actual participation hours, adjusted for the number of weeks in the current term and estimated Early Years Pupil Premium (EYPP) hours.

- 6.3 The Provider shall satisfy the conditions of eligibility as set out in the FEL Code and remain eligible to be included in the Register of Providers at all times.
- 6.4 The Council accepts no liability whatsoever for any losses attributable to delays in payment of the Funding to the Provider, or for any resultant repayment, reduction, cancellation, termination or withdrawal of the Funding, or for any clawback enforced under the terms of this Agreement.
- 6.5 In the event of the Provider ceasing to trade or otherwise failing to make payments to its Contractors, the Council may, at its sole discretion, make payment of any outstanding FEL, which would have been payable to the Provider, directly to the contractors engaged by the Provider for the purpose of supplying the Services. The Council's liability will not exceed the currently outstanding FEL.
- 6.6 The Council shall pay the Funding directly into the Providers' chosen bank account through BACS (the Bankers Automatic Clearing System) unless the Parties agree an alternative arrangement in writing.
- 6.7 For the avoidance of doubt the Council will fund:
 - a) Eligible 2 year old FEL
 - b) Universal FEL for 3 and 4 year olds.
 - c) 3 and 4 year old Extended FEL (EFE).
 - d) Early Years Pupil Premium (EYPP).
 - e) Disability Access Funding (DAF)
 - f) Deprivation Rate - This funding is based on children living in the 30% most deprived Lower Super Output Areas (LSOAs) in the country. The deprivation figures are based on the National Income Deprivation Affecting Children Index (IDACI) and are part of the Index of Multiple Deprivation (IMD). This index was published in 2019 and it checks the child's postcode to identify where children live and if it is in an area of deprivation.
- 6.8 The Council will, at its sole discretion, make funding payments in three instalments each term to the Provider's business bank account:
 - a) The first payment (called the Forecast) will be made early in the term, based on 70% forecast of data supplied by the Provider. If the Provider fails to submit a claim by the prescribed deadline, no forecast payment will be made by the Council.
 - b) The second payment (called the Actual) is the remaining 30% payment or 100% if no forecast payment was received. This payment will include any EYPP and DAF funding. This is mandatory.
 - c) The third payment (called the Amendment) is an end of term reconciliation payment.
- 6.9 The Council will withhold and/or require repayment from the Provider any or all of the FEL Funding at any time during the period of this Agreement and within 6 years thereafter, if:

- a) The Council has made a payment of FEL funding in excess of the FEL Funding due to the Provider.
 - b) The Provider has failed to take sufficient measures to investigate and resolve any irregularity in the course of its providing the Services;
 - c) The Provider fails to keep accurate records and there is evidence of fraudulent activity or fraudulent record keeping.
 - d) This Agreement is terminated pursuant to Clause 25 or any of the grounds reasonably exist under Clause 25.
 - e) The Provider has failed to use any part of the said FEL Funding in providing the Services in accordance with this Agreement;
 - f) In the reasonable opinion of the Council the Provider is in breach of the terms of this Agreement or the relevant FEL Code
 - g) The Council has reasonable evidence that the Provider is in financial difficulties by its failure to pay debts when they fall due
- 6.10 When a provider closes due to an inadequate Ofsted rating and is removed from the FEL register, the Local Authority will work with the provider to investigate any FEL funding issues.
- 6.11 Further published Provider supporting information is on the following link:
<http://www.sheffield.gov.uk/content/sheffield/home/schools-childcare/fel-funding-providers.html>

7. Eligibility of the Child

- 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 can retain paper or digital copies of documentation to enable the Council to carry out audits and fraud investigations. Where a Provider retains a copy of documentation this must be stored securely and deleted when there is no longer a good reason to keep the data, in accordance with the General Data Protection Regulation 2018 and the Data Protection Act 2018.
- 7.2 The Provider should offer places to eligible 2 year olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for 3 and 4 year olds.
- 7.3 Alongside the 30 hours eligibility code, which is the child's unique 11-digit number, and original copies of documentation (see 6.1), a Provider must acquire written consent from, or on behalf of, the parent to be able to receive confirmation and future notifications from the Council of the validity of the parent's 30 hours eligibility code.
- 7.4 Once a Provider has received written consent from the parent, they should verify the 30 hours eligibility code with the Council.
- 7.5 The Council will confirm the validity of the 30 hours eligibility codes to allow Providers to offer 30 hours places for eligible 3 and 4 year olds. The Council will provide a validity checking service to Providers to enable them to verify the 30 hours eligibility code. The Eligibility Checking Service (ECS) allows all Local Authorities to make instant checks for code validity.

- 7.6 Thereafter, the Council should complete audit / compliance checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at 6 fixed points in the year, i.e. half-term and end of term. This is in line with the dates as listed in the table below. It is the Council's responsibility to notify a Provider where a parent has fallen out of eligibility and inform them of the grace period end date.

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

8. The Grace Period (Extended Free Entitlement)

- 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 The Council will be able to access information about whether a child has ceased to meet 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 Council 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 Council's Grace Period process is set out in detail in the FEL Code of Practice.

9. Compliance / Audit

- 9.1 The Council has the right to carry out checks and/or audits on the Provider to ensure compliance with the requirements of delivering the free entitlements.
- 9.2 The Authorised Officer may request in advance of a visit to the Provider copies of the following documents:

- a) Signed Parent / Carer Agreements for every funded child that reflects the actual offer.
- b) Admissions Policy
- c) Proof of eligibility for funding:
 - 2 Year old eligibility code,
 - a birth certificate for 3 and 4 Year old Universal or;
 - 3 and 4 Year old Extended Free Entitlement(EFE) code from HMRC.
- d) A copy of the provider's up to date attendance and absence management policy.
- e) Samples of attendance records (registers) for each funded child and any evidence of communication with parents regarding individual children's attendance/absences.
- f) Sample of invoices that clearly show FEL/EFE hours and chargeable hours to ensure FEL funding is not being used as a subsidy.
- g) Pricing structure that includes charges for additional services / consumables.
- h) Providers' policy on how they will respond if parent / carers are unable or unwilling for pay for additional charges.
- i) Copy of funded places publicity material given to parent / carers.
- j) Current certificates of insurance showing minimum level of cover for employer and employee liability.
- k) Access to policy and procedural documents for the FEL provision.

9.3 Such information should not be unreasonably withheld and is to be provided to the Authorised Officer within 5 provider working days of the request.

9.4 The Authorised Officer shall at all times have access to financial information about the Provider, the accounts records and all other documentation of the Provider relating to the delivery of FEL places funded under this agreement and be entitled to seek and receive explanations from officers of the Provider, or where applicable from the Department for Education, regarding the Provider's deployment of the FEL Funding, within 5 provider working days of making a request to the Provider in writing.

9.5 During a compliance visit if a discrepancy is identified in the FEL funding claim, the LA will take the following actions:-

- a) Recover any over claimed FEL monies paid to the provider.
- b) Request a full audit of FEL funding claims.

Claims for underpayment of FEL will not be considered outside of the headcount process.

9.6 If a provider does not engage with the Local Authority and postpones their scheduled compliance visit with the Local Authority Officer on more than three occasions this may lead to funding implications. The provider may enter the Notice of Concern process (see section 10.1 in the Code of Practice).

10. Charging

- 10.1 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.
- 10.2 Further information on Charging is set out in detail in Section 6 of the FEL Code of Practice.

11. Safeguarding

- 11.1 The Council has overarching responsibility for safeguarding and promoting the welfare of all children and young people in the area. The Council 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.
- 11.2 The Provider must follow the Early Years Foundation Stage (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 and contractors delivering care must have training to identify signs of abuse and neglect. The Provider must have regard to 'Working Together to Safeguard Children' 2015 guidance.

12. Flexibility

- 12.1 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.
- 12.2 The Provider should work with the Council and share information about the times and periods at which they are able to offer FEL to support the Council to secure sufficient stretched and flexible places to meet parental demands in the Council. The Provider should also make information about their offer and admissions criteria available to parents at the point the child first accesses provision at their setting.
- 12.3 The Council's process for a child receiving FEL at multiple Providers is set out in detail in the FEL Code.

13. Partnership Working

- 13.1 Partnerships should be supported by Local Authorities on four levels between:
 - a) Local Authorities and Providers
 - b) Providers working with other Providers, including childminders, schools and organisations
 - c) Providers and parents
 - d) Local Authorities and parents
- 13.2 The Council will endeavour to promote partnership working between different types of Providers, including childminders, across all sectors and encourage more Providers to offer flexible provision, alongside other Providers.
- 13.3 The Provider should work in partnership with parents, carers and other Providers to improve provision and outcomes for children in their setting.

[DfE's 30 hour mixed model partnership 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.

- 13.4 The Provider should discuss and work closely with parents to agree how a child's overall care will work in practice when their FEL is split across different Providers, such as at a maintained setting and childminder, to ensure a smooth transition for the child.

14. Special Educational Needs and Disabilities

- 14.1 The Council must strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in the local area in accordance with the Special Educational Needs and Disability Code of Practice: 0 to 25 years (January 2015).
- 14.2 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.
- 14.3 The support on offer in the area is set out in the Local Offer, which is accessible on the Council website by parents and Providers.
- 14.4 The Provider should 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.

15. Social Mobility and Disadvantage

- 15.1 The Council promotes 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.
- 15.2 The Provider should ensure that they have identified the disadvantaged children in their setting as part of the process for checking Early Years Pupil Premium (EYPP) eligibility. They will also use EYPP and any locally available funding streams or support to improve outcomes for this group.

16. Quality

- 16.1 The Early Years Foundation Stage (EYFS) statutory framework is mandatory for all schools that provide early year's 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.
- 16.2 Ofsted are the sole arbiter of quality for all FEL 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.
- 16.3 The Council has 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.

- 16.4 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.

17. Reviews

- 17.1 The Provider shall co-operate with any officers of the Council and attend / ensure that its representative nominated pursuant to clause 4.7 attends meetings requested upon reasonable notice, in order to review and promote improvements in the Provider's performance.

18. Assignment

- 18.1 The Provider shall not assign the benefit of this Agreement to any person without the prior written consent of the Council.

19. Statutory and Other Requirements

- 19.1 In the performance of this Agreement, the Provider shall comply with all statutory requirements, regulations and other provisions to be observed and performed in connection with the Services.
- 19.2 The Provider shall not do anything to cause any infringement by the Council of its obligations under the Human Rights Act 1998 or any other human rights law.
- 19.3 The Provider shall comply and shall ensure that its employees, contractors, subcontractors and agents comply with the Freedom of Information Act 2004 and the Environmental Information Regulations 2014 and any Codes of Practice in so far as these place obligations upon the Provider in the performance of its obligations under this Agreement.
- 19.4 The Provider accepts that the Council may be required to disclose information relating to this Agreement or Provider to a person in order to comply with its obligations under the Freedom of Information Act 2004 and/or other legislation. Such information may include, but shall not be limited to, the name of the Provider, the overall contract price and details of the provisions of this Agreement.
- 19.5 The Provider shall not do anything to cause any infringement by the Council of its obligations under the Freedom of Information Act 2004 and any Codes of Practice and shall facilitate the Council's compliance and comply with any reasonable request from the Council for that purpose.
- 19.6 Any failure by the Provider to comply with any future amendment or update to this Agreement will be considered a breach and this may result in the Provider being removed from the Register of Providers.

20. Assistance in Legal Proceedings and Other Investigations

- 20.1 If requested to do so by the Council, the Provider shall provide, any relevant information (including but not limited to documentation and statements from its personnel) in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved, or any relevant disciplinary hearing internal to the Council, arising out of or in connection with

the provision of the Services or any other of the Provider's obligations under this Agreement, and the Provider shall give evidence in such inquiries, arbitrations, proceedings or hearings.

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

21. Indemnity and Insurance

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

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

- a) Public Liability Insurance with a level of cover of not less than £5,000,000.00 in respect of any one claim or series of claims arising out of any one incident, and unlimited in any one year; and
- b) Employers' Liability Insurance, if applicable, to comply with statutory requirements.

- 21.3 The Provider shall promptly produce to the Council satisfactory evidence of such insurance, when reasonably requested within 5 Provider Working Days of such request being made.

22. Information and Confidentiality

- 22.1 The Provider must at all times when performing its obligations under this Agreement comply with the Data Protection Act 2018 and the General Data Protection Regulation 2018, including where appropriate, maintaining a valid and up to date notification in accordance with the Act and notify the Council promptly of any matter which may affect the Provider's ability to meet any of the terms of this Agreement.

- 22.2 All documents and information received by the Provider during or in connection with the performance of the Provider's obligations in this Agreement from the Council, its employees or any person connected with the Provider shall be held in confidence. Such documents and information shall not be disclosed by the Provider, its employees, contractors or agents or any other person without the permission of the Council, unless a duty to disclose to that person is imposed under statute or by Court Order. The Provider shall take all reasonable steps to ensure that its employees, agents and any relevant contractors are aware of and comply with this obligation of confidence.

- 22.3 All documents and information received by the Council or any person connected with the Provider from the Provider during or in connection with the performance of the Provider's obligations pursuant to this Agreement shall be held in confidence where the Provider has indicated that such documents and

information should be considered confidential and where the Council acting reasonably agrees (“Confidential Information”). The Council or any person connected with the Services shall not disclose such Confidential Information to any person not connected to the Services without the Provider’s permission unless a duty to disclose to that person is imposed under statute or by Court order. The Council shall take all reasonable steps to ensure that its employees, agents and any relevant contractors are aware of and comply with this obligation of confidence.

23. Information Sharing

- 23.1 The Local Authority and Providers of FEL agree that they are, separately, Data Controllers as defined in data protection legislation and both agree to share and process Personal Data on the terms set out in this Agreement as part of the delivery of FEL, and each party shall determine the purposes and means of its own processing of the Shared Personal Data.
- 23.2 Each Party has a valid registration with the Information Commissioner’s Office if required which, by the time that the data sharing is expected to commence, covers the intended data sharing pursuant to this Agreement.

24. Purpose of Data Processing

- 24.1 The Local Authority and the Provider collect and use personal data, under Article 6(1)(a) of GDPR, in order to claim funding on a child’s behalf as part of the contract between the parent and provider, and the Local Authority and the Provider.
- 24.2 This agreement is made between the Local Authority and the Provider, whereby it is agreed that Providers who care for children (including Funded Early Learning) must collect personal data about each child and their parents and/or carers and share this with the Local Authority in order to:
- a) fulfil and discharge its statutory duties (provision of information about young children: England) as listed in section 2 of the Childcare Act 2016 and sections 6, 7, 7A, 9A, 12 and 13 of the Childcare Act 2006.
 - b) claim Funded Early Learning (FEL) funding for eligible 2, 3 and 4 year olds.
 - c) check entitlement for Early Years Pupil Premium (EYPP) for 3 and 4 year olds.
 - d) check entitlement for Free School Meals when a child begins school.
 - e) check entitlement for Pupil Premium to support a child’s learning at school.
 - f) check entitlement for Disability Access Fund (DAF) to support children with additional needs.
 - g) identify any additional services that could support the child’s overall development to ensure they receive all that they are entitled to by sharing their information with partner agencies.
- 24.3 The personal data collected is also used to help monitor a child’s progress and achievements and help prepare the child for school.
- 24.4 The Local Authority and the provider collect special category (‘sensitive’) data on ethnicity, under Article 9(2)(g), for reasons of substantial public interest.

(Under Schedule 1, Part 2 of the Data Protection Act 2018, paragraph 8 provides for the equality of opportunity or treatment).

- 24.5 The Parties shall not process Shared Personal Data in a way that is incompatible with these purposes and must ensure the information kept is strictly confidential.
- 24.6 Officers of the Local Authority may also access Personal Data when representing Sheffield City Council on various duties they carry out for regulatory, assessment or investigative purposes (see Section 9).

25. Shared Personal Data

- 25.1 The type of Personal Data/Sensitive Personal Data that is collected and may be shared between parties is listed in “The Providers Guide to Claiming Funding for Funded Early Learning and the Extended Funded Entitlement” document.
- 25.2 The Local Authority and Provider undertake to inform Data Subjects of the purposes for which it will process their Personal Data in accordance with applicable laws, to ensure that the Data Subjects understand how their Personal Data will be processed by the Data Controller.

26. Data Quality

- 26.1 The Data Discloser shall ensure that Shared Personal Data is accurate and up to date.
- 26.2 Where either party becomes aware of inaccuracies in Shared Personal Data, they will notify the other party.

27. Data Subject Requests

- 27.1 The Parties agree that the responsibility for complying with a Subject Access Request falls to Party receiving the Subject Access Request in respect of the Personal Data held by that Party.
- 27.2 The Parties agree to provide reasonable and prompt support as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.

28. Data Retention and Deletion

- 28.1 The Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective sectors, no longer than necessary for the purposes it was originally shared for, as set out in this agreement.
- 28.2 The data controllers shall ensure that any Shared Personal Data which is no longer necessary is destroyed securely.

29. Data Breaches

- 29.1 The Local Authority and Provider agree to inform each other of any data breaches occurring before or at least at the same time as informing the Information Commissioner and/or the Data Subject.

30. Third Party Rights

30.1 The Local Authority and Provider agree to share data obtained under this agreement/CoP, with the following partners:

- **Department for Education (DfE):** Sheffield City Council (SCC) will share a family's information with the DfE to allocate funding that is distributed to childcare providers. Information about children is used for a variety of purposes including data checking exercises, self-evaluation, and influence and improve education policy and children's services.
- **Qualifications and Curriculum Development Agency (QCDA):** SCC may share personal information with the QCDA. All providers of education and care to children from ages 0-5 follow the standards set in the Early Year's Foundation Stage (EYFS) framework.
- **Public bodies responsible for the administration or auditing of public funds:** SCC may use personal information for the prevention and detection of fraud under its duty to protect the public funds it administers. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.
- **Office for Standards in Education, Children's Services and Skills (Ofsted):** SCC will share personal information with Ofsted. Ofsted uses general information about the achievement of groups of children to help make decisions about the quality of education in Early Years Settings.
- **Educational Settings your child attends:** SCC will share details about a child's funding entitlements with current and future educational settings in Sheffield that a child attends.
- **Partner agencies:** SCC will share personal details to identify any additional services and support that could support the child's overall development to ensure they receive all that they are entitled to.

31. No Legal Partnership

31.1 Nothing contained in this Agreement shall or shall be deemed to create any legal partnership or joint venture between the Council and the Provider, and nothing in this Agreement shall be deemed to constitute either of the Parties act as the agent of the other.

31.2 Nothing contained in this Agreement shall or shall be deemed to create any direct legal relationship between the Council and contractors / childminders engaged by the Provider.

32. Conduct

32.1 The Provider must have a written Code of Conduct and shall ensure that the conduct of its employees, volunteers, contractors and suppliers is at all times considerate, respectful and professional in the course of their work.

33. Termination and Withdrawal of Funding

- 33.1 The Council may at its absolute discretion terminate, reduce, withhold or suspend the whole of or part of the FEL Funding, and/or require it to be repaid in part or in full to the Council or the Department for Education as applicable, and/or terminate this Agreement immediately upon service of written notice to that effect if the Council has reasonable grounds to believe that the Provider:
- a) has been served with a Notice of Suspension of its registration by Ofsted.
 - b) overall effectiveness of provision ceases to meet the description of “good”, or better, where the early years provision is for a young child who has (i) attained the age of two years at the start of the term beginning on or following a prescribed date and (ii) is an eligible child on or after the prescribed date.
 - c) overall effectiveness of the provision ceases to meet the description of “satisfactory”, or “requires improvement”, or better, where the provision is for a young child who has attained the age of three years at the start of the term beginning on or following the prescribed date.
 - d) who is a childminder registered with an agency which has ceased to be of satisfactory quality, whether the provision is for a young child who has (i) attained the age of two years at the start of the term beginning on or following a prescribed date and (ii) is an eligible child on or after the prescribed date, or where the young child has attained the age of three years at the start of the term beginning on or following the prescribed date.
 - e) has breached the EYFS Statutory Guidance and/or the Early Education and Childcare Statutory Guidance for Local Authorities;
 - f) is in breach of any safeguarding requirements or a safeguarding issue has occurred which the Council considers places a child or children at risk of harm;
 - g) has been removed from the FEL Register of Providers;
 - h) has made any material misrepresentation prior to entering this Agreement.
 - i) has committed any act of fraud or falsifies any records made or kept for the purpose of funding calculations.
 - j) has committed a breach of this Agreement which is not capable of remedy or is in persistent or recurrent breach of its obligations hereunder.
 - k) is in breach of any of the requirements of the FEL Code.
 - l) has committed any act of bankruptcy, or if (the Provider being a company) proceedings have been commenced for the winding up of the Provider or if the Provider shall make any arrangements or composition with its creditors, or if a Receiver or Administrative Receiver or Manager on behalf of a creditor is appointed, or if the Provider shall suffer any execution to be levied on its goods;
 - m) has done anything improper to influence the Council to give the Provider any contract or committed an offence under the Prevention of Corruption Acts 1889 to 1916 or under Section 117(2) of the Local Government Act 1972 or under the Bribery Act 2010;
 - n) is guilty of any gross misconduct or guilty of any conduct which the Council reasonably considers to be prejudicial to the Council’s interests.

- 33.2 When a provider closes due to an inadequate Ofsted rating and is removed from the FEL register, the Local Authority will work with the provider to investigate any FEL funding issues.
- 33.3 This Agreement shall terminate automatically if the Council is no longer in receipt of funding to enable the Provider to perform the Services.
- 33.3 Termination of this Agreement shall be without prejudice to the rights of the Council or liabilities of the Provider accrued hereunder.

34. Appeals Process

- 34.1 In the event that the Provider is denied approval to offer the FEL or has their funding withdrawn as set out in clause 26 above, the Provider has the right to appeal against that decision.
- 34.2 The right to appeal and the process is set out in the FEL Code (Section 2).
- 34.3 The Council's complaints procedure is found [here](#).

35. Complaints Process

- 35.1 The Provider must ensure they have a complaints procedure in place that is published and accessible for parents who are not satisfied their child has received their FEL in the correct way, as set out in this Agreement and in [Early Education and Childcare Statutory guidance for Local Authorities](#). In the first instance the parents should discuss the complaint with the Provider to seek a resolution, before contacting the Council.
- 35.2 Further information on how to escalate a complaint to the Council is set out in Section 2.10 of the FEL Code

36. Waiver

- 36.1 If the Provider is in material breach of this Agreement in any of the circumstances set out in Clause 25 above, the Council may decide to terminate this Agreement immediately. If the Council chooses not to terminate immediately it reserves the right to do so in respect of that breach in the future and if the Council takes this decision it is not a waiver of its right to terminate.

37. Agency

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

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

38. Records, Information and Access

- 38.1 The Provider should retain financial documentation relating to the services it provides for at least six years from the date of completion of the Services. Documents containing Personal Data or Shared Personal Data of individuals accessing the FEL entitlements must be retained for no longer than necessary for the purposes it was originally shared for as set out in the agreement.. Officers of the Local Authority may also access records and documents when representing the Council on various duties they carry out for regulatory assessment or investigative purposes.
- 38.2 The Provider shall promptly provide such information relating to the Services as is reasonably requested by the Authorised Officer from time to time, in order to inspect records and documents relating to the Service.
- 38.3 The Provider shall permit access by an Authorised Officer to the premises where the Service is being provided and/or where the Provider's records are held, following any reasonable request made by the Council in writing providing at least 5 Provider working days' notice, in order for the Authorised Officer to inspect such records and documents relating to the Service.

39. Exclusion of Third Party Rights

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

40. Notices Regarding this Agreement

- 40.1 All notices required by or relating to this Agreement shall be in writing and shall be sent by prepaid first class post, delivered by hand, email or by fax to the parties at their address specified in this Agreement or to such other address as may be notified in writing.
- 40.2 All notices shall be deemed duly given on the second Provider working day following the date of posting or, if delivered by hand or sent by email or by fax, immediately when the notice is transmitted.