



CITY OF YORK COUNCIL

Provider Agreement for the delivery of funded early education and childcare provision

1st April 2023 – 31st March 2025

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This Agreement is made on the 1st April 2023

Between:

- (1) **The City of York Council** of West Offices, Station Rise, York, YO1 6GA (the “**Local Authority**” or “**CYC**”); and
- (2) The early years provider whose details are provided in Schedule 1 to this Agreement (the “**Provider**”)

Recitals:

- (a) The City of York Council, the Local Authority, has a statutory duty to secure sufficient childcare and funded early education provision for each young child in their area in a diverse range of provision, in order to meet parental demand.
- (b) This agreement is for all early years Providers in the Private, Voluntary, Independent and Maintained Sectors based in York who wish to claim the Department for Education (DfE) funding for the delivery of Funded Early Education places (FE) for 2, 3 and 4 year olds. It builds on the guidance provided in the Department for Education Statutory Guidance and is intended to enable Providers and the Local Authority to understand their respective roles, explain the financial arrangements and funding process and to ensure that the FE delivers the best outcomes for children and their families.
- (c) The Local Authority is very proud of the excellent partnership working that exists between both the Local Authority and early years Providers and between early years Providers themselves, via the Shared Foundation Partnership arrangements across the city. This document is intended to further strengthen these relationships by clearly setting out the roles and responsibilities of CYC and early years Providers in securing sufficient early years and childcare provision across the city.

Overview

This document details the requirements and expectations for Providers delivering the Funded Entitlement (FE), in combination with DfE Early education and childcare statutory guidance for local authorities.

Unless otherwise stated, in this document “FE” is understood to cover:

- The 15 hour entitlement for the most disadvantaged 2 year olds and the universal 15 hour entitlement for 3&4 year olds; and
- The 30 hours Extended Funded Entitlement (EFE) available for eligible 3 & 4 year olds.

Where this document refers to Ofsted, this is also deemed to refer to any other independent inspectorate approved by the Secretary of State.

The term Provider refers to all Providers of the FE however paragraphs relating to the removal of funding do not apply to Maintained nursery provision.

This document is intended to relate to FE delivery only and not how Providers operate their private businesses, including charges for any provision which does not include FE.

Duration

This Agreement shall commence on 1st April 2023 and expire on 31st March 2025 and shall continue thereafter on a rolling 24 month basis unless terminated earlier in accordance with this Agreement.

CYC may terminate this Agreement at the end of any school term by serving written notice on the Provider at least a term prior to the proposed termination date.

1 CYC responsibilities and agreement requirements

- 1.1 CYC will secure an FE place for every eligible child in their area.
- 1.2 CYC will work in partnership with Providers to agree how to deliver FE places.
- 1.3 The Local Authority will be clear about their role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (“**SEND**”) as well as their expectations of Providers.
- 1.4 The Local Authority will contribute to the safeguarding and promote the welfare of children and young people in their area.

2 Key Provider responsibilities

- 2.1 The Provider must comply with all relevant legislation and insurance requirements.
- 2.2 The Provider shall deliver the FE 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 funded places, along with their services and charges. Those children accessing the FE should receive the same quality and access to provision.
- 2.3 The Provider must submit accurate and timely data in line with the processes and policies contained in this document and in accordance with dates issued in the termly funding letter.
- 2.4 The Provider must have arrangements in place to support children with special educational needs and/or disabilities (SEND). These arrangements should include a clear approach to identifying and responding to SEND. Providers should utilise the Early Years Inclusion Fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents.
- 2.5 The Provider will have regard to connected Local Authority guidance and protocol published on <http://www.yor-ok.org.uk/workforce2014> or elsewhere.
- 2.6 The Provider must notify CYC if there is a change in the Provider’s premises, ownership, committee, manager or a significant change in their senior leadership team.
- 2.7 The Provider must re-affirm their compliance with this Agreement by submitting an updated Schedule 1 to CYC prior to the expiry date of each contract period in order to remain eligible to receive funding for the following period.

3 Safeguarding

- 3.1 The Local Authority has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. They have a number of statutory functions under the 1989 and 2004 Children Acts which make this clear, and the ‘Working together to safeguard children’ 2018 guidance <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2> and ‘Keeping children safe in education 2022 Statutory guidance for schools and colleges’ (<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>) set these out in detail.
- 3.2 The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that are in line with local guidance and procedures for responding to and reporting suspected or actual abuse and neglect. A lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider must have regard to ‘Working together to safeguard children’ 2020 guidance.

4 Eligibility

- 4.1 The Provider should check original copies of documentation to confirm a child has reached the eligible age on initial registration for all funded entitlements however the Provider should not retain paper or digital copies of this documentation
- 4.2 The Provider should offer places to eligible two-year-olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for three- and four-year-olds.
- 4.3 The Local Authority must ensure that a child has a funded entitlement place no later than the beginning of the term following the child and the parent meeting the eligibility criteria for the funded entitlements.
- 4.4 Alongside the 30 hours eligibility code, which is the child's unique 11-digit number, and original copies of documentation, a Provider must acquire written consent from, or on behalf of, the parent to be able to receive confirmation and future notifications from the Local Authority of the validity of the parent's 30 hours eligibility code.
- 4.5 Once a Provider has received written consent from the parent, they should verify the 30 hours eligibility code with the Local Authority.
- 4.6 The Local Authority will confirm the validity of 30 hours eligibility codes to allow Providers to offer 30 hours places for eligible three- and four-year-olds. The Local Authority will provide a validity checking service to Providers to enable them to verify the 30 hours eligibility code. The Eligibility Checking Service (ECS) allows all Local Authorities to make instant checks for code validity.
- 4.7 Thereafter, the Local Authority will complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours childcare, in line with the dates as listed at table A below. It is the Local Authority's responsibility to notify a Provider where a parent has fallen out of eligibility and inform them of the grace period end date.

Table A

Grace Period End date:	CYC audit dates:
31 March	13 th – 31 st March
31 August	15 th – 31 st July & 15 th – 31 st August
31 December	1 st – 31 st December

5 The Grace Period for the extended funded entitlement

- 5.1 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. See funded entitlement guidance document on www.yor-ok.org.uk/workforce2014
- 5.2 Local Authorities will be able to access information about whether a child has ceased to meet the eligibility criteria and entered the grace period via the Eligibility Checking Service. The grace period end date will automatically be applied to eligibility codes.
- 5.3 The Local Authority will 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.

6 Flexibility

- 6.1 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.
- 6.2 The Provider should work with the Local Authority and share information about the times and periods at which they are able to offer funded entitlements to support the Local Authority to secure sufficient stretched and flexible places to meet parental demand in the Local Authority. 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.
- 6.3 Parents can choose to split their entitlement between multiple Providers, though no more than two sites in one day. Providers must ensure parents who are accessing a 30 hour place between multiple Providers have identified the provision who is claiming for the universal 15 hours entitlement on the signed parental declaration form.
- 6.4 CYC will pay each Provider for the amount of FE taken at each Provider, in line with that stated on the portal and parental declaration form, subject to this not exceeding the total number of hours the child is eligible. In cases where this is a potential overclaim, CYC will liaise with the Providers concerned to agree where the FE is to be claimed.
- 6.5 Local Authorities and Providers will bear in mind the impact that multiple Providers may have on a child's learning, development and wellbeing.
- 6.6 The LA will undertake sufficiency audits with Providers 3 times per year to gather data on number of places offered across each age range along with current vacancy data. This will support the LAs childcare sufficiency duty as outlined in the Childcare Act 2006. Refer to accompanying guidance for information on models of delivery at www.yorok.org.uk/workforce2014.

7 Partnership working

- 7.1 CYC supports partnership working on four levels between:
 - i. Local Authorities and Providers
 - ii. Providers working with other Providers, including childminders, schools and organisations
 - iii. Providers and parents
 - iv. Local Authorities and parents
- 7.2 CYC promotes and supports partnership working between different types of Providers through its Shared Foundation Partnership model. CYC encourage all Shared Foundation Partnerships to focus on the following key themes:
 - Improving quality (including transition, moderation, pedagogy, supporting vulnerability)
 - Increasing availability of places to meet demand for childcare including families with children with SEND
 - Social mobility, closing the word gap and speech language and communication
<https://www.gov.uk/government/publications/improving-social-mobility-through-education>
- 7.3 CYC also encourages the partnerships to regularly review their membership to ensure that all local Providers, including out of school clubs and childminders are invited to the meeting. Partners such as Family Learning and the Healthy Child Service should be invited as appropriate.

- 7.4 Each partnership should have an appointed Chair and there should also be an identified Partnership SENDCo (who completes and reviews a Partnership Inclusion Offer), Early Years Lead and a Social Mobility Champion to give focus to closing the word gap in the early years and promote the sharing of best practice.
- 7.5 The Provider should work in partnership with parents, carers and other Providers to improve provision and outcomes for children in their setting. An interactive toolkit has been developed by the Department for Education to help Providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring. The toolkit can be found at:
<https://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit>.
- 7.6 The Provider should discuss and work closely with parents to agree how a child's overall care will work in practice when their funded entitlement is split across different Providers, such as at a maintained setting and childminder, to ensure a smooth transition for the child.

8 Special educational needs and disabilities

- 8.1 The Local Authority will strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in their local area as per the Special Educational Needs and Disability code of practice 0 to 25 years (January 2015):
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf).
- 8.2 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.
- 8.3 The Local Authority will be clear and transparent about the support on offer in their area, through their Local Offer, so parents and Providers can access that support. Partnerships are encouraged to complete the Local Offer Template which can be found on the yor-ok website:<http://www.yor-ok.org.uk/workforce2014/Childcare%20Strategy/shared-foundation-partnership.htm>. York's local SEND offer can be found at: <https://www.yor-ok.org.uk/families/Local%20Offer/sendlocaloffer>
- 8.4 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 with SEND.

9 Social mobility and disadvantage

- 9.1 The Local Authority will promote equality and inclusion, particularly for disadvantaged families, children in care and children in need by removing barriers of access to funded places and working with parents to give each child the support to fulfil their potential.
- 9.2 The Provider should ensure that they have identified the disadvantaged children in their setting as part of the process for checking EYPP eligibility.
- 9.3 The Provider will use EYPP and any locally available funding streams or support to improve outcomes for this group.

10 Quality

- 10.1 The Statutory framework for the early years foundation stage (**EYFS**) 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.

- 10.2 Ofsted are the sole arbiter of quality for all funded entitlements and Ofsted and inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.
- 10.3 The CYC Quality Improvement Advisors (**QIAs**) will provide information, advice and guidance, signposting to relevant training for childcare Providers and newly registered Providers on the EYFS, SEND, vulnerable and disadvantaged children, two year olds and effective safeguarding and child protection. Support is prioritised to childcare Providers who are judged less than "good" to improve the overall effectiveness of provision.
- 10.4 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.
- 10.5 It is CYCs aim that all children are able to take up their FE place in a high quality setting. Evidence shows that higher quality provision has greater developmental benefits for children, particularly for the most disadvantaged children. The evidence also shows that high quality provision at age two brings benefits to a child's development.

Settings who receive a "Requires Improvement Ofsted Judgement"

- 10.6 A decision will be made as to whether the setting can continue to deliver 2 year old funded places based on the findings of the Ofsted inspection. The Provider will receive:
 - a) Written notification from CYC that they will be removed from the Directory of Providers (the "Directory") for delivery of 2 year old funded places at the end of that half term/term (a minimum of half a terms notice period will usually be given to the Provider) or
 - b) A Notice to Improve, to inform them that they have been placed under temporary registration for delivery of 2 year old funded places and may be removed from CYC's Directory of Providers unless they can demonstrate significant quality improvement within an agreed timescale.
- 10.7 Once the Ofsted report has been published, the Provider must inform parents of the Ofsted judgement and funding implications.
- 10.8 The QIAs will support the setting to produce a Setting Improvement Plan focusing on areas identified in the Ofsted report and the setting will then receive targeted support from the QIAs.
- 10.9 If a decision is made to allow the setting to continue to deliver funded places for existing 2 year old funded children, a '2-year-old funding assessment' must be completed by the child's key person for all funded 2 year olds at the setting. This assessment must detail the child's current age and stage of development, outline targets for development and how the child's key person will help them to achieve these targets.
- 10.10 Whilst under temporary registration, funding will only be paid for those 2, 3 and 4 year old children who are currently attending the setting, (subject to meeting/working towards the actions set out in the Setting Improvement Plan). The Provider will not receive funding for any children who take up a place at the setting after this point. This may include any children who are accessing an initial 'settling in' session at this time.
- 10.11 The QIAs will visit the setting regularly to monitor progress towards actions identified in the Improvement plan and will use the 2 year old funding assessment in order to moderate the age and stage judgements, monitor that children are making at least satisfactory progress and scrutinise the targets on the assessment.

- 10.12 If progress is sufficient and children are making satisfactory progress, the setting will continue to receive funding for existing funded children on a half termly basis until their next Ofsted inspection.
- 10.13 If the children are not reaching age related expectations or are not making satisfactory progress further support and signposting to training for the setting will be offered by the QIAs.
- 10.14 If, following support and training the children continue to work below age related expectations or are not making satisfactory progress or progress towards actions identified in the Improvement Plan is inadequate a decision will be made to terminate funded 2 year old places and the Provider will receive written notification from CYC that they will be removed from the Directory for delivery of funded 2 year old places at the end of that half term/term.

Settings who receive an Inadequate / Not Met with Actions Ofsted judgement

- 10.15 A decision will be made as to whether the setting can continue to deliver 2, 3 and 4 year old funded places based on the findings of the Ofsted inspection. The Provider will receive:
- a) Written notification from CYC that they will be removed from the Directory of Providers (the "Directory") for delivery of 2, 3 and 4 year old funded places at the end of that half term/term (a minimum of half a terms notice period will usually be given to the Provider however this may not apply for Providers who have received an Inadequate Ofsted rating) or
 - b) A Notice to Improve, to inform them that they have been placed under temporary registration and may be removed from CYC's Directory of Providers unless they can demonstrate significant quality improvement within an agreed timescale.
- 10.16 Once the Ofsted report has been published, the Provider must inform parents of the Ofsted judgement and funding implications.
- 10.17 The QIAs will support the setting to produce a Setting Improvement Plan focusing on areas identified in the Ofsted report and the setting will then receive targeted support from the QIAs.
- 10.18 If a decision is made to allow the setting to continue to deliver funded places, a '2 year old funding assessment' must be completed by the child's key person for all existing funded 2 year olds at the setting. This assessment must detail the child's current age and stage of development, outline targets for development and how the child's key person will help them to achieve these targets.
- 10.19 The QIAs will visit the setting regularly to monitor progress towards actions identified in the Improvement Plan and use the 2 year old funding assessment in order to moderate the age and stage judgements, monitor that children are making at least satisfactory progress and scrutinise the targets on the assessment.
- 10.20 If progress towards the Improvement Plan is sufficient the setting will continue to receive funding for existing 2, 3 and 4 year old funded children on a half termly basis until their next Ofsted inspection.
- 10.21 If the children are not reaching age related expectations or are not making satisfactory progress further support and signposting to training for the setting will be offered by the QIAs.

- 10.22 If, following this support and training the children continue to work below age related expectations/are not making satisfactory progress or progress towards actions identified in the Setting Improvement Plan, funding for that setting will be reviewed.
- 10.23 The QIAs will support the setting to formulate a Setting Improvement Plan, addressing the key priorities and issues highlighted in the Ofsted visit. Regular support visits will be made by the QIAs to ensure progress is being made against the actions agreed in the Setting Improvement Plan.
- 10.24 The registration will be reviewed on a half termly basis to ensure progress is being made towards actions identified in the Setting Improvement Plan.
- 10.25 If actions have not been successfully achieved and/or there is no evidence of significant quality improvement, the setting will be notified that they will be removed from the Directory of Providers, with a notice period of half a term. At this point, the setting would need to inform parents of the situation immediately to allow them time to find alternative provision.
- 10.26 For a setting placed under temporary registration, funding payments will be made as follows:
- An appropriate interim payment will be made and processed in the usual way at the start of the term (this is likely to be 50% of the estimated take up rather than the usual 85%).
 - Any remaining balance will be paid during the second half of the term based on the data submitted onto the funding portal and will reflect whether the Provider is to be funded for the full term or a half term.
- 10.27 Whilst under temporary registration, funding will only be paid for those 2, 3 and 4 year old children who are currently attending the setting, (subject to meeting/working towards the actions set out in the Setting Improvement Plan). The Provider will not receive funding for any children who take up a place at the setting after this point. This may include any children who may be accessing an initial 'settling in' session at this time.

11 Business planning

- 11.1 Providers must register to use the online funding portal to submit headcounts and claims within the times and periods requested by the LA.
- 11.2 It is the Providers responsibility to check that the data submitted via the funding portal, both estimated figures and actual child data, is correct.
- 11.3 The Local Authority should clearly set out the documentation that they need to receive from Providers to support payment and delivery of funded entitlements and the timetable which Providers should follow when submitting their documentation, this includes setting out the importance of timely and accurate census returns.
- 11.4 CYC will charge an administration fee of £30 for any late or additional payments made to Providers for data submitted after the deadline dates for that term. Additional payments will be made at the discretion of CYC and will depend on how late after the deadline date the Provider has submitted their data and be subject to capacity of the team.
- 11.5 If a Provider submits their actual child data after the deadline date, any potential overclaims which arise will not be investigated as the funding will already have been allocated to the other Provider(s). The Provider will therefore not receive funding for these hours.
- 11.6 The Provider will ensure they submit timely and accurate information, including, but not limited to, headcount data, census data, parental declarations and invoices, as per the

financial guidelines of their Local Authority. Failure to do so may result in inaccurate, delayed or suspended funding.

- 11.7 The Provider should maintain accurate financial and non-financial records relating to funded entitlement places and should give the Local Authority access on reasonable notice to all financial and non-financial records relating to FE places funded under the Provider agreement, subject to confidentiality restrictions.

12 Charging

- 12.1 Government funding is intended to cover the cost to deliver 15 or 30 hours a week of funded, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.
- 12.2 The Provider can charge for meals and snacks as part of a FE place and they can also charge for consumables such as nappies or sun cream and for services such as trips and musical tuition. Parents should therefore expect to pay for these, although these charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, Providers who choose to offer the FE are responsible for setting their own policy on how to respond, and options may include waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals. Providers should be particularly mindful of the impact of additional charges on the most disadvantaged parents.
- 12.3 The Provider should deliver the FE consistently so that all children accessing any of the FE will receive the same quality and access to provision, regardless of whether they opt to pay for optional hours, services, meals or consumables.
- 12.4 The Local Authority should not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent's ability to take up their child's funded place. The Provider should be completely transparent about any additional charges.
- 12.5 The Provider should publish their admissions criteria and ensure parents understand which hours/sessions can be taken as funded provision. Not all Providers will be able to offer fully flexible places, but Providers should work with parents to ensure that as far as possible the patterns of hours are convenient for parents' working hours.
- 12.6 The Provider can charge parents a deposit to secure their child's funded place but should refund the deposit in full to parents within a reasonable time scale.
- 12.7 The Provider cannot charge parents "top-up" fees (the difference between a Provider's usual fee and the funding they receive from the Local Authority to deliver funded places) or require parents to pay a registration fee as a condition of taking up their child's funded place.
- 12.8 The Provider should ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their FE completely free of charge and understand fees paid for additional hours. The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific Provider.

13 Funding

- 13.1 The Local Authority should pay all Providers the full amount owed to them monthly unless they have good reason not to do so, for example, if, after consultation, the clear majority of Providers opt for an alternative method of payment. Local Authorities should be mindful of the concerns of smaller providers, particularly childminders, about their cash flow when making decisions about payment methods. Local Authorities should regularly review how

they pay Providers to ensure that it continues to meet the needs of all providers in their area.

- 13.2 Following consultation with providers, where the clear majority opted to keep the current payment system, the Local Authority will continue with the current termly payment method, set out in detail in the following paragraphs.
- 13.3 The Provider should accurately complete and submit headcount and other necessary returns by the agreed date to support the Local Authority to make payment. Information submitted onto the portal should match the information on the signed Parental Declaration Forms.
- 13.4 The Provider shall submit funding data via the "Online Funding Portal". Guidance Notes for claiming via the Online Funding Portal can be downloaded from the following link: <http://www.yor-ok.org.uk/workforce2014>
- 13.5 The Local Authority will email a termly funding letter to Providers containing important deadline dates for Providers for submitting estimate and actual child data for that term. The Provider **must** enter estimate and actual figures onto the Portal by the deadlines specified, as failure to do so may result in no payment of funding for that term.

Interim Payments

- 13.6 Interim payments are processed by the Local Authority during the first week of term for 3 & 4 year old funding and during the second week of term for 2 year old funding, based on the number of estimated hours submitted onto the Portal by the provider, at the start of each term.
- 13.7 The Interim payment will be based on 85% of this estimated number of hours per week. Payments will be made based on three equal terms of 12.67 weeks (38 weeks ÷ 3).
- 13.8 Providers will be funded for all eligible children whose details have been added onto the Portal by the deadline dates for that term. If a child starts after the deadline for importing data the setting may be able to receive funding for the child, depending
 - a) When the child started at your setting
 - b) If the child has been attending another setting (including outside CYC area)

Final Payments

- 13.9 A Provider's termly funding is based upon the total number of 'Actual' hours entered on the Portal by the provider. Final payments will be made as soon as possible during the second half of a term, once all overclaims have been resolved and are calculated as follows:

Final payment = Total termly hours x hourly rate x 12.67 weeks – interim payment.

Overpayments

- 13.10 If a Provider's interim payment exceeds the total funding due to them that term, resulting in an overpayment, an invoice will be raised for the balance owed to the Local Authority.
- 13.11 A reduced interim payment, less than 85%, may be made by the Local Authority if a Provider has input inaccurate estimated figures, resulting in significant overpayments, in two successive terms. The amount that the interim payment is reduced by will depend on the amount overpaid in previous terms.

Funding a child who moves setting during the term

- 13.12 The Local Authority will fund a child for half a term to allow for children who move provision during a term. The Provider should indicate on the “Notes” section (Actuals Tab) of the Portal where a child will only be at your setting for half a term.
- 13.13 The following policy is for children taking up a place for periods of time less than half a term:
- a) The Local Authority fund a minimum of half a term therefore if a child leaves a setting during the first half term, half a terms funding (12.67 / 2 weeks) will be paid to the setting that the child attended at the start of the term.
 - b) If a child leaves a setting after the start of the second half of the term, half a terms funding will be paid to the setting where the child attended at the start of the second half of the term.
- 13.14 In exceptional circumstances e.g., where a child has started a new provision but leaves during their settling in period, or a setting receives a less than Good Ofsted judgement, there will be discretion for the Local Authority Early Years and Childcare Service to waive this policy, to ensure the funding is allocated in a fair and appropriate manner.
- 13.15 When a child moves Provider it is expected that the notice period will be honoured by the parent/carer. FE funding may not be paid to a new Provider if the notice period is still in effect at the previous Provider.
- 13.16 If a child moves to the Provider’s provision from another Provider the new Provider must check with the parent that they have informed the previous Provider that the child will no longer be claiming FE at their setting and that the parent has honoured the agreed notice period. The Provider should clearly explain the funding procedure to the parent, emphasising the checking process between Providers, including schools, to ensure the child is not claiming more than 15 hours across two Providers/Local Authorities. This will help to avoid potential overclaims.

Different Local Authority Arrangements

- 13.17 If a child who is resident in the York Council area (CYC area) attends a Provider located in another Local Authority area, the other Local Authority will fund the early education place. Similarly, if a child who lives out of the York area attends a Provider located in the CYC area, CYC as Local Authority will fund the place.
- 13.18 Each Local Authority will have different procedures for claiming funding and may also fund the entitlement at a different rate. The Provider acknowledges that if a child transfers to a new Provider located in a different Local Authority mid-term, the Local Authority in which the new Provider is located may not be able to fund the place until the start of the following term.
- 13.19 Lists of ‘out of area’ children are sent to each Local Authority every spring term in order to check that children are not being funded for more than their FE

Children From Outside the UK

- 13.20 A child moving to England from another country is entitled to the universal FE on the same basis as any other child regardless of whether they have British Citizenship or not. Funding will be paid through the normal “Headcount” process utilised nationally in this area of

childcare provision. This includes the children of temporary residents, students and asylum seekers and they receive FE funding on the same basis as any other child.

- 13.21 Children visiting or on holiday to the UK from abroad cannot normally access FE funding as they are not classed as residing in the UK.

Settling in period / Children starting late in the term

- 13.22 Children may take up reduced hours during the settling in period, however you can claim for their normal pattern of attendance for the term, during this period. The Local Authority recommends a maximum of a 3 week settling in period.
- 13.23 The Local Authority does not recoup funding for a child who leaves a setting late in the term. If a child starts a setting very late in the term, CYC would encourage Providers to be flexible in allowing the child to access a FE place, despite them not having received funding for the child for that short period of time in a term.

Early Years Pupil Premium (EYPP)

- 13.24 Parent information recorded on the Parental Declaration Form should be input through the Portal by the deadline date for the term. If the information has previously been provided by the Provider this does not have to be submitted again. The Local Authority carry out EYPP checks every fortnight and for every eligible child the Provider will receive the current rate, up to a maximum of 15 universal hours per week which will be included in the balance payment for the term. If a child attends more than one provider, the amount will be pro-rata.
- 13.25 For further information and step by step guidance please follow the link <http://www.york.org.uk/workforce2014/>

Note for childminders

- 13.26 Funding for care provided for a child by a parent, stepparent, foster parent or other relative or by a person who fosters the child privately or has parental responsibility for the child is specifically excluded under the Childcare Act 2006. For further information see: www.legislation.gov.uk/ukpga/2006/21/section/18

Statement of funded hours report

- 13.27 At the end of each funding period the Provider will be able to view a summary statement of funding received that term. This can be accessed via the Portal by selecting the "summary tab" for the relevant term. The summary will detail the funding claimed overall by the Provider, the total for each child and the amount paid for Early Years Payment Provision, Deprivation and Disability Access Fund.

14 Compliance

- 14.1 The Local Authority can carry out checks and/or audits on Providers to ensure compliance with the requirements of delivering the funded entitlements.
- 14.2 The Local Authority will carry out audits on a sample of Providers each term to ensure compliance with the requirements of delivering the funded entitlements. These may be undertaken by an independent auditor such as Veritau or the Local Authority's Early Years and Childcare Service. Providers will receive notification of the audit and documentation that they will be required to produce, in advance of the audit visit.

- 14.3 The Provider has the responsibility to ensure all their relevant staff who handles admissions into the provision are aware of the conditions of this agreement.
- 14.4 The Provider must publish their offer of FE places in advance of children taking up a placement. This includes how an FE place can be taken, term time only or 'stretched' and the hours of the day that are classed a funding. Parents must clearly see that they are receiving the child's entitlement for the equivalent claimed for FE hours.
- 14.5 The Provider is responsible for ensuring a child is age eligible for a funded place and ensuring all parents/legal guardians sign a copy of the parental declaration form each term.
- 14.6 Where a dispute cannot be resolved between Providers and parents as to which Provider claims a funded place, CYC will split funded hours equally amongst the Providers involved and so long as the child has been in attendance for the number of hours to be shared equally.

15 Termination and withdrawal of funding

- 15.1 If a Provider wishes to withdraw from the Directory of Providers (the "Directory") and delivery of the FE, they must notify CYC in writing as soon as possible. They must also inform by letter all parents or carers using their service, giving at least a terms / 3 months notice to enable parents or carers to make alternative arrangements.
- 15.2 Suspension of a Provider's registration by Ofsted, safeguarding issues, or a breach of statutory requirements by the Provider may result in the termination of the arrangement and withdrawal of funding.
- 15.3 CYC also reserves the right, subject to the paragraphs below, to remove a Provider from its Directory for any other appropriate reason, including but not limited to:
 - a) failure to comply with the requirements of the Department for Education Statutory Guidance;
 - b) an Inadequate, requires improvement (for 2 year old funding) or not met Ofsted judgement;
 - c) fraud.
- 15.4 CYC may terminate this agreement and related arrangements with immediate effect in the event of any one or more of termination grounds contained within the below applying:
 - a) (a),(b),(c) or (d) of regulation 7 (Termination of the arrangements) of the Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014;
 - b) (a),(b),(c),(d) or (e) of regulation 37 (Arrangements between Local Authorities and early years Providers: termination) of The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016

16 Notice to Improve Process

- 16.1 Where CYC wish to exercise their right to terminate as provided for by Clause 15.3 above, CYC may first (where appropriate and where there are not other serious termination/ withdrawal issues) issue the Provider with Notice to Improve. A meeting will be held between the relevant CYC representative(s) and the Provider to produce a Setting Improvement Plan detailing specific targets and success measures to be achieved within agreed timescales.
- 16.2 CYC will support the Provider to rectify the breach within an agreed reasonable

timescale (not exceeding 18 months). Support may also be available from professional sector specific support organisations.

- 16.3 If the Provider fails to meet the targets set out in their Notice to Improve and/or their Setting Improvement Plan, or does not fully engage in the quality improvement process, the Provider will receive written notice from CYC of their intent to remove them from the Directory. The Provider will be removed from the Directory at the end of that half term/term and will not be eligible to deliver FE places from the following term. However, a minimum of half a terms notice period will usually be given to enable the Provider to give notice to their parents. (This may not apply for Providers who have received an Inadequate Ofsted rating).
- 16.4 An Appeals Process exists for Providers who wish to appeal against this decision and the removal will not be effected until the Provider has been given the opportunity to appeal. The Provider will have 14 days to appeal this decision.
- 16.5 A Provider who has been removed from the Directory may subsequently be re-admitted if CYC is satisfied the grounds for removal are no longer applicable and the Provider meets CYC's conditions for funding. It is the Provider's responsibility to contact CYC and demonstrate that the initial breach has been rectified and that they are able to sustain further improvement.

17 Appeals process

- 17.1 A Provider may be denied approval to offer the FE or have their funding withdrawn as set out above. The Provider can appeal against that decision.

An Appeals Process is available for:

a) Parents/carers who are not satisfied that their child has received their FE in accordance with the legislation or as set out in this agreement and in Early Education and Childcare Statutory guidance for Local Authorities and who are not able to resolve their concern directly with the Provider

b) Providers who wish to appeal against issues relating to the administration of the FE places.

- 17.2 Link to the Provider appeals process can be found at <http://www.york.org.uk/workforce2014>.

18 Complaints process

- 18.1 The Provider should ensure they have a complaints procedure in place that is published and accessible for parents who are not satisfied their child has received their FE in the correct way, as set out in this agreement and in Early Education and Childcare Statutory guidance for Local Authorities.

- 18.2 Any parents or carers who are:

a) not satisfied that their child has received their FE in accordance with the legislation or as set out in this agreement and in Early Education and Childcare Statutory guidance for Local Authorities; and

b) who are not able to resolve their concern directly with the Provider

can complain to the Local Authority contacting 01904 553880 or at earlyyearsfunfing@york.gov.uk. Further information is available via <http://www.york.org.uk/workforce2014/>

- 18.3 If a parent or Provider is not satisfied with the way in which their complaint has been dealt with by the Local Authority or believes the Local Authority has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.

19 General Obligations

- 19.1 The Provider and anyone acting on its behalf will ensure compliance with the law in force from time to time and in particular agrees to comply with all legislation applying to the provision of Early Years Provision including, but without limitation, the following:

Health and Safety at Work Act 1974

The Data Protection Legislation (as defined in clause 20 below)

Human Rights Act 1998

Freedom of Information Act 2000

Special Educational Needs and Disability Act 2001

Equality Act 2010

Childcare Act 2006 and 2016

- 19.2 The Provider shall liaise with and co-operate with all Local Authority officers and other Providers.
- 19.3 The Provider will comply with all reasonable instructions issued by the authorised officers.
- 19.4 The Provider shall declare in writing to the authorised officers any potential or actual conflicts of interest that may arise between the Provider, its employees or agents and the Local Authority.

Freedom of Information and Environmental Information Regulations

- 19.5 Definitions

In this Clause:

“**EIRs**” means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant government department concerning such regulations.

“**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant government department concerning such legislation.

“**Request For Information**”:

in relation to a request for information:

(a) under the FOIA, has the meaning given under section 8 of the FOIA; and

(b) under the EIRs, has the meaning given under regulation 5 of the EIRs.

- 19.6 The Provider acknowledges that the Local Authority is subject to the requirements of the FOIA and the EIRs. The Provider shall:

19.6.1 provide all necessary assistance and cooperation as reasonably requested by the Local Authority to enable the Local Authority to comply with its obligations under the FOIA and EIRs;

19.6.2 transfer to the Local Authority all Requests for Information relating to this Funding Agreement that it receives as soon as practicable and in any event within two working days of receipt;

19.6.3 provide the Local Authority with a copy of all information held on behalf of the Local Authority which is requested in the Request for Information, and which is in its possession or control in the form that the Local Authority requires within five working days (or such other period as the Local Authority may reasonably specify) of the Local Authority's request for such information; and

19.6.4 not respond directly to a Request for Information addressed to the Local Authority unless authorised in writing to do so by the Local Authority.

19.7 The Provider acknowledges that the Local Authority may be required under the FOIA and EIRs to disclose information of the Provider (except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and EIRs) without consulting or obtaining consent from the Provider. The Local Authority shall take reasonable steps to notify the Provider of a Request for Information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Local Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

20 Data Protection

20.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 20 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

20.2 Notwithstanding and without prejudice to the generality of 20.1 above, for the avoidance of any doubt, the Parties confirm that they are each independent Data Controllers in relation to any shared Personal Data and that no Party is to be a Data Processor on behalf of any other Party. Consequently:

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

20.2.2 each Party disclosing Personal Data shall be responsible for the Personal Data while it is in transit to the receiving Party;

20.2.3 each Party receiving data shall be entirely responsible for ensuring that it processes the Personal Data it receives in accordance with the Data Protection Legislation; and

20.2.4 each Party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data.

For the avoidance of any doubt, the Local Authority's activities in respect of any Personal Data that the Provider shares with it under this Agreement are described more fully in the Privacy Notice published online at <https://www.york.gov.uk/privacy/EarlyYearsAndChildcareProviders> as updated by the Local Authority from time-to-time in accordance with the Data Protection Legislation.

20.3 Transportation of Personal Data shall:-

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

- a) through an encrypted VPN connection, or
- b) through such other method as may be expressly agreed between the Parties in writing; or

20.3.2 in a physical form only be delivered by hand by the disclosing Party or by a courier approved by the disclosing Party.

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

20.4.1 consult with the other Party about any notices given to Data Subjects in relation to the shared Personal Data;

20.4.2 promptly inform the other Party about the receipt of any Data Subject access request;

20.4.3 provide the other Party with reasonable assistance in complying with any Data Subject Access Request;

20.4.4 not disclose or release any shared Personal Data in response to a Data Subject Access Request without first consulting the other Party wherever possible;

20.4.5 assist the other Party, at the cost of the other Party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data Breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;

20.4.6 notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;

20.4.7 at the written direction of the disclosing Party, delete or return shared Personal Data and copies thereof to the disclosing Party on termination of this Agreement unless required by law to store the Personal Data;

20.4.8 use compatible technology for the processing of shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;

20.4.9 maintain complete and accurate records and information to demonstrate its compliance with this Clause 20 and

20.4.10 provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the Data Protection Legislation.

20.5 Any material breach of the Data Protection Legislation by one Party shall, if not remedied within twenty (20) working days of written notice from the other Party, give grounds to the other Party to terminate this Agreement with immediate effect.

20.6 Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying Party, its employees or agents, provided that the indemnified Party gives to the indemnifier prompt notice of such claim, full information

about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

Data Protection Definitions

“Controller”	takes the meaning given in the UK GDPR;
“Data Protection Legislation”	means the: (i) UK GDPR; (ii) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; and (iii) all applicable Law about the processing of Personal Data and privacy
“Data Subject”	takes the meaning given in the UK GDPR;
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“DPA 2018”	means the Data Protection Act 2018;
“Personal Data”	takes the meaning given in the UK GDPR and where used in this Agreement refers to any such Personal Data processed by the Provider on behalf of the Council under this Agreement;
“Personal Data Breach”	takes the meaning given in the UK GDPR;
“Process” or “Processing”	takes the meaning given in the UK GDPR;
“Processor”	takes the meaning given in the UK GDPR;
“UK GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679) to the extent that the same has been retained in UK Law following the UK’s withdrawal from the European Union

21 Waiver

- 21.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 21.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22 Assignment and Sub-contracting

Unless otherwise expressly agreed in writing between the parties none of the obligations, benefits, or conditions contained in this Agreement may be assigned or sub-contracted by the Provider.

23 Variations

City of York Council may vary the agreement at any time to reflect changes in legislation and related central government guidance.

24 Indemnity and Insurance

- 24.1 The Provider shall be wholly responsible for the safe operation and conduct of the Activities relating to delivery of the funded early education and childcare provision and shall keep the Local Authority indemnified against all claims, demands, proceedings, damages, costs, charges and expenses arising from any breach of this Agreement or in connection with the provision of or failure to provide the Activities howsoever arising or resulting from any act, neglect or default of the Provider, its employees, or agents or third parties.
- 24.2 The Provider will maintain a comprehensive policy of insurance including both public liability at a minimum level of £5 million and employer's liability cover at a minimum of £10 million to cover its liability under this Agreement and shall provide the Local Authority with certified copies of the relevant policy upon request.

25 Confidentiality

Both parties agree that they shall not use any information identified as confidential or any information which might reasonably be supposed to be confidential for the purposes of this Agreement and that they shall not disclose directly or indirectly to any third party without the prior consent of the other party.

26 Statute and regulatory references

References to legislation and statutory guidance are to such legislation and statutory guidance as amended from time to time and this Agreement shall not require variation in order to incorporate and reflect such amendments.

27 Notices

- 27.1 Any notice or other communication given under this Agreement shall be in writing and may be delivered or sent by email, first class prepaid post or by fax to such address or number notified by either party for this purpose.

- 27.2 Unless the contrary is proved, any such notice or communication shall be deemed to have been given to and received by the addressee:
- if delivered, at the time it is left at the address of or handed to a representative of the party to be served;
 - if sent by post, 2 working days following the date of posting;
 - if sent by fax, 1 working day following the date of transmission.

28 English Law

It is hereby agreed between the parties that the construction, validity and performance of this Agreement shall be governed by English Law and the English Courts.

29 Headings

Clause and Section headings are for ease of reference only and shall not affect the construction of this Agreement.

30 Whole Activities

This Agreement contains the full and complete understanding between the parties and supersedes all prior arrangements and understandings, whether written or oral, relating to the subject matter of this Agreement.