



Durham Early Years Funding Agreement

September 2019 to August
2020

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THE TERMS AND CONDITIONS OF THE FUNDING AGREEMENT BETWEEN A PROVIDER AND THE COUNCIL

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement the following words and expressions shall have the following meanings:

“Agreement”	means the Funding Agreement
“Authorised Officer”	means the Head of Education and Skills, Durham County Council
“Child”	means the child intending to receive, or receiving, the Services
“Council”	means Durham County Council of County Hall, Durham DH1 5UE, a party to this agreement and providing Funding to the Provider
“DBS”	means Disclosure and Barring Service
“Early Years Pupil Premium”	means additional funding for Providers where children meet certain criteria as set out in the DEYF Guide
“EYFS Statutory Framework”	means the Statutory Framework for the Early Years Foundation Stage dated March 2017
“FEEC”	means Free Early Education and Care
“FEEC Funding”	means the funding released to the Provider in consideration of providing the Services pursuant to Clause 4.1
“Funding Agreement”	means this agreement between the Provider and Durham County Council
“Funding Period”	means the period for which the Provider receives funding for any school term in accordance with DEYF Guides
“Headcount Day”	means the Headcount Day (or Census Day) in each school term used to determine FEEC funding as set out in the relevant DEYF Guide
“Intellectual Property Rights”	means all copyright, patents or patent rights registers, and unregistered design rights, trademarks, service marks, database rights, inventions, know-how and all other intellectual property rights whatsoever in the world enforceable
“Parent/Carer Agreement”	means the agreement to be entered into between the parent/carers of the child and the Provider referred to in the relevant DEYF Guide
“Services”	means the provision of early education and care services for eligible children for a period of up to 30 hours per week for a minimum of 38 weeks in the year (or 1,140 hours) during the period of this Agreement at all times in accordance with this Agreement, relevant DEYF Guide, the Statutory Guidance, the EYFS Statutory Framework, the Parent/Carer Agreement and any additional instructions from time to time given by the Council
“Statutory Guidance”	means the Early Education and Childcare Statutory Guidance for Local Authorities dated June 2018

2. THE AGREEMENT

- 2.1 In this Agreement, unless the context or relevant clause otherwise requires:
- 2.2 the expressions "Council" and "Provider" shall include their respective successors, personal representatives, employees and permitted sub-contractors and assigns;
- 2.3 reference to any Order, Regulation or Statute whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it;
- 2.4 words importing any gender shall include all genders and the singular includes the plural and vice versa;
- 2.5 reference to Schedules and Clauses shall be construed as reference to schedules and clauses of this Agreement;
- 2.6 Clause headings are included for ease of reference and shall not affect the interpretation or construction of this Agreement;
- 2.7 To the extent that there is a conflict between or ambiguity relating to, on the one hand any or all of the terms in this Agreement and the relevant DEYF Guide or the Parent Agreement, the wording of the terms and conditions of this Agreement shall prevail.

3. DEFINITIONS AND INTERPRETATION

- 3.1 The duration of this Agreement shall be for a period of 12 calendar months from 1 September 2019 to 31 August 2020 unless terminated sooner or varied in accordance with this agreement.
- 3.2 This Agreement constitutes the entire contract between the Council and the Provider in respect of the Services and, except as may be expressly referred to or referenced in this Agreement, supersedes all prior representations, submissions, negotiations or understandings with respect to the Services, save that nothing in this Agreement purports to exclude liability for any fraudulent statement or act.
- 3.3 No variation or modification of this Agreement shall take effect unless it is in writing and signed by the Authorised Officer and the Provider.
- 3.4 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.

4. THE SERVICES

- 4.1 The Council hereby engages the Provider to provide the Services and the Provider agrees to provide such Services in accordance with the terms and conditions set out in this Agreement.
- 4.2 The Provider warrants that the Services will in all respects comply with this Agreement and that the Provider shall exercise all due skill, care and diligence as would be expected of an experienced Provider undertaking work of similar size, scope and complexity to the Services.

- 4.3 The Provider shall employ a sufficient number of suitably skilled experienced and competent qualified persons to provide the Services in accordance with the EYFS Statutory Framework within the timescales required under this Agreement and as evidence of that shall obtain for each of such persons who works directly with children or who is likely to have unsupervised access to them an enhanced DBS check, or other such check required by the Council, acting reasonably and shall keep sufficient records to demonstrate to the satisfaction of the Council that such checks have been undertaken.
- 4.4 The Provider shall liaise with the Authorised Officer and shall comply with the reasonable request of the Authorised Officer in connection with the Services and shall use their best endeavours to promote the interests of the Council in connection with the Services and shall keep the Authorised Officer fully informed of all changes to the Provider's relevant circumstances during the period of this Agreement.
- 4.5 A senior member of the Provider's staff must be nominated promptly by the Provider to act as the Provider's representative to liaise with the Authorised Officer as required in connection with the Services and to attend any officer and other meetings to be convened within Durham County in respect of which the Provider has received prior notification whether under Clause 5 or otherwise.
- 4.6 Except as otherwise expressly specified in any Schedule to this Agreement:
- 4.7 The Provider shall provide everything necessary for the proper performance of the Services;
- 4.7.1 all consents and permissions necessary in connection with the Services shall be the responsibility of the Provider.
- 4.7.2 the Provider shall enter into a Parent Agreement with the parent of each Child to whom it provides Services prior to commencement of the first school term and shall inform the Council as soon as practicable of any withdrawal of the Services prior to the Funding Headcount Period under the Parent Agreement.
- 4.7.3 the Provider shall inform the council as soon as practicable of any amendments to the Parent Agreement during the Funding Period(s) of this Agreement.
- 4.8 The Authorised Officer shall be entitled (but not unreasonably or vexatiously) to require the Provider forthwith upon issue of notice in writing (or upon expiry of 7 days' notice in writing where it is practicable to give 7 days' notice) to remove from the provision of the Services any personnel specified in such notice if the Authorised Officer has reasonable grounds for believing that such person's conduct or ability is not of a sufficient standard for the proper provision of the Services and the Provider shall forthwith remove such person from the provision of the Services and immediately provide a replacement unless the Council determines, in writing, otherwise.

5. FINANCIAL AND REPORTING ARRANGEMENTS

- 5.1 In consideration of the performance by the Provider of its obligations in accordance with this Agreement, the Council will pay the Provider the FEEC Funding in accordance with the terms and at the rates set out in the relevant DEYF Guide for each Funding Period and so long as this Agreement and the Parent Agreement subsists and the Provider is and remains eligible for funding and at all times satisfies the conditions of eligibility as set out in the relevant DEYF Guide.
- 5.2 The FEEC Funding referred to in Clause 5.1 shall be payable subject to the Provider providing the required information in accordance with the relevant DEYF Guide.
- 5.2.1 The Provider is expressly forbidden from insisting on any notice period to Parents or Carers in respect of any funded children accessing the 15 hours Universal Entitlement (or the 30 hours Extended Entitlement for 3-4-year olds if eligible) if they move to another setting during a funded period. Parents or Carers should only be charged for any additional hours or services purchased from the setting for which they would normally be subject to an invoice (subject to Terms & Conditions of any agreement signed between the Parent or Carer and the setting).

- 5.3 The Council will review the submitted information and, if satisfied that, based on the evidence provided, the Provider meets the Conditions, then it will pay the FEEC Funding to the setting in line with the terms outlined in the DEYF Guide.
- 5.4 Except as otherwise expressly set out in this Agreement the FEEC Funding shall be inclusive of all costs, expenses and disbursements in connection with the Services including without limitation, all fees, labour, equipment, goods, materials, transport, insurance, administration, operating costs, telephones, faxes, profit and all general risks, taxation, duties, liabilities and obligations set out in or implied as necessary to comply with this Agreement.
- 5.5 All sums payable under this Agreement are unless otherwise stated exclusive of Value Added Tax and at all times are subject to and conditional upon funds having been first received by the Council from its funders.
- 5.6 The Council shall not be liable in respect of any contractual or statutory claims in respect of late Funding of debts unless the Council has received written notice of such claim from the Provider within 60 days of the due date.
- 5.7 The Provider has no employee status with the Council and shall be responsible for making or procuring appropriate PAYE deductions for tax and national insurance or similar contributions in respect of the Provider's fees and from the remuneration which it pays to its personnel. The Provider agrees to indemnify the Council in respect of all claims or demands which may be made in respect of income tax or national insurance or similar contributions in connection with the provision of the Services.
- 5.8 The Council may at their discretion withhold and/or require repayment from the Provider any or all of the FEEC Funding referred to at Clause 5.1, at any time during the period of this Agreement and within 6 years thereafter, if;
- (a) The Council's funders recoup monies from the Council;
 - (b) The Council has made Funding in excess of the FEEC Funding due to the Provider under Clause 5.1;
 - (c) The Provider has failed to take sufficient measures to investigate and resolve any irregularity in the course of its providing the Services;
 - (d) This agreement is terminated pursuant to Clause 14 or any of the grounds reasonably exist under clause 14;
 - (e) The Provider has failed to employ any part of the said FEEC Funding in providing the Services in accordance with this Agreement;
 - (f) The Provider is in serious breach of the terms of this Agreement or the relevant DEYF Guide;
 - (g) The Council has reasonable evidence that the Provider is in financial difficulties by its failing to pay its debts when they fall due.
- 5.9 The Authorised Officer or the Council's Director of Finance shall at all times have access to financial information about the Provider and to the accounts records and all other documentation of the Provider and be entitled to seek and receive explanations from officers of the Provider, or where applicable from the Department of Education, regarding the Provider's deployment of the FEEC Funding, within seven Provider Working Days of making a request to the Provider in writing.

6. REVIEWS

- 6.1 The Provider shall co-operate with any officers of the Council or any member of the Quality Improvement Team and attend meetings requested by the Council with a view to reviewing and promoting improvement in the Provider's performance of the Services.

7. ASSIGNMENT

- 7.1 The Provider shall not transfer, charge or assign directly or indirectly to any person or persons whatsoever this Agreement or any part thereof, without the prior written consent of the Council.

8. STATUTORY AND OTHER REQUIREMENTS

- 8.1 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.
- 8.2 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.
- 8.3 The Provider shall comply and shall procure that its employees, subcontractors and agents comply with the Freedom of Information Act 2000 and the Environmental Information Regulations 2014 any Codes of Practice in so far as these place obligations upon the Provider in the performance of its obligations under this Agreement.
- 8.4 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 2000 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.
- 8.5 The Provider shall not do anything to cause any infringement by the Council of its obligations under the Freedom of Information Act 2000 and any Codes of Practice and shall facilitate the Council's compliance and comply with any reasonable request from the Council for that purpose.
- 8.6 The Provider shall (and as appropriate shall procure that all its servants, agents and sub-contractors and all other persons engaged by the Provider to perform the Agreement) comply with the notification requirements of the General Data Protection Regulation ("GDPR") and both parties will duly observe all their obligations under the GDPR which arise in connection with the Agreement.
- 8.7 Notwithstanding the general obligation in Clause 8.6: where the Provider is processing personal data (as defined by the GDPR) as a data processor for the Council (as defined by the GDPR), the Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data); and the Provider shall;
- 8.7.1 provide the Council with such information as the Authorised Officer may reasonably require to determine whether the Provider is complying with its obligations under this Agreement; and
 - 8.7.2 promptly notify the Council of any breach of the security measures required to be put in place pursuant to this Agreement and of any loss of personal data regardless of whether there has been any breach; and
 - 8.7.3 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the GDPR; and
 - 8.7.4 act only on the instructions of the Council in relation to the processing of personal data over which the Council is a data controller; and
 - 8.7.5 take (without prejudice to Clause 3.3) reasonable steps to verify the identity, reliability and honesty of employees who will handle personal data.
- 8.8 Save where authorised in writing by the Authorised Officer, the Provider will not authorise any subcontractor or any other person to transfer any personal data processed pursuant to the Agreement:-

- 8.8.1 to any third party; or
- 8.8.2 outside of the European Economic Area.

8.9 The Provider shall render such assistance and co-operation to the Council as may be reasonably requested by the Authorised Officer in relation to the requirements of the GDPR including without limitation, compliance with the Authorised Officer's instructions concerning the return or destruction of data and cooperation in good faith with clause 8.3.

9. ASSISTANCE IN LEGAL PROCEEDINGS AND OTHER INVESTIGATIONS

- 9.1 If requested to do so by the Authorised Officer, the Provider shall provide, if applicable through the Department of Education, to the Council any relevant information (including but not limited to documentation and statements from its personnel) in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved, or any relevant disciplinary hearing internal to the Council, arising out of or in connection with the provision of the Services or any other of the Provider's obligations under this Agreement, and the Provider shall give evidence in such enquiries, arbitrations, proceedings or hearings.
- 9.2 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.

10. INDEMNITY AND INSURANCE

- 10.1 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.
- 10.2 The Provider shall maintain the following comprehensive insurance(s);
- 10.3 Public liability insurance with a level of cover of not less than £5,000,000 in respect of any one claim or series of claims arising out of any one incident and unlimited in any one year; and
- 10.4 Employers' liability insurance, if applicable, to comply with statutory requirements;
- 10.5 The Provider shall promptly produce to the Council satisfactory evidence of such insurance, when reasonably required.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Council agrees
 - 11.1.1 that all Intellectual Property Rights owned at the date of this Agreement by the Provider and used in the provision of the Services shall remain so owned;
 - 11.1.2 to hereby grant to the Provider a non-exclusive non-transferable, royalty-free licence to use the Council's Intellectual Property Rights only to the extent that and for so long as such use is necessary for the provision of the Services.
- 11.2 The Provider agrees:
 - 11.2.1 that all Intellectual Property Rights owned at the date of this Agreement by the Council shall remain so owned;

- 11.2.2 to hereby grant to the Council a non-exclusive, non-transferable, royalty-free licence to use the Provider's Intellectual Property Rights and generated Intellectual Property Rights in connection with the exercise of the Council's functions.
- 11.2.3 The Provider hereby agrees to indemnify the Council against all actions, claims, demands, proceedings, damages and costs arising from or incurred by reason of any infringement or alleged infringement of Intellectual Property Rights owned by the Provider.

12. CONFIDENTIALITY

- 12.1 Except in any of the circumstances specified in Clause 12.2, all reports, data, designs, drawings and other documents and information relating to the Services and all documents and information relating to the Council's or its client's technology, business affairs or finances or those of its contractors or potential contractors whether supplied by the Council or derived therefrom or obtained by the Provider or which may come into its possession shall be treated in strict confidence and shall not be disclosed or made use of by the Provider during the course of this Agreement or after its expiry or termination, without the prior written consent of the Council and the Provider shall ensure that its employees, subcontractors and agents are under an equivalent duty of confidentiality in respect of such documents and information.
- 12.2 The obligations of confidentiality set out in Clause 12.1 shall not apply to:
 - 12.2.1 any use or disclosure authorised in writing by the Council;
 - 12.2.2 any use or disclosure necessary for the proper performance of the Provider's obligations under this Agreement;
 - 12.2.3 documents and information:
 - 12.2.3.1 which is in, or has become part of, the public domain other than as a result of a breach of the Provider's obligations under this Agreement;
 - 12.2.3.2 which was lawfully in the possession of the Provider at the date of commencement of this Agreement;
 - 12.2.3.3 independently disclosed to the Provider by a third party entitled to disclose the same;
 - 12.2.3.4 required to be disclosed by law.
- 12.3 The Provider shall return to the Council within seven days of a written request all confidential information including all copies.

13. CONFLICTS OF INTEREST

- 13.1 In the event that the Authorised Officer reasonably considers there is a risk of actual or potential conflicts of interest in connection with or arising from this Agreement, a system for dealing with such conflicts of interest must be agreed with the Authorised Officer. The Provider shall ensure that its system meets all relevant professional Codes of Practice and if necessary shall amend it to ensure that it continues to do so throughout the period during which the Provider is responsible for providing the Services. The Provider shall also ensure its system is observed at all times during such period and that it prevents the occurrence of situations, not only where a conflict has arisen, but where one is likely to arise.
- 13.2 The Provider shall ensure that, in accordance with the requirements of this Agreement and the agreed system, it is loyal to the Council and avoids any situation which might be seen to put its loyalty in doubt.
- 13.3 All conflicts of interest must be declared promptly to the Authorised Officer.

14. TERMINATION

- 14.1 The Council may forthwith terminate this Agreement upon giving prior written notice to the Provider if the Provider:
- 14.1.1 has made any material misrepresentation prior to entering this Agreement;
 - 14.1.2 is in remediable breach of this Agreement and such breach is not remedied within a reasonable period stated in any notice issued by the Authorised Officer;
 - 14.1.3 commits a breach of this Agreement which is not capable of remedy or is in persistent or recurrent breach of its obligations thereunder;
 - 14.1.4 shall commit any act of bankruptcy, or if (the Provider being a company) proceedings shall be commenced for the winding up of the Provider or if the Provider shall make any arrangements or composition with its creditors, or if a Receiver or Administrative Receiver or Manager on behalf of a creditor is appointed, or if the Provider shall suffer any execution to be levied on its goods;
 - 14.1.5 does anything improper to influence the Council to give the Provider any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or under Section 117(2) of the Local Government Act 1972 or under the Bribery Act 2010;
 - 14.1.6 is guilty of any gross misconduct or guilty of any conduct which the Council reasonably considers to be prejudicial to the Council's interests.
- 14.2 The Agreement shall terminate automatically if the Council is no longer in receipt of funding to enable the Provider to perform the Services.
- 14.3 Termination of this Agreement shall be without prejudice to the rights of the Council or liabilities of the Provider accrued hereunder.

15. EQUALITY

- 15.1 The Provider shall ensure that no recipient of the Services receives less favourable treatment on the grounds of gender, sexual orientation, colour, race, nationality, ethnic or cultural origin, religious persuasion, disability or age or any other grounds prohibited under the Equality Act 2010 or any other equality legislation and that the recipient of the Services is not disadvantaged by conditions or requirements which cannot be justified, to the satisfaction of the Council.

16. WAIVER

- 16.1 The failure by either party to enforce at any time any of the provisions of this Agreement or to require at any time performance by either party of any of the provision hereof, shall in no way be construed as a waiver of such rights nor in any way affect the validity of this Agreement or any part thereof or the right of either party thereafter to enforce each and every provision.

17. AGENCY

- 17.1 Except to the extent otherwise expressly stated in this Agreement the Provider is not and shall in no circumstances hold itself out as being the servant or agent of the Council.
- 17.2 The Provider is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Council or in any other way bind the Council to the performance, variation, release or discharge of any obligations.
- 17.3 The Provider has not and shall in no circumstances hold itself out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

18. RECORDS AND INFORMATION

- 18.1 The Provider must maintain correspondence, accurate records, the Parent Agreement and other documents relating to the Services and retain these for at least three years from the date of completion of the Services, with the exception of copies of Children's identification documents which must be retained for two years from the date of completion of the Services, and shall allow at all reasonable times access by the Authorised Officer or their agents to such records and documents, directly or where applicable through the Department of Education, which must be kept separately from records not relating to the Services and provide copies thereof.
- 18.2 The Provider shall promptly provide such information relating to the Services as is reasonably requested by the Authorised Officer from time to time.

19. EXCLUSION OF THIRD PARTY RIGHTS

- 19.1 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.

20. NOTICES

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

21. LAW

- 21.1 This Agreement shall be considered as a contract made in England and subject to English law

PROVIDER DECLARATION

Please complete all the required information below and then sign and return the agreement.

Provider Name: _____

E-mail address: _____

Telephone number: _____

OFSTED URN: _____

Current OFSTED judgement: _____

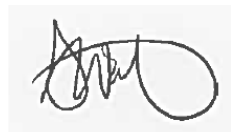
OFSTED judgement date: _____

- Staff qualification level (please tick **one**)
- Qualified Teacher Status, EYT or EYP
 - Early Years qualification at Level 6
 - Early Years qualification at Level 5
 - Early Years qualification at Level 3
 - No early years qualification

- We offer the following services: (tick **all** that apply)
- 2 year old
 - 3/4 year old universal entitlement
 - 3/4 year old extended entitlement (up to 30 hours)
 - Stretch funding

- Preferred Interim Payment Method (please choose one)
- Monthly Interim Payments
 - Termly Interim Payment

IN WITNESS whereof the parties hereto have executed this Agreement upon the dates set out below.



Signed by an Authorised Office of Durham County Council

1 July 2019
Date



Witness

1 July 2019
Date

Signed on behalf of the Provider

Date

Witness

Date

Please return the completed agreement by e-mail to EYfunding@durham.gov.uk or in the post to:

Early Years Funding Team, Durham County Council, Ground Floor (Room G24-36), County Hall Durham DH1 5UE