

**Early Education Entitlement (EEE)
Provision for 2, 3 and 4 year olds in
Birmingham
1st September 2017 – 31st August 2018**

Provider Agreement

**Terms and Conditions for Providers
Delivering Early Education Entitlement
Funded places**

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THIS PROVIDER AGREEMENT is made on the date set out in the Funding Acceptance Form

BETWEEN:

(1) BIRMINGHAM CITY COUNCIL of the Council House Victoria Square Birmingham B1 1BB (“the Council”);

and

(2) The Provider whose details are set out in the Funding Acceptance Form (“the Provider”)

IT IS AGREED as follows:-

Definitions and Interpretations

The terms and conditions set out in Schedule 2 and 3 shall apply.

The definitions and rules of interpretation set out apply to this provider agreement are available in schedule 2 and schedule 3

Introduction

The Provider shall ensure that it has read this document and can meet all the terms and conditions during the period of time it is claiming Early Education Entitlement (EEE) funded places. The document must be read in its entirety as all components are relevant to the delivery of (EEE) funded places.

In this Provider Agreement reference to the Local Authority means the Council.

1.1 This Provider Agreement applies to the 15 hour entitlement for the most disadvantaged two-year-olds, the 15 hours entitlement for parents of three- and four-year-olds (the universal entitlement) and the 30 hours entitlement for working parents of three- and four-year-olds (the extended entitlement). This agreement has been developed in line with the [Model Agreement Early years provision free of charge and free childcare \(2017\)](#) from the Department for Education which sets out the department’s expectations on what should be included in agreements between local authorities and providers (provider agreements) and refers to early years provision free of charge (sections 7 and 7A of the Childcare Act 2006) and free childcare (section 2 of the Childcare Act 2016) as the ‘free entitlement(s)’ or ‘free hours’ or a ‘free place’.

Provider eligibility requirements for; two year olds, three and four year old universal entitlement and three and four year old extended entitlement for working parents.

1.2. This Provider Agreement is for all early education providers who are referred to as ‘providers’ including:

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- Early years providers and childminders registered on the Ofsted Early Years Register;
 - Childminders registered with a childminder agency that is registered with Ofsted;
 - Maintained Schools, Independent Schools and Academies taking children age two and over and which are exempt from registration with Ofsted as an early years provider.

1.3 The [Early education and childcare statutory guidance for local authorities 2017](#) requires local authorities to fund eligible two, three and four year olds at EEE registered providers who have a good or outstanding Ofsted quality rating or at new providers registered with Ofsted until the provider's first full Ofsted inspection judgement is published.

1.4 Providers who do not meet the quality requirement in 1.3 and new providers must be working with a Local Authority Early Years Consultant to improve quality by achieving actions as set within a Focused Improvement Plan (FIP). These actions will support the provider to reach a good or outstanding Ofsted Inspection outcome at their next inspection. Local authorities are not required to fund places at providers who do not meet the quality standards set out in 1.3 above but may choose to do so to ensure sufficiency of EEE funded places. If at your next OfSTED inspection you do not achieve a good or outstanding quality rating the decision to continue EEE funding will be reviewed by the EEE Panel in line with the [Appendix 1](#) and the [Early education and childcare statutory guidance for local authorities 2017](#)

1.5 Only providers registered as eligible to receive (EEE) may do so. Registration will be restricted to providers offering early education at premises within the area covered by Birmingham City Council.

1.6 To obtain registration providers must satisfy all of the eligibility criteria and conditions for registration set out in this document. Provider will be removed from the EEE Directory where it appears that any of the eligibility criteria or conditions is not subsequently being met. See [Compliance and Termination of funding](#).

1.7 When registering providers Birmingham City Council will consider any information published by Ofsted about a provision including the recent history about childcare provision at a particular address. This could include, for example, a provider using the same location, and employing at least one member of the leadership team, as one previously closed down or rated 'inadequate' by Ofsted. This information will inform the decision whether to add the provider to the directory of providers.

1.8 It is a condition of registration that providers agree to be bound by the conditions of funding for periods during which they are claiming funding. If EEE funding is accepted, Birmingham City Council will accept the receipt of funding as acceptance of the terms and conditions of funding. If a provider does not agree to be bound by the conditions of funding, the provider must return the funding within 14 days and inform Birmingham City Council in writing that they wish to be removed from the directory of EEE providers.

1.9 Providers wanting to register to deliver EEE funded places must complete a Birmingham City Council EEE registration pack for submission and verification by the NEF team. Providers meeting the eligibility criteria will then be able to access EEE funding from the following academic term.

Childminders

1.10 Early years provision is defined in section 20 of the 2006 Act as the provision of childcare. "Childcare", as defined in section 18 of the 2006 Act, specifically excludes care provided for a child by a parent, step-parent, foster parent (or other relative) or by a person who fosters the child privately or has parental responsibility for the child. Early years provision by a childminder (either independently registered with Ofsted or registered with a childminder agency) for a related child does not count as childcare in legal terms. Government funding cannot be claimed

by, or spent on, childminders providing childcare for their own child or a related child, even if they are claiming for other children.

Legal framework and statutory guidance

1.11 The following frameworks and legislation underpin this Provider Agreement:

- [Early Education and childcare, Statutory guidance for Local authorities 2017](#)
- [Childcare Act 2006](#)
- [Childcare Act 2016](#)
- [Equality Act 2010](#)
- [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 2014](#)
- [The Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) Regulations 2016](#)
- [Special educational needs and disability code of practice: 0 to 25 years 2015](#)
- [Data Protection Act 1998](#)
- [Model Agreement Early years provision free of charge and free childcare \(2017\)](#)
- [Early years entitlements: operational guidance For local authorities and providers 2017](#)

Key Principles for delivering the Early Education Entitlement for eligible two year olds and all three and four year olds

1.12 All eligible children are able to take up high quality early education regardless of their parents' ability to pay – benefiting their social, physical and mental development and helping to prepare them for school. Evidence shows that regular, good quality early education has lasting benefits for all children.

1.13 The universal Early Education Entitlement offers 570 hours a year for every eligible child accessing providers in Birmingham from the relevant date following their eligible birthday until they reach compulsory school age (the beginning of the term following their fifth birthday). This equates to 15 hours a week for 38 weeks of the year. Children may stretch their entitlement over more than 38 weeks (and up to 52 weeks). This means taking fewer EEE funded hours per week, subject to a maximum of 570 hours a year.

1.14 The relevant dates (in relation to the age criterion) are as follows:

- Children born in the period 1st January to 31st March: the start of term beginning on or following **1st April** after the child's second birthday;
- Children born in the period 1st April to 31st August: the start of term beginning on or following **1st September** after the child's second birthday;
- Children born in the period 1st September to 31st December: the start of term beginning on or following **1st January** after the child's second birthday.

1.15 Early Education Entitlement funding cannot be claimed for children of statutory school age, a child reaches statutory school age the term following their 5th birthday.

Child Eligibility - two-year-olds:

1.16 A child will be entitled to the free hours from the term after their second birthday if both of the following conditions are satisfied: (1) the child has attained the age of two (2) the child or parent meets the eligibility criteria. The eligibility criteria are set out in the [appendix 6](#) of this document.

1.17 Where family circumstances change and the family no longer meet the two year old eligibility criteria the two year old **will** remain eligible.

Child Eligibility - All three and four year-olds (universal entitlement):

1.18 All three and four year olds living in England are entitled to the 15 hours universal entitlement the term after their third birthday, irrespective of the immigration status of the child or their parent(s).

Child Eligibility – Three and four year olds of working parents (extended entitlement 30 hours):

1.19 A child will be entitled to the additional 15 EEE funded hours from the term after their third birthday if both of the following conditions are satisfied: (1) the child has attained the age of three; (2) the child's parent has a current positive determination of eligibility from HMRC. Parents wishing to confirm eligibility should be sign posted to <https://www.childcarechoices.gov.uk/> through which they can complete an eligibility application. [Children's services](#) 0121 303 1888 will support parents to find provision offering the 30 hours extended entitlement as there is no requirement that all providers must offer 30 hours in order to receive funding to deliver EEE places. The eligibility criteria for the extended entitlement are set out in [appendix 7](#) of this document.

Key local authority responsibilities

2.1. Local authorities must secure a free entitlement place for every eligible child in their area.

2.2. The local authority should work in partnership with providers to agree how to deliver free entitlement places.

2.3. The local authority should be clear about their role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as their expectations of providers. [Local Offer](#)

2.4. The local authority must contribute to the safeguarding and promote the welfare of children and young people in their area.

Key provider responsibilities

2.5. The Provider must comply with all relevant legislation and insurance requirements. Providers must notify Birmingham City Council within seven days of any claim in respect of personal injury, disease or death made against them by or on behalf of a child accessing their free entitlement provision.

2.6. The Provider should deliver the free entitlements consistently to all parents, whether in receipt of 15 or 30 hours and regardless of whether they opt to pay for optional services or

consumables. This means that the provider should be clear and communicate to parents details about the days and times that they offer free places, along with their services and charges. Those children accessing the free entitlements should receive the same quality and access to provision. Providers and parents should also refer to the [flexibility section](#) of this document for clarification about how the free entitlement may be provided.

2.7. The Provider must follow the Early Years Foundation Stage Framework (April 2017) and have clear safeguarding policies and procedures in place that link to the Birmingham Safeguarding Children Board (BSCB) guidance for recognising, responding, reporting and recording suspected or actual abuse. Birmingham Safeguarding Children Board guidance can be accessed through the following link. <http://www.lscbbirmingham.org.uk/index.php>

2.8. The Provider must have arrangements in place to support children with special educational needs and/or disabilities (SEND). The provider should make arrangements in line the [Special educational needs and disability code of practice: 0 to 25 years 2015](#) 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. For more information about DAF see [appendix 10](#).

2.9 The Provider must appoint a setting based SENCO. (Childminders are the SENCO's).

Safeguarding

2.10. 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 2015 guidance](#) sets these out in detail.

2.11. The Provider must follow the [Statutory framework for the early years foundation stage 2017](#) (EYFS) and have clear safeguarding policies and procedures in place that are in line with Birmingham City Council Board (BSCB) guidance and procedures manual for responding to and reporting suspected or actual abuse and neglect. A lead practitioner (**Designated Safeguarding Lead**) must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider must have regard to '[Working Together to Safeguard Children 2015 guidance](#). In addition where the Provider is school based the Provider must follow the statutory guidance for schools and colleges on safeguarding children and safer recruitment. [Keeping children safe in education: for schools and colleges](#), [Keeping children safe in education: for school and college staff \(part 1\)](#) [Regulated activity in relation to children: scope](#)

2.12. The Provider must ensure it is are aware of any changes and updates to relevant guidance provided by BCSB, and of any changes to national guidance and legislation.

2.13. In addition the Provider must follow the Birmingham City Council process for reporting absent and missing children age 0-5. [Statutory Framework for the Early Years Foundation Stage](#) (EYFS) (April 2017) EYFS section 3; 3.7 states: '*If providers have concerns about children's safety or welfare, they must notify agencies with statutory responsibilities without delay*'. (EYFS 2017).

2.14 The Provider shall obtain in writing a signed parental consent enabling the Provider to share the following information with the local authority when a child is absent for two weeks or more or if a child has left the provider permanently. The Provider shall comply with the procedure set out in [appendix 2](#) of this Agreement. The Provider shall produce the parental consent to the local authority upon request. The Provider shall also meet the requirements of the [Safeguarding](#) section of this Agreement.

Eligibility (demonstrating child eligibility)

2.14. The Provider should 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 local authority 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. Please refer to the [business planning and audit requirements](#) section of this document and the data privacy guidance set out in appendix 9.

2.15. 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. To support children's continuity of care providers should enable children continue to access their funded entitlement place at the same provision until a parent choose to leave that provision.

2.16 Eligibility for [two year olds](#), [early years pupil premium and free school meals](#) will be confirmed using the Birmingham City Council (BCC) online Eligibility checking system (ECS) (see hyperlinks above). Eligibility for the 30 hours extended offer is to be confirmed through the [HMRC](#). Providers should support parents to access their early education entitlements. This support will include signposting parents to the appropriate ECS tools and the HMRC for benefits advice.

2.17. The local authority must ensure that a child has a free entitlement place no later than the beginning of the term following the child and the parent meeting the eligibility criteria for the free entitlements.

2.18. 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. The Provider should use the [parental declaration](#) form at provided by Birmingham City Council which asks the parent for the necessary information and consents. Providers can adapt the BCC [parental declaration](#) form to suit their provision, but must include as a minimum the information on the BCC [parental declaration](#) form in appendix 5.

2.19. Once a provider has received written consent from the parent, they should verify the 30 hours eligibility code with the local authority. See the online data base Eymis for the verification procedure. Details of how to access Eymis are available in [Appendix 3](#)

2.20. 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 swiftly and efficiently. The Eligibility Checking Service (ECS) allows all local authorities to make instant checks for code validity. The Local Authority will be supply all providers with an online eligibility checking (ECS) tool. The ECS will enable providers to verify the eligibility codes submitted by parents for two year old places, Early Years Pupil Premium and for 30 hours places. The Provider is responsible for checking the eligibility codes provided by parents. Places offered to children without eligible codes will not be funded. See [appendix 6](#), [7](#) and [8](#) of this document for eligibility criteria. The Provider should refer to Eymis for ECS procedures.

2.21. Thereafter, the local authority should complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at 6 fixed points in the year, both at half-term and at the end of term across the year (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: Date Parent receives ineligible decision on reconfirmation:	LA audit date:	Grace Period End date:
1 Jan – 10 Feb	11 February	31 March
11 Feb – 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

The Grace Period

2.22. 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.

2.23. 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.

2.24. The local authority should continue to fund a place for a child who enters the grace period as set out in the [Early Education and Childcare Statutory guidance for local authorities 2017](#) and the table A above

2.25. The local authority will inform providers of a child's grace period via the ECS system. When providers submit an eligibility code in to the ECS system for verification the provider will receive an email from the ECS system confirming the child's grace period.

Flexibility

2.26. 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 2017](#). The statutory guidance states that children are able to take up their full entitlement to a free place at times that best support their learning and development, and at times which fit with the needs of parents to enable them to work or increase their hours of work if they wish to do so. The Early Education and Childcare Statutory guidance for local authorities states that Local Authorities should encourage providers to offer flexible packages of free hours, subject to the following standards

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

2.27. Flexibility for parents means that:-

- Parents will have a choice of provider, but the entitlement to a funded place does not offer a guarantee of a place at any one provider or funded hours at times outside the model being offered by the chosen provider.
- Parents can request access to a particular pattern, and the *local authority* should be able to accommodate this within the local area of Birmingham (taking into account the level of demand for the particular model and local provider capacity to deliver); Parents are entitled to 570 hours (1140 hours for eligible working parents with three and four year olds) of early education provision within a year.
- Parents can choose to take up as many or as few hours as they wish of their EEE entitlement.

2.28. The Provider should work with the local authority and share information about the times and periods at which they are able to offer free entitlements. Birmingham City Council will require providers to complete and return a termly data collection form. The data provided will be used to inform parents of the local childcare options available to them and to support the local authority to secure sufficient stretched and flexible places to meet parental demand in the local authority. Parent can access information about the availability of local childcare by contacting Children's Services on 0121 303 1888.

2.29. The Provider should make information about their offer and admissions criteria available to parents before an admission is confirmed.

2.30. The Providers must ensure that a parental declaration is completed in English for each child entitled to an early education entitlement place. A parental declaration **must** be signed, fully completed or updated for **each term** the child is in attendance at a provider. The parental declaration form will confirm when a parent is using multiple providers to access their entitlement. Providing the parental declarations confirm that the parent is receiving their eligible entitlement funding will be split and paid in accordance with the signed parental declaration forms.

2.31. When accessing multiple providers the signed parental declaration form must also confirm which provider is supplying the universal and extended entitlement (if eligible). If a parent loses their eligibility to the extended entitlement (30 hours) Birmingham City Council will continue to pay EEE funding for the universal entitlement to the universal provider. The choice of universal provider is made by the parent and should not be influenced by providers.

2.32. The signed parental declaration should aid in supporting the manageability of the early education entitlement as parents will be required to sign-up to receive the funding in a set way for the period of one term. Changes within this time frame will not be supported by Birmingham city Council (unless extenuating circumstances apply – and are agreed by the Local Authority, providers are advised to contact the NEF@Birmingham.gov.uk on a case by case basis for advice).

2.33. Providers must discuss and explain the parental declaration verbally with parents to ensure it is understood and does not present a barrier to accessing the early education entitlement, prior to parents signing the documentation.

2.34. A sample declaration form is included in [appendix 5](#) of this document. Providers can adapt the sample document to suit their provision, but must include as a minimum the information on the sample form.

2.35. Where a parent has completed a parental declaration form with more than one provider, and the parents are actively using both provisions to access more than their entitlement, when attendance is confirmed at both providers funding will be equally split between both providers. If

funding is reduced to a provider following a duplicate over claim the provider will be responsible for collecting due parental fees. If a duplicate claim is disputed between two providers, evidence of attendance and parental declarations and the EEE terms and conditions of funding will inform how the funding is paid.

Partnership working

2.36. Partnerships should be supported by local authorities on four levels between:

- i. Local authorities and providers
- ii. Providers working with other providers, including childminders, schools and organisations
- iii. Providers and parents
- iv. Local authorities and parents

2.37. The local authority should promote partnership working between different types of providers, including childminders, across all sectors and encourage more providers to offer flexible provision, alongside other providers. Birmingham City Council will promote partnership working via Locality Networks see [appendix 4](#) for Locality Networks contact details.

2.38. The provider should work in partnership with parents, carers and other providers to improve provision and outcomes for children in their setting. An [interactive toolkit](#) has been developed to help providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring.

2.39. The provider should discuss and work closely with parents to agree how a child's overall care will work in practice when their free entitlement is split across different providers, such as at a maintained provision and childminder, to ensure a smooth transition for the child.

Special educational needs and disabilities

2.40. The local authority must strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in their local area as per the [Special educational needs and disability code of practice: 0 to 25 years 2015](#) (January 2015).

2.41. The Provider must ensure owners and all staff members are aware of their duties in relation to the [Special educational needs and disability code of practice: 0 to 25 years 2015](#) and the [Equality Act 2010](#).

2.42. The local authority must be clear and transparent about the support on offer in their area, through their [Local Offer](#), so parents and providers can access that support.

2.43. The Provider should be clear and transparent about the SEND support on offer at their provision and make information available about their offer to support parents to choose the right provision for their child with SEND.

Social mobility and disadvantage

2.44. The local authority should promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to free places and working with parents to give each child support to fulfil their potential.

2.45. The Provider should ensure that they have identified the disadvantaged children including [Looked-after children](#) and children who have left care in England or Wales through; an adoption,

a special guardianship order or a child arrangement order in their setting as part of the process for checking [Early Years Pupil Premium \(EYPP\) eligibility](#). Providers will also use EYPP and any locally available funding streams or support to improve outcomes for this group.

Quality

2.46. The [Statutory Framework for the Early Years Foundation Stage](#) (EYFS) (April 2017) is mandatory for all schools that provide early years provision and Ofsted-registered early years providers in England. The EYFS (2017) sets the standards that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe.

2.47. Ofsted are the sole arbiter of quality for all free entitlements and Ofsted and inspectorates of independent schools have regard to the EYFS (2017) in carrying out inspections and report on the quality and standards of provision.

2.48. Local authorities have a legal duty to provide information, advice and training on meeting the requirements of the EYFS (2017), 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.

2.49. 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 (2017) statutory framework. All children should be able to take up their entitlement to funded early education in a high quality setting. Evidence shows that higher quality provision has greater developmental benefits for children, particularly for the youngest children. The evidence also shows that high quality early education at age two brings benefits to children's development. This guidance reflects the Government's intention that, as far as possible, early education for two-year-olds is delivered by providers who have achieved an overall rating of 'outstanding' or 'good' in their most recent Ofsted inspection report.

2.50. The Provider is required to meet the quality requirements in section 1.2, 1.3 and 1.4.

2.51. Private, Voluntary and Independent providers rated "inadequate or not met" by Ofsted will continue to be funded for children previously in receipt of an EEE funded place, where evidence is available to demonstrate they are actively working with an Early Years Consultant to achieve a Good/Outstanding OfSTED inspection outcome at their next inspection and following the process as set out in [Appendix 1](#) of this document.

2.52. Birmingham City Council will not fund childminders registered with a childminder agency where the agency has indicated that the childminder is not of the appropriate quality unless it is necessary to do so to ensure sufficiency of accessible places. Birmingham City Council will establish ward sufficiency requirements in line with Section A3.7 of [Early Education and childcare, Statutory guidance for Local authorities](#). Local authorities should also consider any information provided by a childminder agency about the childminder registered with them and the childminder's premises.

2.53. For school based early years provision the Local Authority will take appropriate action to improve the quality of provision when a local authority maintained school has been judged by Ofsted to require significant improvement or has been placed in special measures. This action will be in line with the guidance on [schools causing concern](#).

2.54. The LA will signpost parents to source alternative provision as soon as is practicable for children who are already receiving their free entitlement at a provider when it is rated

“inadequate or not met” by Ofsted for a second time, or if there are serious safeguarding issues as set out in the process in [Appendix 1](#). A second inadequate or not met Ofsted outcome will result in withdrawal of EEE funding the provider will be notified in writing of their removal from the EEE directory of providers. Also see [Termination and withdrawal of funding](#).

2.55. The EEE Panel may suspend or withdraw where providers judged by Ofsted as less than ‘good’ do not demonstrate continuous quality improvement; See [Termination and withdrawal of funding](#) and [appendix 1](#).

2.56 Providers judged by Ofsted as inadequate or ‘requires improvement/satisfactory’ must be willing to work with Local Authority to continuously improve quality and achieve a judgment of ‘good’ or above at next inspection. The LA will provide a cycle of support that aims to achieve this. The EEE panel will make decisions about continuing to fund providers who do not achieve an improved inspection outcome. The decision may result in withdrawal of funding. See [appendix 1](#).

2.57. In addition the provider will only be funded for two year old EEE places if there is not sufficient good quality provision available in the ward they are located within.

Business planning and Audit arrangements

2.58. Providers wanting to register to deliver EEE funded places must complete a Birmingham City Council EEE registration pack including a signed provider agreement for submission and verification by the NEF team. Providers meeting the eligibility criteria will then be able to access EEE funding from the academic term after the completion of the EEE registration.

2.59. EEE Registered Providers must maintain a specific business bank account for their business. The account must be dual-signatory, unless a provider is a sole trader. Birmingham City Council can only pay Early Education Entitlement funding into that account, cheque payments are not available. Any change to the bank account details must be notified directly to the Vendor Data team (VendorData@birmingham.gov.uk) of Birmingham City Council. Failure to do so will result in a non-payment for EEE Funding.

2.60. The maximum absence of a child from a provision when claiming EEE funding is four consecutive weeks. Providers must notify the Early Years Team when a child permanently leaves, or is absent for two or more weeks for their EEE sessions. Providers must phone the early years duty line 0121 675 4996 or 0121 675 1943 within 2 weeks of the child’s first absence to request a missing child form. Failure to do so may result in the removal of EEE funding. In addition if it is identified that the provider may be contravening legislation e.g. OFSTED, Child protection, and Health and safety etc. the Early Years and Childcare team have a duty to report their findings to the appropriate body. [appendix 2](#)

2.61. The local authority will not carry out audit regimes which are disproportionate or are unnecessarily burdensome to the Provider. The Provider will be notified in writing of the date and time of planned EEE audits. All providers will be audited; the audit cycles will be planned by informed financial risk assessments. The EEE audit will test to ensure that the EEE terms and conditions of funding are being adhered to and funding is being claimed and used appropriately.

2.62. The Provider shall keep financial accounts of the receipt and use of EEE funding. All funding should be accounted for as restricted funds and cannot be used for other purposes (outside of supporting the early education entitlement children).

2.63. If requested the Provider must make available to Birmingham City Council copies of their annual report and accounts bearing the appropriate signatures in the form required for your legal status, to the Early Years and Childcare Team within nine months of the end of your financial year.

2.64. The Provider shall notify Birmingham City Council if any financial irregularity in the use of the funding is suspected and indicate the steps taken in response. Irregularity shall include any fraud or other impropriety, mismanagement or use of funds for purposes other than that approved.

2.65. The Provider agrees to be inspected by EEE Audit Officer or Early Years Officer from Birmingham City Council to ensure that funding is being used correctly. Birmingham City Council will provide ten working days' notice of any such inspections. Failure to do so may result in clawback for the term.

2.66. The Provider shall keep all financial records for **at least 6 years** from the end of the relevant financial year to which they relate.

2.67. The Provider must keep a record of attendance in respect of all children for whom funding has been claimed and retain these records for a **minimum of 6 years**.

2.68. The Provider must keep on file for a **minimum of 6 years** a copy of the signed parental declaration form for each child funding is claimed for. This must include a signed parental declaration covering each term claimed for.

2.69. If during audit inspections the Provider is unable to provide original copies of the required documentation, or appropriate evidence demonstrating that child eligibility has been confirmed, funding will be reclaimed by the Council. The Council will write to the Provider setting out the amount it shall reclaim. If the Provider is still providing Early Education Entitlement funded places the money to be reclaimed will be deducted from the next Early Education Entitlement payment. If the Provider is no Early Education Entitlement payment is due the Provider shall pay the amount to the Council within 30 days.

2.70. Where children have left a setting the providers must make available copies of the form notifying the Early Years Team of the non-attendance, and evidence of any other actions taken to follow-up non-attendance with the family according to safeguarding protocols and the early years missing from education procedures. Where this process has not been followed or cannot be evidenced, funding will be reclaimed. In addition if it is identified that the provision may be contravening legislation e.g. OFSTED, Child protection, and Health and safety etc. the Early Years and Childcare team have a duty to report their findings to the appropriate body. See [appendix 2](#).

2.71. Birmingham City Council retains the right to investigate any grant funded organisation's business where it reasonably believes that there is or has been financial irregularity, misuse or misappropriation of grant funds. The investigation will include having the right to access documents and individuals within the organisation. Any irregularities may result in the removal of the provider from the EEE directory of providers. The information gained during the investigation may be referred to the appropriate authorities and shared with other Birmingham City Council teams for their action.

2.72. The Provider must use its best endeavours to safeguard these arrangements under this Agreement against fraud on the part of directors, governors, staff or parents with particular regard to inaccurate, incomplete or misleading claims for payment.

2.73. In the event the Provider inappropriately claims EEE funding for two terms, the matter will be discussed at the EEE panel which will consider removing the Provider from the EEE Directory. See [termination and withdrawal of funding](#).

2.74. The Provider should ensure they submit timely and accurate information, including, but not limited to, headcount data, census data, parental declarations and invoices, as per the financial guidelines of their local authority. Failure to do so may result in inaccurate, delayed or suspended funding. In addition the local authority may charge the provider a reasonable and

proportionate charge for the costs incurred to the local authority as a result of the lateness and local authorities will ensure charges are clearly communicated to providers.

2.75. The Provider shall maintain accurate financial and non-financial records relating to EEE funded places and should give the local authority access on reasonable notice to all financial and non-financial records relating to EEE funded places funded under the provider agreement, subject to confidentiality restrictions.

Charging

2.76. 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. This document does not provide guidance on how providers operate their private businesses, including charges for provision over and above a child's free hours.

2.77. The Provider can charge for meals and snacks as part of a free entitlement place and they can also charge for consumables such as nappies or sun cream and for services such as trips and yoga. These charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the entitlements are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals. Birmingham City Council will review provider's policies during the EEE audit to ensure that charging policies do not prohibit a parent from taking up the early free entitlement

2.78. The Provider should deliver the free entitlements consistently so that all children accessing any of the free entitlements will receive the same quality and access to provision, regardless of whether they opt to pay for optional hours, services, meals or consumables.

2.79. The local authority cannot, and should not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent's ability to take up their child's free place. The Provider should be completely transparent about any additional charges.

2.80. The Provider should publish their admissions criteria and ensure parents understand which hours/sessions can be taken as free provision. Not all providers will be able to offer fully flexible places, but providers should work with parents to ensure that as far as possible the patterns of hours are convenient for parents' working hours.

2.81 The Provider can charge parents a deposit to secure their child's free place but should refund the deposit in full to parents within a reasonable time scale. The deposit should not be a barrier to take-up, if the deposit does create a barrier to take up the provider must have a procedure to remove this barrier including being able to waive the deposit. The provider may retain the deposit if the family do not take up the secured place.

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

2.83. The Provider should ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their free entitlement completely without charge. The invoices should also define fees paid for additional hours and charges. The early education entitlement should be represented to parents in terms of funded hours rather than a monetary subsidy. The way that the early education entitlement is itemised to parents must be explained by providers to parents.

2.84. The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider.

Funding

2.85. The local authority should pay all providers, particularly childminders, monthly by September 2018 unless a provider requests and the local authority agrees to continue an existing alternative sustainable method of payment. See below for September 2017 payment procedures. Payment procedures from September 2018 will be agreed and communicated following a consultation with all EEE providers.

2.86. The provider should accurately complete and submit headcount and other necessary data returns by the agreed date to support the local authority to make payment.

2.87. The local authority will follow the below local funding process and timetable in this section, including how funding will be administered to multiple providers and changes in provider.

Funding conditions for all providers

2.88 All providers will be funded using the [Early Years Single Funding Formula](#) (EYSFF) for 2, 3 and 4 year olds, which will be participation based using formulae. The rates for EEE funding are available via EYMIS. Birmingham City Council will fund all eligible two, three and four year old children in Birmingham provisions regardless of their home postcode

2.89 Providers may only claim funding in respect of an eligible child who is correctly included in the headcount on headcount day, or who missed the headcount for permissible reasons such as absence through illness but genuinely expected to return within the four weeks permitted absence period. Please also refer to the process for reporting absent and missing children age 0-5. [appendix 2](#). No claim should be made in respect of a child who has permanently left the provision before the headcount/census day.

2.90 In exceptional circumstances a child may need to start at a provider after the headcount/census date and claim their EEE funding entitlement within that term. Exceptional circumstances could include a child moving from another Local Authority or when the late start is in the child's best interests and has multi agency support. Exceptional circumstances requests must be submitted via email to nef@birmingham.gov.uk and will be considered on a case by case basis.

2.91 The maximum absence of a child from a provision when claiming EEE funding is four consecutive weeks. Providers must follow their Safeguarding procedures when a funded child does not arrive for a booked session. In addition providers must follow the agreed process for reporting absent and missing children age 0-5 for reporting long term absence to the Local Authority as detailed in Section 2.39 see [appendix 2](#).

2.92. Providers must notify the Early Years Team when a child permanently leaves, or does not attend regularly for their EEE funded sessions. Providers must phone the early years duty line 0121 675 4996 or 0121 675 1943 within two weeks of the first absence to request a child missing form, failure to do so may result in the removal of EEE funding See [appendix 2](#).

2.93. Where providers can demonstrate that the processes above have been followed, the Local authority will decide how the funding is paid using; the child missing form, evidence of attendance, and parental declaration form. This could include split funded weeks payments if the child transfers to another provider. Providers will be notified by email of split funding outcomes.

2.94. If a child attends fewer than 15 hours per week, providers will be paid a pro rata amount of funding. If a child attends fewer than 15 hours per week as they are stretching their entitlement across more than 38 weeks, the provider should still claim 15 hours per week to ensure that they receive the correct amount of funding.

2.95. The parental declaration form will confirm when a parent is using multiple providers to access their entitlement. Providing the parental declarations confirm that the parent is receiving their eligible entitlement, funding will be split and paid in accordance with the signed parental declaration forms.

2.96. Where a parent has completed a parental declaration form with more than one provider, and the parents are actively using both provisions to access more than their entitlement, when attendance is confirmed at both provisions funding will be equally split between both providers. If funding is reduced to a provider following a duplicate over claim the provider will be responsible for collecting due parental fees. If a duplicate claim is disputed between two providers, evidence of attendance and parental declarations and the terms and conditions of funding will inform how the funding is paid.

2.97. It is the provider's responsibility to ensure no more than the eligible hours of funding per week are claimed in respect of any child (either 15 or 30 hours). Hours must be detailed on the signed parental declaration form. If a child is also attending another provision that is also claiming funding, it should be recorded on the parental declaration how the EEE funded hours will be split between the two provisions. In addition the parental declaration form should record which provider is offering the universal entitlement. Only the agreed hours should be claimed on the headcount return for eligible 2, 3 and 4 year olds.

2.98. If the amount of funding a provider receives from Birmingham City Council exceeds the amount that would normally be charged for the early education entitlement place provided, the provider can retain the excess and put it to use in support of the provision for eligible children in the provision in other ways e.g. the purchase of equipment or supporting another eligible child to start attendance after the headcount.

2.99 If the amount of funding a provider receives from Birmingham City Council is less than the amount that would normally be charged for the early education entitlement place provided, the provider cannot request top-up fees from parents.

3. Where children move providers during the term, the funding will remain with the original provider as claimed in attendance on the headcount/census day and recorded on Portal.

3.1 Birmingham City Council will provide funding for Free School Meals (FSM) for eligible 3 and 4 year olds. To access a FSM the child must be attending their EEE funded entitlement for a minimum of 5 hours during core hours (9am to 3pm), and parents/carers must be in receipt of specific benefits. FSM funding **IS NOT** available for 2 year old children. See [appendix 8](#) for eligibility criteria.

Funding process for PVI providers

3.2. PVI providers from September 2017 will receive up to two payments per term an interim payment and final payment.

3.3. Birmingham City Council will pay PVI group care providers an interim payment of 80% for 3 and 4 year olds based on the EYSFF indicative budget.

3.4. Alternatively, if the provider estimates a variance of +/- 10% against the indicative budget. or if the provider is claiming for 2 year olds, providers should return an estimate variance form by the stated deadline. Deadlines for submission will be on Eymis.

3.5. Providers that have completed an estimate variance form and are identified as over estimating their claim resulting in an overpayment for two terms may no longer be able to use this facility. The provider will receive a single 100% final payment.

3.6. Childminders MUST return an estimate variance form each term by the stated deadline. Birmingham City Council will then pay 80% of the amount of funding due for 2, 3 and 4 year olds based on this estimate return. Failure to return an estimate variance form will result in no interim payment but 100% of funding will be paid according to the actual headcount and released at the end of the term.

3.7. 80% Interim payments will be received by PVI providers during the first week of each academic term for eligible 2, 3 and 4 year olds. The remaining 20% will be based on the EEE Portal headcount figures and will be adjusted to reflect any under or over payments. This final payment will be paid no later than two weeks before the end of the academic term.

3.8. Providers must inform the NEF@Birmingham.gov.uk in writing within **14 days** following receipt of the EEE interim or final payment, if there are any queries relating to that terms payment in order for adjustments to be made in the next payment.

Funding process for schools and academies.

3.9. School and academies are advised of an indicative budget by the 31st March each year based on the prior years collected data on the Schools Section 251 budget statement: https://www.birmingham.gov.uk/downloads/file/1484/section_251_budget_statement_and_memoandum_201617

3.10. Each term schools and academies will receive termly template via noticeboard, this noticeboard article will also include the timeline for submitting the required data. https://www.birmingham.gov.uk/downloads/file/1577/early_years_single_funding_formula_data_collection_schedule_january_2017_census

3.11. All schools and academies are required to submit the termly template posted to the Birmingham.gov.uk (Budget pages) which is returned by email. This will ensure that Schools receive the maximum funding they are entitled to from information that can't be collected via the schools Census. Late submissions may cause a loss of funding as retrospective funding from previous financial years is not possible.

3.12. Schools and academies are notified termly of the current actual position (and final at year end) when the all data collection has been completed. Payments schedules are set out at the start of the year for full chequebooks and Academies, with financial cash adjustments being made from the following summer term payment. All maintained schools that are non-full chequebook have the ledger adjustments completed in the same financial year.

3.13. Schools must inform the Fair Funding FairFunding@birmingham.gov.uk in writing within **14 days** following receipt of a payment, if there are any queries relating to their payment.

Compliance

3.14. The local authority can carry out checks and/or audits on providers to ensure compliance with the requirements of delivering the free entitlements.

3.15. The local authority requires that the below compliance conditions are met.

3.16. Providers must agree to be inspected by EEE Audit Officer or Early Years Officer from Birmingham City Council to ensure that funding is being used correctly. Birmingham City Council will provide ten working days' notice of any such inspections. Failure to do so may result in clawback of NEF for the term.

3.17. Providers **must** notify Birmingham City Council of any changes to their Ofsted registration. Changes that result in a new EY number will invalidate a current DfE number and EEE registration. Failure to do so will result in a nil payment for EEE as the provider will no longer be registered to provide EEE funding.

3.18. No funding will be payable to a providers in respect of any period in which they are not Ofsted registered, or removed from the EEE Directory of Providers. Any funding paid in respect of a period in which the provider was unregistered will be recovered. It is a condition of funding that the provider agrees to financial recovery taking place.

3.19. Providers must undertake to **repay on demand** any payment of funding if that payment was for provision that did not meet the conditions and requirements for eligible providers; or made incorrectly due to an administrative error. It is a condition of funding that this recovery may be affected by an appropriate reduction in the funding paid in respect of a subsequent term.

Termination and withdrawal of funding

3.20. Suspension of registration by Ofsted or a breach of statutory requirements or safeguarding issues may result in the termination of the arrangement and withdrawal of funding.

3.21. The local authority will follow the below process to remove providers from the registered directory of approved EEE providers. See [appendix 1](#).

3.22. Providers who are removed from the registered directory of approved EEE provision will only be re-instated on the directory if all the requirements in section 1 are met.

3.23 For new registration onto the directory, the EEE Panel will consider any information published by Ofsted about a provider or childminder agency including the recent history about childcare provision by a particular provider or agency or childcare provision at a particular address. This may include, for example, where the local authority has concerns that a provider judged "inadequate or not met" by Ofsted may have re-registered their provision with Ofsted to avoid making the quality improvements identified by Ofsted. This may result in refusal to register onto the directory or agree to fund EEE.

3.24. Funding will be withdrawn and providers may be removed from the registered directory of approved EEE providers if a provider fails to comply with the terms and conditions for funding in this document.

3.25 Funding will be withdrawn and providers may be removed from the registered directory of approved EEE providers where there is evidence of fraud or other impropriety, mismanagement or use of funds for purposes other than that approved.

3.26. Providers who do not make a claim for EEE funding within three consecutive terms may be removed from the EEE Directory.

3.27. Where the decision has been made to withdraw funding for any of the reasons above, the local authority will give the provider a written explanation of the decision to withdraw funding and confirm the date of removal. Decisions will be made on a case by case basis.

Appeals process

3.28. A provider may be denied approval to offer the free entitlements or have their funding withdrawn as set out above. Providers can appeal against that decision and put their case in writing by email to nef@birmingham.gov.uk outlining the grounds for their appeal, within 14 days.

3.29. The appeal will be raised with the EEE Panel within 28 days of receipt of an appeal email providers will be notified in writing of the decision of the appeal panel.

Complaints process

3.30. Parents/Carers who are not satisfied that their child has received their free entitlement in accordance with the legislation and as set out in this agreement, should in the first instance raise their concerns with the provider in line with the providers complaints procedure. If parents/carers are still not satisfied that their child has received the early education entitlement the provider should direct the parent to raise their concerns with Birmingham City Council NEF@Birmingham.gov.uk or 0121 675 4996/1943.

3.31. The provider should ensure they have a complaints procedure in place that is published and accessible for parents who are not satisfied their child has received their free entitlement in the correct way, as set out in this agreement and in Early Education and Childcare Statutory guidance for local authorities.

3.32. The Local Authority will contact the provider to establish the facts and prepare a response for the parent within 28 days. If Parents/Carers are not satisfied with the response received they can escalate their concerns using the Birmingham City Council complaints procedure.

3.33. 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.

Contacts

For further advice please contact:-

Email: NEF@birmingham.gov.uk

Tel: 0121 303 0267

Fax: 0121 303 6509

The Nursery Education Funding (NEF) Team
Early Years and Childcare Service
PO Box 16453
Birmingham. B2 2ZJ

LEGAL SCHEDULE 2

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation set out apply to this Provider Agreement

“**Access to Information Legislation**” means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 1998 and/or s.15 Audit Commission Act 1998, together with any other statutory provision or statutory code of practice imposed on a public authority, or a person holding information on behalf of a public authority

“**ADR Notice**” means a notice issue under **Condition 12.3** requesting mediation.

“**Provider Agreement**” means this provider agreement and all its Schedules

“**Agreement Period**” means the period from the Commencement Date until the Expiry Date or such shorter or longer period in the event of early termination or extension as provided under **Condition 1**.

“**Council’s Representative**” means;

NEF Manager
Early Years Childcare
Directorate for People
P.O. Box 16453
Birmingham
B2 2ZJ

Phone 0121 303 0267

Email NEF@Birmingham.gov.uk

appointed in accordance with **Condition 3.1** of Schedule 3 or such other officer appointed pursuant to that condition.

The Council shall give notice in writing to the Provider if any person ceases to be the Council’s Representative and will provide the details of the replacement Council’s Representative.

“**CEDR**” means the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU

“**Commencement Date**” means 1 September 2017 (or such later date following a new EEE registration as confirmed in writing by the Council).

“**Conditions**” means any references to Conditions are to these terms and conditions in this Provider Agreement unless stated otherwise.

“**Confidentiality Expiry Date**” means the date [one year] following the Expiry Date.

“Confidential Information” means

- All information relating to this Provider Agreement which includes, but is not limited to, commercial, financial, technical, operation or other information in whatever form (including information disclosed orally) and includes any complete or partial copy of the information, which concerns the business and affairs of a Party including information disclosed prior to the date of this Provider Agreement, where one Party can demonstrate to the other Party that disclosure would cause considerable harm.
- All information reasonably designated as such by either Party in writing together with all other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers of either Party being information where the Party can demonstrate to the other Party that disclosure would cause considerable harm.
- Any information which is agreed by the Parties at the Commencement Date or any time prior to publication of this Provider Agreement or any part of it under the Freedom of Information Act 2000 or any other Legislation as being commercially sensitive.

“DBS means” the Disclosure and Barring Service established under the Protection of Freedoms Act 2012

“Dispute Resolution Procedures” means **Conditions 12.**

“Document” means includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

“DPA” means the Data Protection Act 1998.

“EEE Funding” means The amount of EEE funding which the Local Authority has agreed to pay the Provider for the EEE funded place[s] offered by the Provider as set out in the [insert details]

“Expiry Date” means 31 September 2018. unless the Provider Agreement is either extended in accordance with **Condition 1** or terminated earlier under **Condition 14**. Also refer to Termination and withdrawal of funding.

“Event of Default” means the events set out in Condition 9.1

“FOIA” means the Freedom of Information Act 2000.

“FOIA Scheme” means the Council’s current published scheme under Section 19.

“Intellectual Property Rights” means all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions. **Know-How:** information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

“**Legislation**” means any Act of Parliament or subordinate legislation within the meaning of Section 21 (1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body in each case in the United Kingdom.

“**Local Authority**” or “**Council**” mean Birmingham City Council

“**Model Procedure**” means CEDR’s Model Mediation Procedure and Contract.

“**Notice**” includes any instruction, notice certificate or other communication.

“**Office Hours**” means between the hours of 0900 and 1700 hours

“**Parent Declaration Form**” means the form set out and to be completed in accordance with **Condition 2.30**

“**Parties**” means the Council and the Provider as set out in the Funding Acceptance Form and “**Party**” means either of them.

“**Premises**” means the relevant premises where the early education entitlement is offered by the Provider.

“**Provider’s Representative**” means the contact name and address provided on the Funding acceptance form appointed in accordance with **Condition 3.2** or such other officer appointed pursuant to that condition.

“**Provision Offered**” means the type of EEE funded placement offered by the Provider as set out in the Funding Acceptance Form.

“**Schedules**” means the schedules attached to this Provider Agreement

“**Services**” means the early education services to be provided by the Provider under this Provider Agreement

“**Quality Assurance Systems**” means formal management systems intended to assist an organisation to run more effectively and efficiently.

“**Variation**” means the addition, omission, substitution, modification, alteration of the quantity or postponement of any work comprised in the Services.

“**VAT**” means value added tax.

“**Working Day**” means any day on which the Council’s principal offices are open.

1.2 **Jurisdiction**

This Provider Agreement and any non-contractual rights and obligations arising out of or in connection with it shall be governed by and in accordance with the law of England and Wales and any dispute or difference under this Provider Agreement shall be subject to the jurisdiction of the courts of England and Wales.

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- 1.3 **Entities**
Any reference to “person”, “firm” or “company” includes any entity which has legal capacity.
- 1.4 **Gender**
Any term importing gender includes any gender.
- 1.5 **Singular and Plural**
Any term importing the singular number includes the plural number and vice versa.
- 1.6 **Headings**
Condition and sub condition headings are for ease of reference only and do not form part of or affect the interpretation of this Provider Agreement.
- 1.7 **Statutory Provisions**
Any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted.
- 1.8 **Contract (Rights of Third Parties) Act 1999**
The Contracts (Rights to Third Parties) Act 1999 shall not apply to this Provider Agreement. Therefore a person who is not a Party to this Provider Agreement shall not be able to enforce any of its terms against either the Council or the Provider.
- 1.9 **Waiver**
No failure or delay by a Party to exercise any right or remedy provided under this Provider Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy
- 1.10 **Common Law**
Except as this Provider Agreement otherwise provides, this Provider Agreement does not affect the rights or remedies of either Party, tort or otherwise.
- 1.11 **Entire Agreement**
This Provider Agreement supersedes any previous oral or written agreements or arrangements between the Parties relating to the matters contained in this Provider Agreement and it represents the entire agreement and understanding between the Parties relating to those matters.
- 1.12 **Conduct of Indemnity Claims**
Where one Party (“Indemnifying Party”) is liable to indemnify the other Party (“Indemnified Party”) under this Provider Agreement in relation to a claim made by a third party against the Indemnified Party, such Indemnity will apply provided that:-
- 1.12.1 the Indemnified Party gives notice of any such claim to the Indemnifying Party as soon as reasonably practicable
 - 1.12.2 the Indemnified Party provides to the Indemnifying Party on request such information and assistance in relation to such claim as the Indemnifying Party

may reasonably require, subject to the Indemnifying Party indemnifying the Indemnified Party against all costs reasonably incurred by it in the provision of such information or assistance.

1.12.3 the Indemnified Party does not make any settlement, compromise or prejudicial written admission in relation to such claim without the prior consent of the Indemnifying Party (such consent not to be unreasonably withheld or delayed); and

1.12.4 the Indemnifying Party shall be entitled to have sole conduct of litigation relating to the third party claim (subject to the Indemnified Party being secured to its reasonable satisfaction).

1.13 **Severability**

If any provision of this Provider Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Provider Agreement shall continue in full force and effect as if the provider agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Provider Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

1.14 **Schedules**

The Schedules to this Provider Agreement form part of this Provider Agreement.

1.15. **Rights and Remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

1.16 **No Partnership or Agency**

Nothing in the Provider Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, nor constitute either Party the agent of the other for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other Party in any way.

1.17 **Assignment**

The Provider may not assign, transfer, mortgage, charge, sub-contract, novate, declare a trust over or deal in any other manner with all or any of its rights or obligations under this Provider Agreement without the prior written consent of the Council.

LEGAL SCHEDULE 3

GENERAL TERMS AND CONDITIONS

1. COMMENCEMENT AND DURATION

This Provider Agreement shall come into force on the Commencement Date and shall continue unless terminated in accordance with this Provider Agreement, until the Expiry Date 31.8.2018

2. VARIATION

- 2.1 The Council's prior written agreement must be obtained for any intended variation in the use of the EEE Funding.
- 2.2 No variation of this Provider Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

3. PARTIES REPRESENTATIVE

- 3.1 The Council shall nominate a manager to act on its behalf ("the Council's Representative") for the purposes of managing this Provider Agreement.
- 3.2 The Provider shall identify to the Council a competent person ("Providers Representative"), with full authority to act and deliver on all matters arising under this Provider Agreement on behalf of the Provider.

4. PROVIDER'S OBLIGATIONS

- 4.1 The Provider will provide the Early Education in accordance with the terms of this Provider Agreement for the duration of the Agreement Period.
- 4.2 The Provider will provide the Services with reasonable skill and care.
- 4.3 The Provider shall allocate such appropriately experienced and qualified personnel and other resources as may from time to time be necessary for the proper performance of the Services.
- 4.4 The Provider shall manage and monitor the performance of this Provider Agreement and inform the Council's Representative if any aspect of this Provider Agreement is not being or is unable to be performed.
- 4.5 The Provider shall provide to the Council with such information at such periods the Council shall require with regard to the performance of the Service.

5. COUNCIL'S OBLIGATIONS

The Council will fulfil its obligations set out in this Provider Agreement.

6. INSURANCE

- 6.1 The Provider shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Provider Agreement, including death or personal injury, loss of or damage to property or any other loss. The Provider shall take out and maintain for the term of the Provider Agreement a policy of public liability, and employers liability insurance to cover the liabilities assumed under this Provider Agreement. At the

reasonable request of the Council, the Provider will produce evidence of such insurance to the Council.

7. LIABILITY

- 7.1 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the provision of the EEE placement by the Provider, the use of the EEE funding or from withdrawal of the EEE funding. The Provider shall indemnify and hold harmless the Council, its employees, agents, officers with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Provider in relation to the EEE funded placement, the non-fulfilment of obligations of the Provider under this Provider Agreement or its obligations to third parties.
- 7.2 Subject to clause 7.1, the Council's liability under this Provider Agreement is limited to the payment of the Grant.

8. INFORMATION MANAGEMENT

8.1 Confidentiality

8.1.1 The Parties shall not disclose any Confidential Information and shall use all reasonable endeavours to prevent employees and agents from making any disclosure to any person of any Confidential Information.

8.1.2 **Condition 8.1.1** shall not apply to:

- 8.1.2.1 any disclosure of Confidential Information that is reasonably required by persons engaged in the performance of its obligations under the Provider Agreement;
- 8.1.2.2 any Confidential Information which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of **Condition 8.1**;
- 8.1.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
- 8.1.2.4 any disclosure which is required by any Legislation (including any order of a court of competent jurisdiction), and parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 8.1.2.5 any disclosure of Confidential Information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 8.1.2.6 any disclosure by the Council of Confidential Information relating to the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise

for any proposed successor provider or should the Council decide to re-tender the Provider Agreement;

- 8.1.2.7 any disclosure for the purpose of the examination and certification of a Party's accounts;
- 8.1.2.8 any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;
- 8.1.2.9 disclosure to a Party's professional advisers;
- 8.1.2.10 disclosure to the Council's Members;
- 8.1.2.11 any disclosure required or permitted by the FOIA Scheme 2000 or in compliance with the FOIA Scheme;
- 8.1.2.12 any disclosure made by a Party following the prior written consent of the Party owning the Confidential Information;
- 8.1.2.13 any disclosure made by a Party where it has requested the owning Party to consent to such disclosure and the owning Party has either:-
 - 8.1.2.13.1 failed to respond within ten (10) Working Days of the issue of such request;
 - 8.1.2.13.2 refused such request and has failed to set out its reasons for refusal; or
 - 8.1.2.13.3 unreasonably refused to grant such consent or has granted it on terms or subject to conditions which are unreasonable;
- 8.1.2.14 any disclosure made following the Confidentiality Expiry Date.

8.1.3 Where disclosure is permitted under **Conditions 8.1.2** other than **Conditions 8.1.2.4, 8.1.2.6, 8.1.2.7, 8.1.2.8 and 8.1.2.10**, the recipient of the information shall be made subject to the same obligation of confidentiality as that contained in this Provider Agreement.

8.2 **Freedom of Information Act 2000 and the Environmental Information Regulations 2004**

8.2.1 The Parties recognise and accept that the Council is a "Public Authority" for the purposes of Access to Information Legislation, including the provisions of the Freedom of Information Act 2000 and Environmental Information Regulations 1998, and is obliged to disclose information held by itself, or on its behalf, unless the information falls under one or more exemptions, and that the Council may be required to disclose the information where the public interest test lies in disclosure.

8.2.2. In the event that the Provider receives either:-

- 8.2.2.1 a request under the Access to Information Legislation; or

-
- 8.2.2.2 a request for an internal review in respect of a decision not to disclose information requested under the Access to Information Legislation, where the information requested is deemed to be exempt from disclosure, where the requests relate to information of Personal Data processed in the course of carrying out its obligations under this Provider Agreement, the Provider shall within 2 Working Days of the receipt of either request for either the information or a request for an internal review against a decision to withhold information requested under the Access to Information Legislation, notify the Council with details of the request.
- 8.2.3 In the event that the Council receives either:-
- 8.2.3.1 a request under the Access to Information Legislation; or
- 8.2.3.2 a request for an internal review in respect of a decision not to disclose information requested under the Access to Information Legislation, where the information requested is deemed to be exempt from disclosure, where the requests relate to information of Personal Data processed in the course of carrying out its obligations under this Provider Agreement, the Council shall within 2 Working Days of the receipt of either request for either the information or a request for an internal review against a decision to withhold information requested under the Access to Information Legislation, notify the Provider with details of the request.
- 8.2.4 The Provider shall provide the Council with a copy of all information in its possession or power in the form that the Council requires within 5 Working Days (or such other period as the Council may specify) of the Council requesting that information from the Company.
- 8.2.5 Following the Council notifying the Provider of the request or asking the Provider to provide comments, the Provider shall provide any such comments, with detailed reasoning, within 5 Working Days (or other such period as the Council may specify), as to what Confidential Information, if any, should be withheld and the reasons why, to allow the Council to consider the public interest considerations applicable under the relevant Access to Information Legislation.
- 8.2.6 In the event that such comments, with detailed reasoning are not received within the 5 Working Days, the Council shall be entitled to consider the applicability of an exemption without further reference to the Provider, save for the provisions of **Condition 8.2.7**.
- 8.2.7 The Council shall provide to the Provider, no less than 3 Working Days prior to the release of any information requested, a copy of the response to the request.
- 8.2.8 The Council shall be responsible for determining at its absolute discretion whether any information:
- 8.2.8.1 is exempt from disclosure in accordance with the provisions of the Access to Information Legislation;
- 8.2.8.2 is to be disclosed in response to a request and in no event shall the Provider respond directly to a request unless expressly authorised to do so by the Council.
- 8.2.9 The Provider shall ensure that all information produced in the course of this Provider Agreement or relating to the Provider Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 8.2.10 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose the Confidential Information.

8.11 **Transparency**

- 8.11.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of this Provider Agreement, and any Schedules to this Provider Agreement, are not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Provider Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the FOIA.
- 8.11.2 Notwithstanding any other term of this Provider Agreement, the Provider hereby gives its consent for the Council to publish this Provider Agreement and its Schedules in their entirety including from time to time agreed changes to the Provider Agreement, to the general public in whatever form the Council decides.

8.3 **Data Protection**

- 8.3.1 The Parties shall at all times comply fully with the Data Protection Act 1998 (“the Act”) and all subordinate Legislation including the 8 Data Protection Principles contained in Schedule 1 of the Act, as a data controller if necessary, including maintaining a valid and up to date registration or notification under the Act covering the data processing to be performed in connection with the Service.
- 8.3.2 Where necessary the Council may require the Provider to enter into a separate data processing agreement, in the form as may be supplied by the Council.

9. **FAILURE TO COMPLY WITH AGREEMENT CONDITIONS**

- 9.1 An Event of Default is the occurrence, in the absolute discretion of the Council (acting reasonably), also see [Termination and withdrawal of funding](#) of any of the following:-
- 9.1.1 the Provider commits a serious breach of any of the Conditions of this Provider Agreement;
- 9.1.2 the EEE funding is not spent in accordance with these Conditions and or within the timescales set out in these Conditions;
- 9.1.3 the EEE funded placement is not provided as was agreed by the Provider or is not provided within the timescale set;
- 9.1.4 the Provider does not meet the eligibility criteria as set out in this Provider Agreement and/or the EEE funded placement does not meet any of the Conditions of this Provider Agreement;
- 9.1.6 the Provider no longer has the financial resource or the facilities to provide the EEE funded placement;
- 9.1.7 the EEE funded placement closes or ceases other than in accordance with this Provider Agreement or the Council’s consent;
- 9.1.8 the Provider suffers an insolvency event other than for the purposes of amalgamation or reconstruction;
- 9.1.9 any financial irregularity or any fraud on the part of the Provider concerning the EEE funding has been suspected or identified;
- 9.1.10 the Provider’s financial management or records are deemed inadequate;

-
- 9.1.11 any information given or representation made in the completed Birmingham City Councils' EEE registration pack and or the information completed by the Provider on the Parental Consent Form or in any correspondence, report or other document submitted to the Council in connection with the EEE funding is found to be incorrect or incomplete to the extent that the Council considers it to be serious;
- 9.1.12 any report or certificate made by the Provider's auditor or reporting accountant is unsatisfactory (where, for example, the report or certificate refers to a fundamental uncertainty or disagreement, or contains a material qualification, or states that the auditor or accountant is unable to form an opinion about any item, or reports that any amount is not correctly stated in the accounts or records examined);
- 9.1.13 the Provider owes any sum to the Council under any other grant agreement.
- 9.1.14 there is a change which the Council consider relevant in the ownership, control and nature of business of the Provider;
- 9.1.15 by reason of funding obtained from other public sector resources the Council is satisfied that the EEE funding offered is no longer required; or
- 9.1.16 the Provider is in serious breach of the Conditions of this Provider Agreement, other than as contained in **Conditions 9.1.1 to 9.1.15** above.
- 9.2 Where an Event of Default has occurred the Council shall by written notice (as set out in Condition 9.3 below) be entitled to take any one or more of the following steps:
- 9.2.1 suspend the payment of the EEE funding for such period as the Council shall determine and the Council shall not be under any obligation to make payments of the EEE funding during the suspension;
- 9.2.2 vary the EEE funding, in which case the payment shall thereafter be made in accordance with the variation notified to the Provider; or
- 9.2.3 cease to make all or any payments of the EEE funding to the Provider under this Provider Agreement and require the Provider to repay to the Council all or any part of the EEE funding previously paid to the Provider under this Provider Agreement and/or (if applicable) recover such repayment by withholding or deducting an amount equivalent to the required repayment from sums due from the Council to the Provider under any other grant agreement;
- 9.2.4 terminate this EEE funding
- 9.3 The Council shall prior to taking action under Condition 9.2 issue the Provider with a written notice ("Default Notice") specifying:-
- 9.3.1 the relevant Event of Default;
- 9.3.2 if the Event of Default is capable of remedy:-
- 9.3.2.1 the corrective action required; and
- 9.3.2.2 the period of time, as the Council shall determine to be reasonable, within which the corrective action must be taken (or such extended period as the Council shall thereafter determine in its discretion).
- 9.3.3 if the Event of Default is not capable of remedy, the action the Council intend to take.
- 9.4 Where the Event of Default is not capable of remedy; or the Provider has failed to comply with the Default Notice; or the Provider has repeated a breach of these

Conditions or committed a series of breaches which as a result of the repetition, or cumulatively, amount to a serious breach of these Conditions the Council may:

- 9.5.1 exercise its rights under **Conditions 9.2.3** (cease payments) and **9.2.4** (termination of the EEE funding); and
- 9.5.2 issue a demand for repayment of all or part of the EEE funding.
- 9.5 If the Council exercises its rights under **Conditions 9.2.3** (cease payments) and **9.2.4** (termination of the EEE funding) the Council shall give written notice to the Provider and from the date of such notice the Council shall cease to be under any obligation to pay the amount of EEE funding to the Provider under this Provider Agreement.
- 9.6 Where the Council requires the Provider to repay any amount of EEE funding, the Provider shall repay the amount concerned within 20 Working Days of receiving the demand for repayment. The liability to meet such a demand shall be enforceable as a debt.
- 9.7 The Council may require interest to be paid on any amount repayable by the Provider in accordance with the base rate published by the Bank of England from time to time.
- 9.8 The exercise by the Council of its rights under **Condition 9.2** shall be without prejudice to any other right of action or remedy of the Council in respect of any breach by the Provider of this Provider Agreement.

10. **NOTICES**

- 10.1 Any notice given under this Provider Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant Party to the setting address registered with Ofsted in the case of the Council, the correct address is set out below;

NEF Manager
Early Years Childcare
Directorate for People
P.O. Box 16453
Birmingham
B2 2ZJ

Phone 0121 303 0267

Email NEF@Birmingham.gov.uk

or by sending it by fax to the fax number notified by the relevant Party to the other Party. Any such notice shall be deemed to have been received:

- 10.1.1 if delivered personally, at the time of delivery;
 - 10.1.2 in the case of first class or recorded delivery post, on the second Working Day after the date of posting; and
 - 10.1.3 in the case of fax, if the fax transmission is completed during Office Hours then on that Working Day. If fax transmission is completed outside Office Hours then on the next Working Day PROVIDED that Notice shall also be sent by pre-paid post to the addressee.
- 10.2 The Parties may by notice to the other change their address for service to take effect no earlier than 7 days from the service of such notice.

11. PREVENTION OF CORRUPTION

- 11.1 The Council shall be entitled forthwith to cancel the EEE funding by delivery of written notice to the Provider and to recover from the Provider all or any part of the EEE funding paid:-
- 11.2 if the Provider:-
- 11.2.1 has offered, promised or given a financial or other advantage to another person and either;
- 11.2.2 intends the advantage to induce a person to perform improperly a relevant function or activity in relation to the obtaining or execution of the Conditions of this Provider Agreement or any other contract or grant agreement with the Council; or
- 11.2.3 knows or believes that the acceptance of the advantage would itself constitute the improper performance of the relevant function or activity in relation to the obtaining or execution of the EEE funding or any other contract or grant agreement with the Council; or
- 11.3 *if the like acts shall have been done by any person employed by the Provider or associated with the Provider (whether without or with the knowledge of the Provider); or*
- 11.4 *if in relation to this Provider Agreement or any other contract or grant agreement with the Council the Provider or any person employed by the Provider or associated with the Provider shall have;*
- 11.4.1 committed any offence under the Bribery Act 2010; or**
- 11.4.2 given any fee or reward to an officer of the Council the acceptance of which is an offence under Section 117(2) Local Government Act 1972.**

12.0 DISPUTE RESOLUTION PROCEDURE

- 12.1 If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with or arising out of this Provider Agreement, the Parties will attempt to settle it within ten (10) Working Days.
- 12.2 If the dispute is not resolved to the satisfaction of either Party, the dispute shall be referred to the appropriate Provider's Manager and Council Manager who will make every endeavour to remedy the dispute. In the event that the dispute is not remedied or accepted by Provider as a breach, the dispute shall be referred to the relevant Director of Provider to recommend any appropriate remedial action.
- 12.3 If the dispute cannot be resolved under **Condition 12.2**, the Parties will attempt to settle it in accordance with the Model Procedure. Either of the Parties may initiate mediation by giving an Alternative Dispute Resolution notice ("ADR Notice") to the other in writing requesting mediation. A copy of the ADR Notice shall also be sent to CEDR.
- 12.4 The procedure in the Model Procedure shall be amended to take account of:-
- 12.4.1 any relevant provision in this Provider Agreement; and

12.4.2 any other additional agreement which the Parties may enter into in relation to the conduct of the mediation.

12.5 If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within five (5) Working Days from the date of the ADR Notice, CEDR will, at the request of either Party, decide that point for the Parties having consulted them.

12.6 The mediation will start not later than four (4) weeks after the date of the ADR Notice.

12.7 Neither of the Parties may terminate the mediation until each of the Parties has made its opening presentation and the mediator has met each of the Parties separately for one (1) hour. Thereafter Paragraph 14 of the Model Procedure will apply.

12.8 Each Party will use all reasonable endeavours to reach a resolution through this Dispute Resolution Procedure.

13. FORCE MAJEURE

13.1 If the performance of this Provider Agreement is interfered with by reason of any circumstance beyond the reasonable control of the Parties as a result of fire, flood, storm, explosion, war, industrial dispute, industrial action, embargo, statutory requirement, civil or military authority, act of nature, civil disorder, breakdown of plant or machinery, failure of a utility service or transport network (“Force Majeure Event”), then the Party affected shall be excused from such performance of its obligations to the extent of such interference, provided the Party affected makes reasonable efforts to remove the cause of non-performance. The Client shall be under no obligation whatsoever to pay for any Services not provided by reason of a Force Majeure Event.

13.2 The Provider shall give immediate Notice to the Council of any situation which makes it impractical to perform any of the Services and shall discuss with the Council a suitable course of action.

14.0 TERMINATION OF AGREEMENT

14.1 Subject to **Condition 1** above, this Provider Agreement shall terminate on the Expiry Date.

14.2 The Council may terminate this Provider Agreement and any EEE funding payments on giving the Recipient written notice in line with appendix 1 should it be required to do so by financial restraints or for any other reason.

15. SURVIVAL

All Conditions in this Provider Agreement which impose an obligation upon the Provider to repay to the Council any part or all of the EEE funding shall continue to remain in force after the termination of this Provider Agreement and may be enforced by the Council.

16. EQUAL OPPORTUNITIES

The Provider shall adopt a policy to comply with its statutory obligations under the Equality Act 2010 and with all regulations and Codes of Practice, made under the Equality Act 2010.

17. DISCLOSURE AND BARRING

The Provider shall ensure that all its employees involved in the delivery of the Services have the relevant level of the Disclosing and Barring Service records check before commencing provision of the Services.

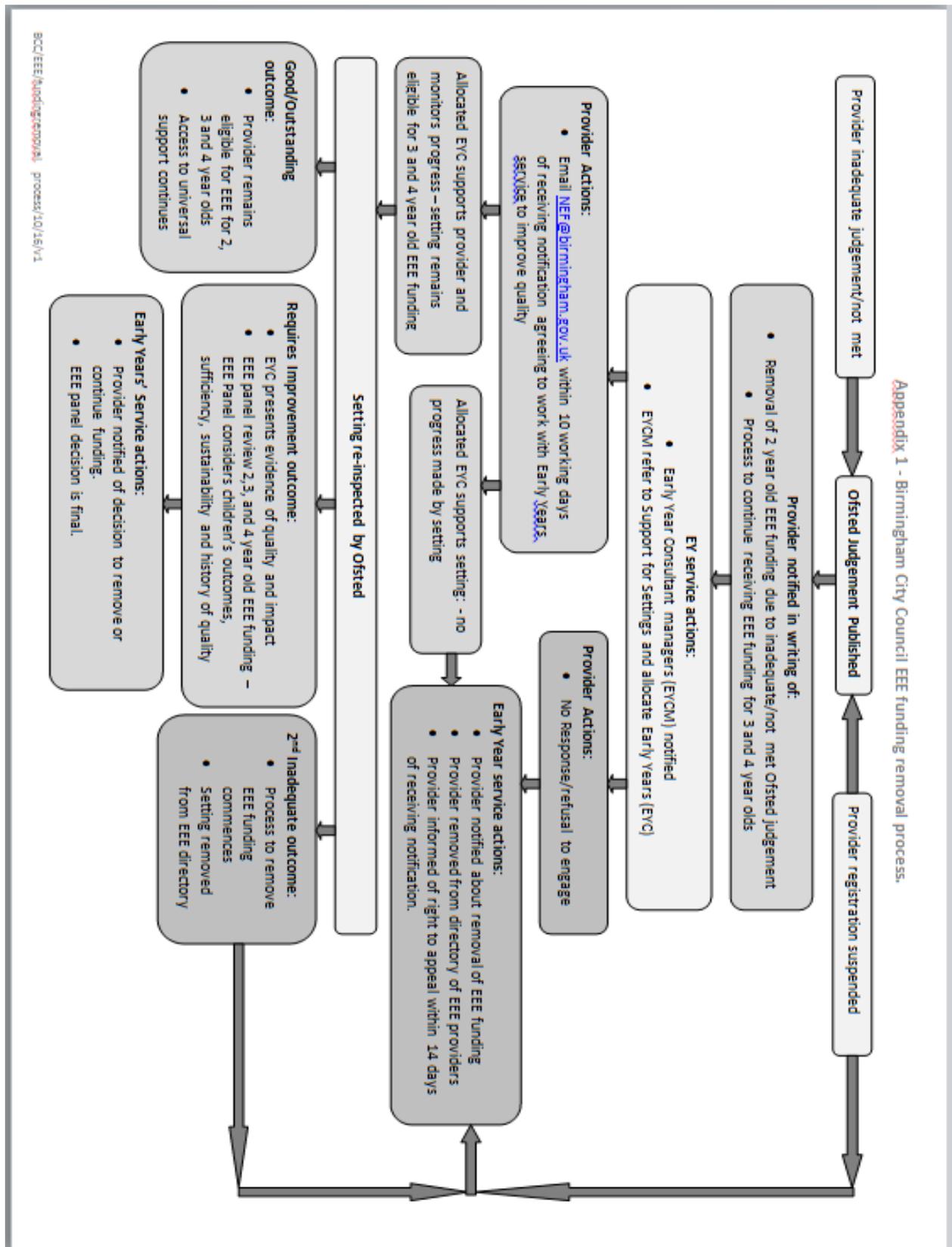
18. HEALTH AND SAFETY

The Provider shall comply with the Health and Safety at Work etc Act 1974, the Management of Health and Safety at Work Regulations 1992 and all Legislation relating to health and safety.

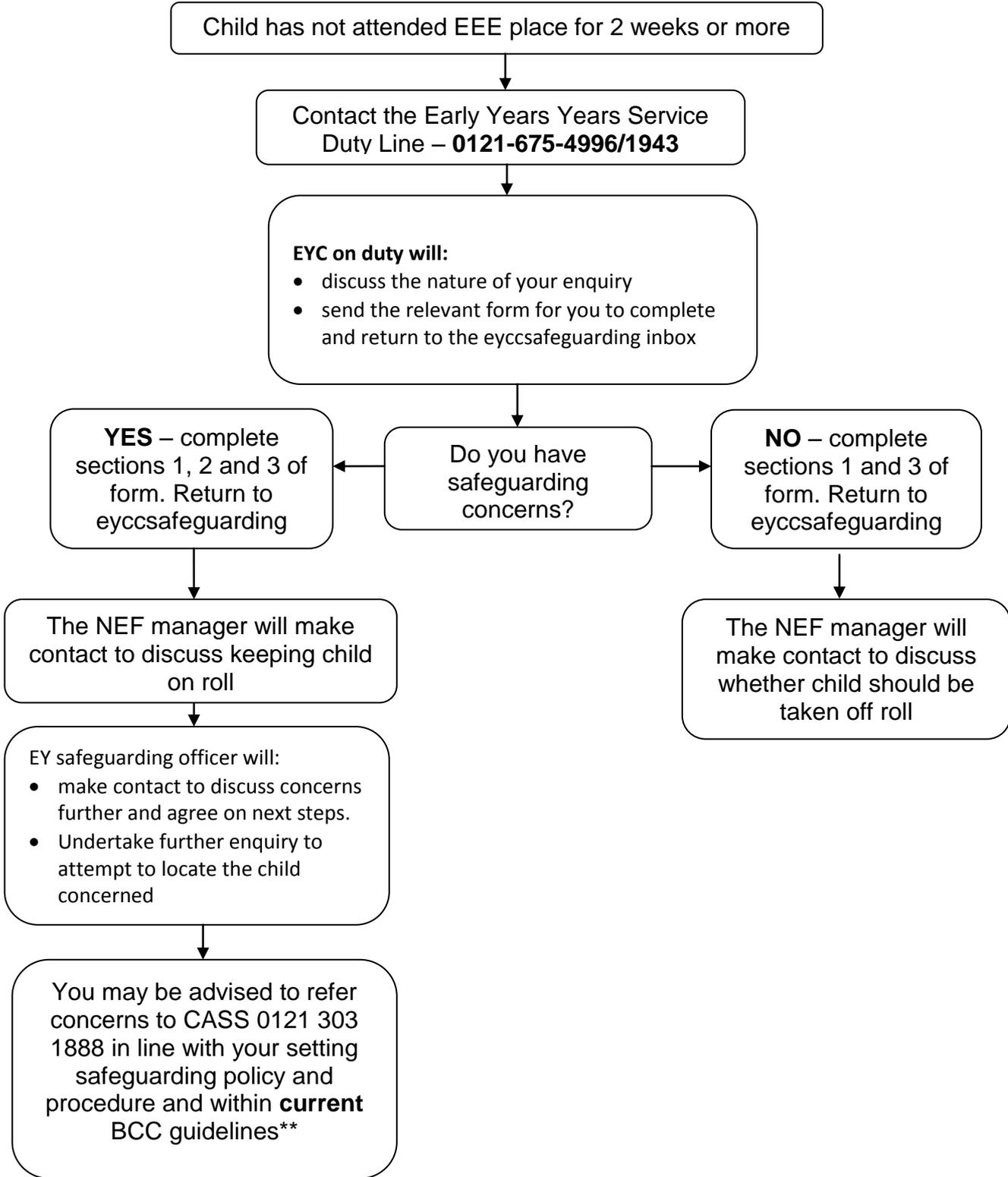
19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 The Council and the Provider agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Council or the Provider before the Commencement Date or developed by either party during the Agreement Period, shall remain the property of that party.
- 19.2 Where the Council has provided the Provider with any of its Intellectual Property Rights for use in connection with this Provider Agreement (including without limitation its name and logo), the Recipient shall, on termination of this Provider Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Council.

Appendix 1 – EEE Funding removal process



Appendix 2 – Procedure for reporting absent and missing children 0-5



**Please refer to the Birmingham Safeguarding Children’s Board (BSCB) website:
<http://www.lscbbirmingham.org.uk/index.php>

Appendix 3 – Eymis Data Base Log on details

We recommend that you regularly access Eymis for up to date documentation and guidance. Eymis is the Data base which Birmingham City Council uses to store all of our guidance and information relating to Early Years. This includes information about Early Education Entitlement funding and procedures.

The log-on details are:

<https://www.ted-birmingham.org.uk/>

- Log in details **PVI2** (Capital letters **PVI** (the letter **i**) then the number **2**)
- Password **PVI2year** (Capital letters **PVI** (the letter **i**) then the number **2** and lower case **year**)

Appendix 4 - Early Years Locality Leads/LA Rep Contact List

LOCALITY	EY NETWORK STEERING GROUP CHAIR	LA EY service REPs	EY FORUM MEMBER
Aston Nechells	Sarah Rutter Bloomsbury CC s.rutter@bloomsbury.bham.sch.uk 0121 464 2034 07774 337401	Steering Group member: Sue Bristow Allocated EYC: Dwayne Burke 675-1943/4996	Sarah Rutter Bloomsbury CC
Cole Heath	Sue Berry Bertram Rd CC Susan.Berry@coleheath.bham.org.uk 675 5259	Steering Group member: Marion Daniels Allocated EYC: Janice Blanchette	Sue Berry Bertram Rd CC
East Wards	David McCallin Bordesley Green East NS and CC d.mccallin@bgens.bham.sch.uk 783 2138	Steering Group member: Marion Daniels Allocated EYC: Theresa Perry	Sally Leese Head Teacher Castle Vale NS
Erdington	Elaine Dupree Head Teacher Featherstone NS &CC e.dupree@feathern.bham.sch.uk 0121 675 2223	Steering Group member: Sue Bristow Allocated EYC: Carol Knight	Elaine Dupree Head Teacher Featherstone NS &CC
Hall green	Laura Hitchmough Allens Croft CC l.hitchmough@allenscn.bham.sch.uk 675 2835	Steering Group member: Angela Blower Allocated EYC: Velma Treasure	Sandra Jenkinson Chair of Trustees Maypole CC
Handsworth	Kelly Bagnall Soho CC kellybagnall@birmingham.gov.uk 01216751890 07835052285	Steering Group member: Jane Taylor Allocated EYC: Leesa Heely	Kelly Bagnall CC Manager Soho CC
LOCALITY	EY NETWORK STEERING GROUP CHAIR		EY FORUM MEMBER
Kings Norton	Maureen McGillicuddy Head Teacher Kings Norton NS & CC m.mcgillicuddy@kingsnorton-nursery.bham.sch.uk 675 3993	Steering Group member: Maggie Kempson Allocated EYC: Carol Moore	Maureen McGillicuddy Head Teacher Kings Norton NS & CC
Ladywood	Sue Bennett St Thomas NS s.bennett@stcn.bham.sch.uk 464 0002	Steering Group member: Jane Taylor Allocated EYC: Kay Mirshahi	Kelly Bagnall Locality Manager Ladywood locality
Longbridge	Jacqui Jackson West Heath NS j.jackson@wesththn.bham.sch.uk 475 2672	Steering Group member: Maggie Kempson Allocated EYC: Cynthia Alex-Eyitene	Cara Atkinson CC Manager Frankley CC

Perry Barr	Beth O'Neill Goodway Nursery School b.oneill@goodwayn.bham.sch.uk 464 3078	Steering Group member: Sue Bristow Allocated EYC: Sharron McKenzie-Lewis	Ruth Day CC teacher Storywood CC
Quinborne	Claire Hamilton CC Teacher Key Stone CC Claire.Hamilton@quinborne.bham.org.uk 464 1810	Steering Group member: Angela Blower Allocated EYC: Sarah Belt	Claire Hamilton CC Teacher Keystone CC
LOCALITY	EY NETOWRK STEERING GROUP CHAIR		EY FORUM MEMBER
Saltley Plus	Jackie White Head Teacher Adderley NS & CC Jackie@addleyn.bham.sch.uk 464 4183 Valerie Daniel Head Teacher Washwood Heath NS & CC v.daniel@washwdhn.bham.sch.uk 464 1810	Steering Group member: Marion Daniels Allocated EYC: Melanie Payne	Jackie White Head Teacher Adderley NS & CC
Senneleys	Lesley Harris/Sarah Vernon Head Teacher Weoley Castle NS & CC l.harris@wlycstln.bham.sch.uk 427 1058	Steering Group member: Angela Blower Allocated EYC: Zaida Nembhard	Lesley Harris Head Teacher Weoley Castle NS & CC
Sparkbrook/hill	David Aldworth Executive Head Teacher Shennley Fields Daycare & NS d.aldworth@shnlyfld.bham.sch.uk 0121 675 3065	Steering Group member: Angela Blower Allocated EYC: Lyn Holmes	Karen Stait CC Manager Sparkbrook CC
Sutton	Fiona Godwin CC Teacher & Manager Sutton virtual CC fgodwin@arthurterry.bham.sch.uk 323 2221	Steering Group member: Sue Bristow Allocated EYC: Mumtaz Irfan	Sue Bailey Assistant HT Authur Terry School
Fays	Olivia Delaney CC Manager, Oaklands Park CC Olivia.Delaney@birmingham.gov.uk 675 0126	Steering Group member: Marion Daniels Allocated EYC: Val Robinson	Olivia Delaney CC Manager Oaklands Park CC

Appendix 5 - Parent Declaration Form – Early Education Entitlement 2-4 years
Please fully complete this form in English.

All three and four year olds are eligible for a funded early education place of 15 hours a week for 38 weeks per year (term time only) or the equivalent of 570 hours stretched over the whole year. Some two year olds are also eligible for 570 hours per year subject to certain criteria – see **'Parents Notes'**.

Some three and four year olds will be eligible for 30 hours per week (1140 hours per year) funded early education place (term-time or equivalent stretched). This form collects information to assess which funding you are eligible for including Free School Meals, Pupil Premium and Disability Access Fund

Parent or Carer details:

Title:	Legal Forename:	Legal Family Name:												
Previously known Surname:														
Address:														
		Postcode:												
Date of birth	/ / (i.e. 31/08/1970)	Telephone:												
Email address:														
National Insurance (NI) number or National Asylum Support (NASS) number:														
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30 hour eligibility code:														
<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 25px;"></td> </tr> </table>														
2 year old eligibility code:		3 and 4 early years pupil premium eligibility code:												
<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 25px;"></td> </tr> </table>								<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 25px;"></td> </tr> </table>						

Couples – second parent or carer details must complete the details below:

Title:	Legal Forename:	Legal Family Name:										
Previously known Surname:												
Address:												
		Postcode:										
Date of birth	/ / (i.e. 31/08/1970)	Telephone:										
Email address:												
National Insurance (NI) number or National Asylum Support (NASS) number:												
<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 25px; height: 25px;"></td> </tr> </table>												

Child details:

Legal Forename:	Legal family name:
Previous names;	
Date of Birth: / / (as per birth certificate) Gender M <input type="checkbox"/> F <input type="checkbox"/>	
Proof of date of birth seen by	Proof of address seen by
Ethnicity:	
Address:	
Postcode:	
Home Language:	
Disability living Allowance <input type="checkbox"/> Education Health Care Plan <input type="checkbox"/> Looked After Child <input type="checkbox"/>	
Adopted <input type="checkbox"/> Residence Order <input type="checkbox"/> Special Guardianship Order <input type="checkbox"/>	
** If you have ticked any of the above boxes your Provider may ask you to produce evidence	
Name the provider offering the universal entitlement (1 st 15 hours per week):	

Provider attendance details

- You need to complete this Declaration Form for each provider your child attends for their early education entitlement in order to ensure that funding is paid fairly between them
- If your child attends more than one setting you can decide how to allocate your funded hours. Please record your chosen hours below.
- If your child is 3 or 4 years old and in receipt of Disability Living Allowance only one Provider is able to access Disability Access Fund – please nominate below the provider the funding should be paid to. Please note the Disability Access Fund payments can only be paid to one provider per year:

Name of provider to receive Disability Access Fund payment _____

My child is attending the following settings:

Term – Autumn Spring Summer	Please enter total free entitlement hours attended per day*					Total number of hours per week	Number of weeks per year (e.g. 38, 51)
Provider school name	MON	TUES	WED	THUR	FRI		
A							
B							
C							
Total Daily Free Hours Attended							
Start Date/s							

Term – Autumn Spring Summer	Please enter total free entitlement hours attended per day*					Total number of hours per week	Number of weeks per year (e.g. 38, 51)
Provider school name	MON	TUES	WED	THUR	FRI		
A							
B							
C							
Total Daily Free Hours Attended							
Start Date/s							

Term – Autumn Spring Summer	Please enter total free entitlement hours attended per day*					Total number of hours per week	Number of weeks per year (e.g. 38, 51)
Provider school name	MON	TUES	WED	THUR	FRI		
A							
B							
C							
Total Daily Free Hours Attended							
Start Date/s							

I confirm I am eligible for the provision below (Please refer to ‘Important Note for Parents/Carers’ overleaf)

- 15 hours for two year olds (see note 1)
- 30 hours for three and four year old (see note 2)
- 15 hours for three and four year old (see note 3)
- Disability Access Fund i.e. in receipt of DLA (see note 4)
- Early Years Pupil Premium (see note 5)

I have read the Privacy Notice and agree that the information I have provided can be shared with the local authority and Department for Education, who will access information from other government departments to confirm my child’s eligibility and enable this provider to claim Early Years Pupil Premium (EYPP) or Disability Access Fund (DAF) on behalf of my child.

Parent Signature	Date	Term Autumn/Spring/Summer
Provider Signed:	Date	Print Name
Parent Signature	Date	Term Autumn/Spring/Summer
Provider Signed:	Date	Print Name
Parent Signature	Date	Term Autumn/Spring/Summer
Provider Signed:	Date	Print Name

Privacy Notice : How we use your information

Information that you supply to your early years provider will be shared with Birmingham City Council. The local authority will use the information provided by you on this declaration form to enable the council to carry out specific functions for which it is responsible:

To safeguard and promote the welfare of children, including children missing from education.

Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014.

Ensure that the early years providers receive appropriate funding, including supplementary payments for children with special educational needs

Ensure that the early year's providers are administrating the funding or free entitlement appropriately.

Information about you, your child and the early year's provider is required to process your application for early year education funding and calculate how much funding to pay to your early year education provider. Where applicable, it is used to check for eligibility for 2 year old funding. For 3 and 4 year old funded children it is also used once per year until your child's 5th birthday to check for eligibility for Early Years Pupil Premium funding.

Your information may also be shared with other Local Authorities, early year providers and the Department for Education (DfE) for audit funding requirements or where there is a legal basis to do so.

It is important that we hold accurate and up to date information about you in order to assess your needs and deliver the appropriate services. If any of your details have changed, or change in the future, please ensure that you inform your early education provider as soon as possible so that we can update your records.

You have the right to object to the processing of your information and to have any inaccurate information corrected. You also have a right of complaint to the Information Commissioner's Office (ICO) at www.ico.org.uk if you think we have dealt with your information in an inappropriate manner.

Birmingham City Council's Fair Processing Notice sets out how any data provided in this form will be looked after by the local authority and your rights to access your records held by the local authority. An electronic version can be accessed by using this link

https://www.birmingham.gov.uk/info/20154/foi_and_data_protection/384/privacy_statement

If you would like more information about how the DfE use your information, then please go to the following websites:

www.gov.uk/guidance/data-protection-how-we-collect-and-share-research-data

Note: This Privacy Notice could be subject to change at a later date should the type of data we need to collect change or should we need to share the data with new partners organisations. The most recent version of the Privacy Notice will be available on the Birmingham City Council website.

Date: July 2017

Date for Review: January 2018

Important Notes for Parents/Carers

Changing Provision: When a child moves early years provider after headcount day funding will not be transferred to another provider unless an exceptional agreement has been made between the provider and Local Authority. If a parent moves to a new provider midterm, the parent will be liable for any fees due to the new provider.

Note 1: To be eligible for 15 hours for my two year old I must be in receipt of one of the following: Income Support/Income based JSA, Income related ESA, Child Tax Credit, Working Tax credit with an assessed income of less than £16,190, Universal Credit The Guarantee element of State Pension Credit, Support under Part VI of the immigration and Asylum Act, child in receipt of DLA, Child looked after by the Local Authority, or a child who has left care through adoption, Special Guardianship or Residence Order.

Note 2: To be eligible for 30 hours for my three or four year old I must earn less than £100,000 and meet one of the following criteria: Single parents working at least 16 hours per week on the minimum wage, Couples – both working at least 16 hours per week on minimum wage, one parent is employed and the other parent is in receipt of specific carers benefits, specific disability or incapacity benefits. Working parents includes those on statutory sick pay, parental, adoption maternity or paternity leave. Should you no longer be eligible for 30 hours (extended entitlement) then you will still be eligible for the 15 hours early education universal entitlement. Where your child attends 2 settings or more, you should choose which setting will be funded for the universal 15 hours.

Note 3: All three and four year olds are entitled to the 15 hours universal entitlement.

Note 4: Three and four year old children in receipt of child DLA and are receiving the early education entitlement are eligible for the Disability Access Fund (DAF). DAF is paid to the child's setting as a fixed annual rate of £615. Please note this payment is not made for 4 year olds in reception classes.

Note 5: Early Years Pupil Premium (EYPP) is an additional sum of money paid to childcare providers for children of families in receipt of certain benefits including: Income Support/Income based JSA, Income related ESA, Child Tax Credit, (but **not** Working Tax Credit), Universal Credit The Guarantee element of State Pension Credit, child in receipt of DLA, Child looked after by the Local Authority, or a child who has left care through adoption, Special Guardianship or Residence Order. This funding will be used to enhance the quality of the child's early years' experience by improving teaching and learning.

Appendix 6 – 2 year old eligibility criteria

As of 1st April 2015, the National criteria to claim early education entitlement for two year old children are as follows:

- Universal credit
- Income support
- Income-based Job Seekers' Allowance
- Income-related Employment and Support Allowance (If you are unable to work due to illness or a disability)
- Support under Part VI of the Immigration and Asylum Act 1999
- The Guarantee element of the State Pension Credit; or Child Tax Credit, provided they have an annual gross income of no more than £16,190 as assessed by Her Majesty's Revenue and Customs (HMRC).
- Working Tax Credits (including those in receipt during the four-week period immediately after their employment ceases, or after they start to work fewer than 16 hours per week) with a household income of less than £16,190 as assessed by HMRC.
- The child is looked after by their local authority.
- The child who has left care through special guardianship or an adoption or residence order.
- The child has a current statement of special educational needs or an Education, Health and Care plan.
- The child is in receipt of the Disability Living Allowance.

Appendix 7 - 30 hours extended entitlement eligibility criteria

Will I qualify for 30 hours free childcare?

Parents of three and four year olds will need to meet the following criteria in order to be eligible for 30 hours free childcare:

- They earn or expect to earn the equivalent to 16 hours at National Minimum or Living Wage over the coming three months.
- This equates to £120 a week (or c.£6,000 a year) for each parent over 25 years old or £112.80 a week (or c.£5,800 a year) for each parent between 21 and 24 years old and £56 a week for apprentices in their first year.
- This applies whether you are in paid employment, self-employed or on zero hours contract.
- The parent (and their partner where applicable) should be seeking the free childcare to enable them to work.
- Where one or both parents are on maternity, paternity, shared parental or adoption leave, or if they are on statutory sick leave.
- Where one parent meets the income criteria and the other is unable to work because they are disabled, have caring responsibilities or have been assessed as having limited capability to work.
- Where a parent is in a 'start-up period' (i.e. they are newly self-employed) they do not need to demonstrate that they meet the income criteria for 12 months.
- If one or both parents is a non-EEA national, the parent applying must have recourse to public funds

A parent will not meet the criteria when:

- Either parent has an income of more than £100,000
- If one or both parents is a non-EEA national and the parent applying does not have recourse to public funds

What happens if a parent loses eligibility?

- They will receive a 'grace period' – this means they will be able to keep their childcare for a short period.
- Once the 'grace period' has lapsed, the parent should be entitled to the universal 15-hour entitlement.

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Appendix 8 - Early Years Pupil Premium and Free School Meals Eligibility Criteria

Three and four year olds in state-funded early education will attract early years pupil premium funding if they meet at least one of the following criteria:

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

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

Appendix 9 – Data Privacy

Data privacy

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

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

A 'privacy notice' is a good way to be able to meet data subject's rights and therefore DfE recommend they are used to explain to parents, pupils and staff how their data is being used.

The department has drafted template privacy notices that providers may like to use, however, they should be reviewed, amending as necessary to reflect business need and ideally include this link to the gov.uk webpage on how the department collects and shares data.

It is recommended that the privacy notice be included as part of an induction pack for children and staff and in addition be put on the providers website for parents, as well as potentially featured on the staff notice board/intranet. They do not need to be issued on an annual basis as long as new parents and staff are made aware of the notices and they are readily available electronically or in paper format.

Please note that information about whether a child is in receipt of Disability Living Allowance is sensitive personal data which should be handled appropriately. Providers are asked to pay particular note to advice from the ICO on holding personal data including sensitive personal data available at:

<https://ico.org.uk/for-organisations/guide-to-data-protection/principle-3-adequacy/>

Appendix 10 – Disability Access Fund (DAF)

Disability access fund (DAF)

The Government is committed to promoting equality and inclusion for children with Special Educational Needs and Disabilities (SEND) by removing barriers which prevent children from accessing their Early Education Entitlement (EEE) and working with parents to give each child support to fulfil their potential.

To ensure that children are able to access and get the best from their EEE, from April 2017 the government introduced a new funding measure for early year's providers, the **Disability Access Fund (DAF)**, to support children with disabilities or SEN.

Eligibility

3- and 4-year olds will be eligible for the DAF if they meet the following criteria:

- the child is in receipt of child disability living allowance and;
- the child receives free early education.

Please note that four-year olds in primary school reception classes are not eligible for DAF funding. Children become eligible for free early education at different points in the year depending on when they turn 3. Details of the dates when children become eligible are available in existing guidance.

Entitlement

Providers with three- and four-year-olds eligible for the DAF will be entitled to receive a one-off payment of £615 per year. The DAF is not based on an hourly rate and is an additional entitlement.

Children do not have to take up the full 570 hours of early education they are entitled to in order to receive the DAF. Children in receipt of the DAF will be eligible where they take-up any period of free entitlement