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ANNEX A – 2019-20 PARENT DECLARATION FORM
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ANNEX C – FUNDING SCHEDULE
ANNEX D – FUNDING PROCESS
1. **Definitions**

In this Agreement the following expressions shall have the following meaning:

<table>
<thead>
<tr>
<th>Expression</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreement Price</td>
<td>The amount payable to the Provider for each eligible Service User receiving the Service from the Provider and calculated in accordance with section 17.</td>
</tr>
<tr>
<td>Base Rate</td>
<td>As set out in clause 17.22.</td>
</tr>
<tr>
<td>Capita</td>
<td>Online system to capture child data and to facilitate funding.</td>
</tr>
<tr>
<td>Controller</td>
<td>As defined in the Data Protection Legislation.</td>
</tr>
<tr>
<td>Processor</td>
<td></td>
</tr>
<tr>
<td>Data Subject</td>
<td></td>
</tr>
<tr>
<td>Personal Data</td>
<td></td>
</tr>
<tr>
<td>Personal Data Breach</td>
<td></td>
</tr>
<tr>
<td>processing and appropriate technical and organisational measures</td>
<td></td>
</tr>
<tr>
<td>Data Protection Legislation</td>
<td>the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.</td>
</tr>
<tr>
<td>DAF</td>
<td>Disability Access Fund.</td>
</tr>
<tr>
<td>Deprivation Supplement</td>
<td>As set out in clause 17.21 and 17.23.</td>
</tr>
<tr>
<td>DfE</td>
<td>Department for Education.</td>
</tr>
<tr>
<td>DLA</td>
<td>Disability Living Allowance.</td>
</tr>
<tr>
<td>EYFS</td>
<td>Early Years Foundation Stage Statutory Framework.</td>
</tr>
<tr>
<td>EYPP</td>
<td>Early Years Pupil Premium.</td>
</tr>
<tr>
<td>EEF</td>
<td>Early Education Funding.</td>
</tr>
<tr>
<td>Funding Stages</td>
<td>Forecast</td>
</tr>
<tr>
<td></td>
<td>Actual Headcount</td>
</tr>
<tr>
<td></td>
<td>Amendment Headcount</td>
</tr>
<tr>
<td>The Local Authority</td>
<td>Warrington Borough Council.</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Provider</td>
<td>The person or entity described as such and who executed this Agreement.</td>
</tr>
<tr>
<td>Provider’s Directory</td>
<td>A directory kept and maintained by the Local Authority that lists the name and address of every Provider in the Local Authority area that is eligible to receive EEF.</td>
</tr>
<tr>
<td>SEND</td>
<td>Special Education Needs and Disability.</td>
</tr>
<tr>
<td>Service</td>
<td>Delivery of Early Years Education for two, three and four year olds. The service must adhere to the requirements as set out in this Agreement.</td>
</tr>
<tr>
<td>Service User</td>
<td>Any recipient of the Service provided through this Agreement or their parent, guardian or appropriate adult.</td>
</tr>
<tr>
<td>SOA</td>
<td>Super Output Area</td>
</tr>
<tr>
<td>Staff</td>
<td>All persons, including volunteers, involved in the provision of the Service, whether or not they are formally employed by the Provider including the Provider’s servants, agents, suppliers or sub-contractors.</td>
</tr>
<tr>
<td>UK Data Protection Legislation</td>
<td>All applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.</td>
</tr>
<tr>
<td>Volunteer</td>
<td>A person who is engaged by the Provider in respect of the Service and is thereby Staff but not engaged by a contract of employment or receives payment, but who has been subject to Staff Vetting Procedures.</td>
</tr>
</tbody>
</table>
2. **Provider Agreement requirements**

2.1 It is important that Providers who are eligible to receive EEF understand their responsibilities under this Agreement. It is based on the current law and statutory guidance issued by the DfE.

2.2 This Agreement covers EEF funding places for 2, 3, 4 year olds, EYPP and DAF for 3 and 4 year olds.

2.3 **Universal entitlement**

   All 3 and 4 year olds – a maximum of 15 funded hours per week over 38 weeks per year OR 570 hours per year as a ‘stretched’ offer.

2.4 **Criteria based funding (family or household eligibility)**

   - Funding for 2 year olds - a maximum of 15 funded hours per week over 38 weeks per year OR 570 hours per year as a ‘stretched’ offer.
   - EYPP for 3 and 4 year olds accessing the universal 15 hours.
   - Extended entitlement for 3 and 4 year olds – in addition to the 15 hours universal entitlement. Families could receive a maximum of 15 extra hours per week over 38 weeks totalling 30 hours per week, OR 1140 hours per year as a ‘stretched’ offer.
   - DAF for 3 and 4 year old children in receipt of DLA.

2.5 This Agreement is applicable to:

   - Day nurseries
   - Academy Nurseries
   - Pre-schools
   - Childminders and childminder agencies
   - Wraparound care (integrated).

   These include a variety of ownerships such as private, limited company, sole trader, voluntary, charity groups, governor lead groups, and independent sectors.

2.6 As an existing Provider offering EEF for 2, 3 and 4 year olds, in order to continue receiving funding you must agree to comply with all terms and conditions set out in this Agreement. Failure for Providers to return the declaration and comply with the terms of the Agreement may lead to Providers having funding withheld or withdrawn permanently.

2.7 New Providers who are registering for the first time to offer EEF for 2,3 and 4 year olds, will not receive funding until they have attended an EEF induction session and the Agreement is completed in full, signed and returned with the other required documentation found in in the Early Education Funding Application Pack provided by the Local Authority.
3. **Context and national vision**

The first five years of life are critical to a child’s lifelong development. Children’s earliest experiences and environments set the stage for future development and success in school and life. Early experiences provide the foundation for language, reasoning, problem solving, social skills, behaviour, health and emotional wellbeing.

Over the past few years Early Years provision has increasingly become subject to prescriptive legislation and regulation. This means that the law sets out what support must be provided and how it must be provided. Services are inspected by Ofsted and are judged on the quality of service and support being provided to the children and families in their care and the difference which it makes to their lives.

Being at risk of poor outcomes can significantly reduce life chances and prevent social mobility. There are several powerful reports that highlight the need for early intervention to target support for children at risk of poor health, educational and wellbeing outcomes. Through the Warrington Early Years Strategy, we aim to work in an integrated way with key partners to give the youngest children of Warrington the best start towards achieving their potential.
4. **Legal framework and statutory guidance**

The following frameworks and legislation underpin this Agreement:
- Early Education and Childcare Statutory Guidance for the Local Authority (June 2018)
- Childcare Act 2006
- Childcare Act 2016
- Equality Act 2010
- School admissions code 2014
- Early years entitlements: operational guidance for local authorities and providers (June 2018).
- Early Years Foundation Stage Statutory Framework 2017
- Local Authority, (Duty to Secure Early Years Provisions Free of Charge)( Regulations 2014)
- The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016
- Special Education Needs and disability code of practice: 0-25years 2015
- Data Protection Act 2018
- Working together to safeguard children (2018)
5. **Warrington Borough Council responsibilities**

5.1 The Local Authority must secure an Early Education Funded place for every eligible child in the area.

5.2 The Local Authority will work in partnership with Providers to agree how to deliver EEF places.

5.3 The Local Authority will be clear about their role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as their expectations of Providers (see section 12).

5.4 The Local Authority will contribute to the safeguarding and promote the welfare of children and young people in the area through the Warrington Safeguarding Children Board.
6. **Key Provider responsibilities**

6.1 The Provider must comply with all relevant legislation and insurance requirements as stated in the Early Years Foundation Stage Statutory Framework (EYFS).

6.2 The Provider should deliver the EEF consistently to all parents, whether in receipt of 15 or 30 hours and regardless of whether they opt to pay for optional services or consumables. This means that the Provider should be clear and communicate to parents details about the days and times that they offer funded places, along with their services and charges. Those children accessing the EEF should receive the same quality and access to provision.

6.3 The Provider should only change their funding model from the start of a new term, and notify parents in advance if the funded hours agreed on the parent declaration form change as a result.

6.4 The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that link to the Local Authority’s guidance for recognising, responding, reporting and recording suspected or actual abuse.

6.5 The Provider must have arrangements in place to support children with special educational needs and/or disabilities (SEND). These arrangements should include a clear approach to identifying and responding to SEND. Providers should utilise the SEN inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents.

6.6 EEF 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. The Childcare Act 2006 Section 18 states that a relative, in relation to a child, means a grandparent, aunt, uncle, brother or sister, whether of the full blood or half blood or by marriage or civil partnership.
7. Safeguarding

7.1 The Local Authority has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. They have a number of statutory functions under the 1989 and 2004 Children Acts which make this clear, and the ‘Working together to safeguard children’ 2018 guidance sets these out in detail.

7.2 The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that are in line with the Warrington Safeguarding Children’s Board for responding to and reporting suspected or actual abuse and neglect. A lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider must have regard to ‘Working together to safeguard Children’ 2018 guidance.
8. **Eligibility**

8.1 The Provider should check original copies of documentation to confirm a child has reached the eligible age on initial registration for all EEF. 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 data privacy guidance set out in Annex A: Parent declaration form.

8.2 The Local Authority must ensure that a child has an EEF place no later than the beginning of the term following the child and the parent meeting the eligibility criteria for the EEF.

8.3 The child’s age criteria for starting a placement are as follows:

<table>
<thead>
<tr>
<th>Birthday is during period</th>
<th>Start of funded placement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st January to 31st March</td>
<td>1st April (Summer term)</td>
</tr>
<tr>
<td>1st April to 31st August</td>
<td>1st September (Autumn term)</td>
</tr>
<tr>
<td>1st September to 31st December</td>
<td>1st January (Spring term)</td>
</tr>
</tbody>
</table>

8.4 4 year old children who are attending primary school reception classes are not eligible for EEF.

2 Year olds – 15 hours free childcare

8.5 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.

8.6 Applications to check eligibility can be submitted by parents / carers online through the Citizen’s portal which can be found on MyLifeWarrington at:


This will provide an instant answer and will generate a confirmation letter and application reference for eligible children that can be printed off and taken to the chosen Provider as evidence of eligibility.

If a ‘Not Eligible’ result is returned, and the parent thinks they may be eligible as they are in receipt of Universal Credits, they can contact the EEF Team for further clarification.

8.7 Providers and Children’s Centres may support eligible families by assisted application through the Capita Provider Portal.
8.8 All places must be verified by Providers and agreed through the Capita Provider Portal (via the Start Placement Notification Process) before funding can commence. No exceptions will be made for Providers who have accepted children for a funded 2 year old place without an approved 2 year old application reference, which starts with TYF877. Providers will be liable for the costs of a place taken before a code is issued.

8.9 The Local Authority will fund the place of any eligible child (regardless of where they live) attending a Warrington Provider where there is valid confirmation of eligibility. Providers approached by families residing outside of Warrington should support an application to the Local Authority (Warrington) through their Capita Provider Portal, or contact the EEF Team regarding any other proof of documentation.

8.10 Providers will need to ensure they have checked the start date on the confirmation letter. The Provider can only claim from this date.

8.11 The confirmation letter will include the unique application reference which Providers must submit on the Capita Provider Portal Headcount as requested by the EEF Team in order for the funding to be claimed. It is the Provider’s responsibility to confirm a child’s date of birth and proof of address and notify the EEF Team of any anomalies.

8.12 The Local Authority requires Providers to submit termly Learning and Development Tracking Data as part of the monitoring process for all funded 2 year olds.

3 & 4 year olds – universal 15 hours free childcare

8.13 All three and four year olds become eligible for 15 hours of EEF across 38 weeks per year OR 570 hours per year from the term after their 3rd birthday.

8.14 Funding will be based on the data entered onto the Capita Provider Headcount Portal. Deadlines will be issued well in advance and payments will be delayed if deadlines are missed. Any late claims will be paid at the next funding stage.

Early Years Pupil Premium (EYPP)

8.15 EYPP is additional funding for Providers to improve the education they provide for disadvantaged 3 and 4 year olds.

8.16 Children must receive EEF in order to attract EYPP funding. They do not have to take up the full 570 hours of universal early education they are entitled to in order to get EYPP. Funding is based on hours claimed.

8.17 Once a Provider starts receiving EYPP funding in respect of a particular child, they will not lose it while the child is taking up the Early Education Funding.
8.18 Providers will be paid at a rate of \textbf{53p} per hour for EYPP children for the universal 15 hours only. Extended entitlement hours will not attract EYPP.

8.19 4 year old children who are attending primary school reception classes and who already receive the school-age pupil premium are not eligible for EYPP funding.

8.20 Please be aware that once a child previously eligible for EYPP starts school they will not become automatically eligible for the school-age pupil premium.

8.21 In order for Providers to access the EYPP funding, they must obtain parent/carers National Insurance number/National Asylum Support Service reference number, dates of birth and surname via the Parental Declaration form and submit the data via the Capita Provider Headcount Portal to the EEF Team to complete an eligibility check for the EYPP funding.

8.22 Providers will be notified through the Capita Provider Headcount Portal if a child is eligible. Providers should then inform the child’s parents or legal carers of the outcome of the check.

8.23 EYPP for eligible children appearing for the first time on the amendment headcount will only be paid from the beginning of the next term.

8.24 The Local Authority Virtual Schools Head will have control over the EYPP budget for looked after children and may contact Providers with regard to utilisation of spend.

8.25 Providers must not use EYPP as a top up fee to the EEF rate.

8.26 Warrington Providers can claim EYPP for any eligible children attending their setting regardless of where the child resides.

8.27 In the rare instance that a child moves to a different Provider part way through the term, the first Provider will retain the EYPP funding for the remainder of that term.

8.28 The Local Authority has a duty, as outlined in the Ofsted Annual Conversation, to track the development of children who attract EYPP funding. This information needs to be submitted at the request of the Early Years Data Officer on a termly basis.

\textbf{3\&4 year olds – extended entitlement}

8.29 Families need to check their eligibility for the extended entitlement via the government website: \url{https://childcare-support.tax.service.gov.uk/} - if the parents are entitled they will receive an eligibility code, granting them an additional 15 hours funded childcare per week.

8.30 Alongside the 30 hours eligibility code, which is the child’s unique 11-digit number, and original copies of documentation, a Provider \textbf{must} acquire written consent from, or on behalf of, the parent using the Parental Declaration Form (found on the Provider Portal) to
be able to receive confirmation and future notifications from the Local Authority of the validity of the parent’s 30 hours eligibility code.

8.31 Once a Provider has received written consent from the parent on the Parental Declaration Form, they **must** verify the 30 hours eligibility code through the Capita Provider Portal regardless of whether they claim universal or extended hours.

8.32 Submission for checking to the Local Authority will imply parental consent is in place via the Parental Declaration form.

8.33 The Local Authority will complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at a minimum of 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 clause 9.8. The Local Authority’s will notify Providers where a parent has fallen out of eligibility. Full details of the code are then available through the Provider Portal Expiration Dashboard and the Review Previous Checks screen.

8.34 Providers should regularly monitor 30 hour codes through the Expiration Dashboard on the Provider Portal, and notify parents to re-confirm as they approach their eligibility end date.

8.35 Providers must check whether they are the main setting according to page 3 of the Parent Declaration form. If they are the main setting, they must enter universal hours on the headcount columns, otherwise they must enter the hours in the extended columns.

8.36 A child can only take up their extended entitlement the term after the 30 hour code has been issued AND the term after their 3rd birthday.
9. **The Grace Period**

9.1 A child will enter the grace period when the child’s parents cease to meet the eligibility criteria set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016, as determined by HMRC or a First Tier Tribunal in the case of an appeal.

9.2 The Local Authority will be able to access information about whether a child has ceased to meet the eligibility criteria and entered the grace period. The grace period end date will automatically be applied to eligibility codes.

9.3 The Local Authority will continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory guidance for the Local Authority (June 2018).

9.4 A child who becomes ineligible during the first half of the term as defined in the table 9.8, will be funded until the end of that term (31st March, 31st August, 31st December) or for as long as the child remains under compulsory school age, whichever is the shorter.

9.5 A child who becomes ineligible during the latter half of the term (up to the end of the term) as defined in the table 9.8, will be funded until the end of the following term (31st March, 31st August, 31st December) or for as long as the child remains under compulsory school age, whichever is the shorter.

9.6 The Local Authority has the discretion to extend the ‘grace period’ for a short time in very exceptional circumstances if the parent has been forced to leave their home and paid employments, for example, where the parent is a victim of domestic abuse or other serious crime. This will be considered on a case by case basis.

9.7 A child can only take up a place during the eligibility period and cannot take up a 30 hour place for the first time, with a provider, during a grace period.

9.8 **Grace period table**

<table>
<thead>
<tr>
<th>Date Parent receives ineligible decision on reconfirmation:</th>
<th>LA audit date:</th>
<th>Grace Period End date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Jan – 10 Feb</td>
<td>11 February</td>
<td>31 March</td>
</tr>
<tr>
<td>11 Feb – 31 March</td>
<td>1 April</td>
<td>31 August</td>
</tr>
<tr>
<td>1 April – 26 May</td>
<td>27 May</td>
<td>31 August</td>
</tr>
<tr>
<td>27 May – 31 August</td>
<td>1 September</td>
<td>31 December</td>
</tr>
<tr>
<td>1 September – 21 October</td>
<td>22 October</td>
<td>31 December</td>
</tr>
<tr>
<td>22 October – 31 December</td>
<td>1 January</td>
<td>31 March</td>
</tr>
</tbody>
</table>
10. **Flexibility**

10.1 Providers that are unable to offer the full entitlement to parent / carers per week but operate over at least 38 weeks per year, should inform parents that they can take the remainder of their entitlement with another Provider.

10.2 Providers who open for less than 38 weeks of the year should make parents aware that they can take up the rest of their entitlement with another Provider.

10.3 Providers should offer flexible packages of funded hours, which will enable children to access regular, high quality provision in keeping, whilst maximizing flexibility for parents and ensuring a degree of stability for Providers.

10.4 Parents can take up their child’s funded place in patterns of hours that “stretch” their child’s entitlement by taking fewer hours a week over more weeks of the year, where there is Provider capacity and depending on parental demand.

10.5 Providers choosing to commence with a stretched offer as a parental option can only do so at the beginning of a term.

10.6 A stretched offer is at the discretion of the Provider. Providers can contact the previous Provider or the EEF Team to clarify how many hours are still available for the child. Stretched offer guidance is available through the Provider Portal.

10.7 Providers should note the following restrictions on session times:
- No session can be longer than 10 hours
- There is no minimum session length (subject to the requirements of registration on the Ofsted Early Years Register)
- Funded sessions cannot operate before 6.00am or after 8.00pm
- Funding is limited to one setting only for 2 year olds
- Funding is limited to a maximum of two sites in a single day for 3 and 4 year olds
- Providers may consider offering funded places:
  - over a maximum of 52 weeks of the year
  - outside of school term times
  - at weekends.

10.8 There is no requirement that funded places must be taken on or delivered on particular days of the week or at particular times of the day.

10.9 There is no requirement that Providers must be open for at least 38 weeks of the year, or that Providers must offer 30 hours in order to receive funding to deliver funded places.

10.10 Providers can choose not to deliver funded places.
10.11 The Provider should work with the Local Authority and share information about the times and periods at which they are able to offer EEF via the Capita Self Update Provider Portal. This will support the Local Authority to secure sufficient stretched and flexible places to meet parental demand in Warrington. Providers should also make information about their offer and admissions criteria available to parents at the point the child first accesses provision at their Provider.

10.12 Parents / carers can choose to split funded hours for 3 and 4 year olds between multiple Providers, though no more than 2 sites in one day. Parents will share this information with each Provider they use via the Parental Declaration Form.

10.13 The Local Authority advise that parents splitting their funding over more than one provider, do not stretch their funding. Further details can be found in the Stretched Offer Guidance.

10.14 Providers must check that the total hours for all settings entered on the Parent Declaration Form do not exceed the maximum allowed. (570 hours for universal or 1140 hours for an Extended Entitlement).
11. **Partnership working**

11.1 Partnerships should be supported by Local Authorities on four levels between:
- Local Authorities and Providers
- Providers working with other Providers, including childminders, schools and organisations
- Providers and parents
- Local Authorities and parents

11.2 The Local Authority will promote partnership working between different types of Providers, including childminders, across all sectors and encourage more Providers to offer flexible provision, alongside other Providers.

11.3 The Provider should work in partnership with parents, carers and other Providers to improve provision and outcomes for children in their setting.

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

11.5 The Provider will adhere to the Warrington Borough Council Attendance and Welfare Policy for Early Years Settings as found on the Capita Provider Portal.
12. **Special educational needs and disabilities**

12.1 The Local Authority will strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in Warrington as per the Special Educational Needs and Disability code of practice: 0 to 25 years (January 2015).

12.2 The Provider must ensure owners and all staff members are aware of their duties in relation to the SEND Code of Practice and the Equality Act 2010.

- Section 20–22 of Equality Act 2010 Childcare Providers must make reasonable adjustments to policies and physical features which put disabled children at a disadvantage compared to non-disabled children.

- Local Authorities and other listed public authorities (which include Local Authority Maintained Schools and Academies) must comply with the public-sector equality duty found in section 149 of the Equality Act 2010 which sets out the three “equality needs” that they must have due regard to when making decisions:
  - to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act;
  - to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- While private, voluntary and independent settings are not bound by the public sector equality duty which applies to public authorities, the principles of equity and justice underpinning the law should be applied as good practice. Where provision is overseen, coordinated or advised by the Local Authority or a partnership with Local Authority membership, the Local Authority will have responsibility to ensure the duties are fulfilled.

12.3 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. **This is detailed in Warrington Early Years 0-4 - Graduated Approach – Guidance booklet for all education providers (version 1 2018).**

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

12.5 Providers must be aware of the Warrington Local Offer. [https://askollie.warrington.gov.uk/localoffer/](https://askollie.warrington.gov.uk/localoffer/)
12.6 Providers will be required to make available a copy of any personal plans and termly review to the Local Authority for any children receiving SEN support through the graduated approach.

12.7 Providers must meet the needs of disabled children or those with Special Educational Needs.

12.8 The Disability Access Fund (DAF) supports 3 and 4 year old children with disabilities or SEN. The DAF aids access to early years places by, for example, supporting Providers in making reasonable adjustments to their settings and/or helping with building capacity (be that for the child in question or for the benefit of children as a whole attending the setting).

12.9 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 (DLA) AND;
- the child receives Early Education Funding.

12.10 The Providers of 3 and 4-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.

12.11 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 universal funding.

12.12 Early Years Providers are responsible for identifying eligible children. Providers are encouraged to speak to parents in order to find out who is eligible for the DAF. Parents of children qualifying for Disability Living Allowance will be required to provide documented evidence of this entitlement, and share it with the EEF Team. This will be highlighted on the Parent Declaration Form found on the Provider Portal.

12.13 The DAF is payable as a lump sum once a year per eligible child. If a child eligible for the DAF is splitting their EEF across two or more Providers, parents will be expected to nominate their main Provider using the Parental Declaration Form. This Provider will be the one to attract universal funding and EYPP (If applicable) and where The Local Authority will pay the DAF for the child.

12.14 If a child receiving DAF moves from one Provider to another within 12 months, the new Provider is not eligible to receive DAF funding for this child within the same financial year. DAF funding received by the original Provider will not be recouped by the Local Authority. However, any items bought specifically for that child should move with the child to their new Provider. For example personal chair or mobility aids.

12.15 Where children are still eligible for the DAF, Providers should receive a second payment one year later; that is one year after they first received the DAF.
13. Social mobility and disadvantage

13.1 The Local Authority will aim to promote equality and inclusion, particularly for disadvantaged families, looked after children, traveller children and children in need by removing barriers of access to funded places and working with parents to give each child support to fulfil their potential.

13.2 The Provider should ensure that they have identified disadvantaged children in their care as part of the process for checking EYPP eligibility. They will also use EYPP and any locally available funding streams or support to improve outcomes for this group.

13.3 The Local Authority requires Providers to submit termly Learning and Development Tracking Data as part of the monitoring process for all funded 3 & 4 year olds.
14. **Quality**

14.1 The Early Years Foundation Stage (EYFS) statutory framework is mandatory for all schools and Ofsted-registered early years Providers in England that offer Early Years provision. The EYFS sets the standards that all Early Years Providers must meet to ensure that children learn and develop well and are kept healthy and safe.

14.2 Ofsted are the sole arbiter of quality for all Early Education Funding. Ofsted and inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.

14.3 Local Authorities have a legal duty to provide information, advice and training on meeting the requirements of the EYFS, meeting the needs of children with SEND and on effective safeguarding and child protection for Providers who are rated less than ‘Good’ by Ofsted or newly registered Providers.

14.4 Provision must be offered in accordance with the national parameters on quality as set out in Section A3 of Early Education and Childcare Statutory Guidance for Local Authorities and the EYFS statutory framework.

14.5 To ensure that the service provided is of a suitable quality, the Provider should engage with the Quality Team and access the universal pathway of quality support. This includes Early Years Networks related to quality, safeguarding and SEND.

14.6 Providers must work with the Quality Team when a setting receives a Requires Improvement or Inadequate Ofsted judgement and access the targeted pathway of quality support.

14.7 Providers must be registered with Ofsted or registered with the Department for Education as an Independent School and comply with the requirements of the EYFS Statutory Framework at all times.

14.8 Providers should have a “Good” or better Ofsted outcome, with the exception of new Providers awaiting their first Ofsted inspection for 2 year olds, and requires improvement for 3 and 4 year olds.

14.9 Provider must be registered with the Local Authority to deliver EEF and comply totally with the Local Authority EEF Agreement.

14.10 Provider must comply with the Early Education and Childcare Statutory Guidance for Local Authorities (June 2018) and Early years entitlements: operational guidance for local authorities and providers (June 2018).

14.11 Providers must comply with the Code of Practice for the assessment of children with Special Educational Needs.
14.12 Providers that receive an ‘Inadequate’ or ‘Requires Improvement’ outcome following their Ofsted inspection, must adhere to the Local Authority procedures. (see section 19: Termination and withdrawal of funding).

14.13 Providers shall ensure that all staff within the setting access programmes of continuous professional development with regard to Early Years Foundation Stage Framework.

14.14 Providers shall take account of parent’s views in the planning and delivery of services.

14.15 Providers must complete the Early Years Foundation Stage 2 year old Progress Check. This should be integrated with the two year old health check where possible.

14.16 Providers must ensure that children’s Early Years Foundation Stage development is being tracked and recorded using the Warrington Tracking system or other suitable in-house systems and share this data at termly intervals with the Local Authority. This will help to ensure the needs of all children are being met.

14.17 Providers shall engage with the Quality Team regarding their continuous quality improvement plans.

14.18 Providers must demonstrate the impact of the Early Years Pupil Premium where accessed and if requested to do so should share this information with the Quality Team.

14.19 Providers must identify how DAF has been used effectively when asked by the Local Authority.

14.20 Providers should comply with the Guidance for Learning Outside the Classroom when taking children on trips.

14.21 Providers must actively promote fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths or beliefs.

14.22 Providers must have a written complaint procedure for use by Service Users and/or their representatives and all Service Users and/or their representatives shall be made aware of it.

14.23 Providers shall maintain a records system, which shall enable the reporting of statistical information in relation to the activities detailed under this Agreement.

14.24 Providers shall have a policy relating to confidentiality of information, sharing information and access to records. This shall include the right of access by Service User to any of his/her own case records generated by the Provider. The Provider shall ensure that such records are kept securely.
15. **Business planning**

15.1 All Providers must register to use the Capita Provider Portal to submit child data and headcount information according to the dates specified in Annex C - Funding schedule.

15.2 The Provider should ensure they submit timely and accurate information, including, but not limited to, forecast data, headcount data and census data. Failure to do so will result in inaccurate, delayed or suspended funding.

15.3 The Provider should maintain accurate financial and non-financial records relating to EEF places and should allow the Local Authority access to all financial and non-financial records relating to EEF under the Provider agreement, subject to confidentiality restrictions.
16. **Charging**

16.1 Government funding is intended to cover the cost to deliver 15 or 30 hours a week of funded, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.

16.2 The Provider can charge for meals and snacks as part of an EEF place and they can also charge for consumables such as nappies or sun cream and for services such as trips and musical tuition. Parents should therefore be expected to pay for these, although these charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, Providers who choose to offer the EEF 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. Providers should be particularly mindful of the impact of additional charges on the most disadvantaged parents.

16.3 The Provider should deliver the EEF consistently so that all children accessing any of the EEF will receive the same quality and access to provision, regardless of whether they opt to pay for optional hours, services, meals or consumables. Any additional hours or services purchased by a parent must not affect the parent’s ability to take up their child’s funded place.

16.4 The Local Authority should not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent’s ability to take up their child’s free place. The Provider should be completely transparent about any additional charges.

16.5 The Provider should publish their admissions criteria and ensure parents understand which hours/sessions can be taken as funded provision. Not all Providers will be able to offer fully flexible places, but Providers should work with parents to ensure that as far as possible the pattern of hours is convenient for parents’ requirements.

16.6 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.

16.7 The Provider **cannot** charge parents “top-up” fees (the difference between a Provider’s usual EEF and the funding they receive from the Local Authority to deliver funded places) or require parents to pay a registration fee as a condition of taking up their child’s EEF place.

16.8 The Provider should ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their EEF completely free of charge and understand charges made for additional hours or services. The Provider will also ensure that invoices and receipts contain their full details so that they can be identified as relating to a specific Provider.
16.9 Childminders may offer an on-call service as part of their offer to parents while the child is at another Provider and needs to be collected unexpectedly. This is an optional extra charge, agreed between the Childminder and the parent and cannot be a condition of the EEF place. EEF cannot be used to fund this.
17. **Funding**

17.1 The Provider **must** accurately complete and submit forecasts, headcounts and other necessary data returns by the agreed date to support the Local Authority to make payment.

17.2 Interim payments under this Agreement to the Provider shall be made by monthly instalments as detailed in Annex C – Funding Schedule. Providers can opt to be paid twice per term (first and last month of the term) and must complete the Non-monthly payments form, to do so.

17.3 The final month’s payment will be the balance of the base rate for the term, based on data entered on the Actual Headcount Task plus EYPP where applicable.

17.4 The amendment payment will be paid with or before the 2nd monthly payment in the following term, and will include changes entered on the Amendment Headcount Task, any necessary deprivation supplement for the term and any adjustments for EYPP where the child has moved settings.

17.5 If the Provider fails to submit a forecast form by the deadline dates, payment will be delayed until the next funding stage.

17.6 If the Provider fails to enter child data onto the Capita Provider Portal Headcounts by the deadline dates, payment will be delayed until the next funding stage.

17.7 Providers who are persistently late in returning data to Capita will become subject to section 19 (Termination and withdrawal of funding).

17.8 Claims can only be backdated for 1 term prior to current term. Eg In summer term, the provider can make a late claim for missing children in the spring term, but not the autumn term.

17.9 The Local Authority can reclaim overpayments for any term prior to the current term.

17.10 Service users can only leave a Provider at the end of term. If a child leaves and starts a new Provider mid-term, the second Provider should charge the parent for the rest of that term and the first Provider will retain that term’s funding.

17.11 Mid-term movement will only be considered in exceptional circumstances such as a house move to a different area, serious safeguarding concerns involving Ofsted or social care, Provider no longer able to deliver the agreed hours, or a change in session times imposed by the Provider. Parents must complete a ‘Request to Transfer Funding form’ which can be found on MyLifeWarrington website. If the move is granted, a 4 week notice period will be applied from the last day of attendance or the date of notice given, **whichever is earliest** and funding will be transferred to the new Provider after this date. The original Provider must submit a leaver’s form to the EEF Team. **Transfer of funding is not guaranteed.**
17.12 Mid-term movement includes reducing hours at one provision to take up hours at a second provision part way through a term. If a parent wishes to add a second provision part way through a term, no funding will be transferred away from the original provision.

17.13 Providers must make parents aware of the limitations to moving settings mid-term.

17.14 If a child leaves a setting at the end of term, the Provider must submit a leaver’s form to the EEF Team. The exception to this is when a child is leaving to start a school reception class.

17.15 When any Service User ceases to use the Service the Provider must enter a leaving date on the Capita Provider Headcount Portal. This will be the date of the last day of funding.

17.16 For Service users who take up a place with a Provider part way through a term and wish to stretch their hours, Providers should not stretch hours in their first term, but start stretching from the next term. See the Stretch Offer Guidance on the Provider Portal for full details.

17.17 For Service Users who take up places at the Provider’s setting part way through a term, payment will be made to the Provider in respect of that Service User by way of an amendment at the next payment stage.

17.18 EYPP will be calculated on the actual headcount data. Any child starting or claiming on the amendment headcount will be paid EYPP (if eligible) from the start of the following term.

17.19 The Local Authority will reclaim any funding paid to a Provider that subsequently withdraws the service without giving the specified notice as set out in clause 19.

17.20 Bank Holidays cannot be included in the funded hours if the Service is not provided by the Provider on those days.

17.21 The Agreement Price will consist of a Base Rate and the possibility of a deprivation supplement for those children:
- whose home post code falls within the 25% most disadvantaged SOAs of the borough
- Children in Care
- are adopted
- going through adoption process
- Traveller Children.
17.22 The **Base Rate** for is:

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 and 4 year olds</td>
<td>£4.25 per hour</td>
</tr>
<tr>
<td>2 year olds</td>
<td>£5.00 per hour</td>
</tr>
</tbody>
</table>

(EEF 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. The Childcare Act 2006 Section 18 states that a relative, in relation to a child, means a grandparent, aunt, uncle, brother or sister, whether of the full blood or half blood or by marriage or civil partnership).

17.23 Deprivation supplement for three and four year olds is £0.02 per hour (if applicable).

17.24 Providers offering term time only (including some Full Day Care Providers) must submit the Provider’s academic term time dates when returning a signed copy of the EEF Agreement.

17.25 Service Users attending a Provider open 38 weeks in an academic year and who will be in attendance for the whole of the term, will be funded for the number of weekly EEF hours being claimed and multiplied by the number of funded weeks allocated in the term, as follows:

**Summer Term 2019**
(12 weeks - 180 hours maximum) between April and August 2019

**Autumn Term 2019**
(14 weeks - 210 hours maximum) between September and December 2019

**Spring Term 2020**
(12 weeks - 180 hours maximum) between January and March 2020

17.26 Providers that open for less than 38 weeks in an academic year will be funded on a pro rata basis.

17.27 Amendments will not be made for normal absences resulting from sickness, subject to the Attendance Concerns policy criteria – see 17.27 and 17.28.

17.28 **2 weeks** leave can be taken by a Service User at a time. Extended leave for a Service User may be approved in exceptional circumstances for up to a maximum of 4 weeks in exceptional circumstances such as overseas travel to family weddings or funerals, and only with prior arrangement with the Local Authority. If they do not return for any reason, the Local Authority will process the funding claim for the weeks following their expected return.

17.29 If a Service User has not attended or the family has not been in contact with their Provider over 2 consecutive weeks, Providers **must** submit an Attendance Concern Form to the Local Authority. The Early Help Team will attempt to work with the family in order to bring the
child back into their placement. If the family does not engage with the Early Help Team the funded place may be withdrawn.

17.30 If the Service user’s attendance has been less than 50% over a consecutive 4 week period, Providers must submit an Attendance Concern Form to the Local Authority. The Early Help Team will attempt to work with the family in order to bring the child back into their placement.

17.31 The Service can only be accessed by Service Users who are eligible for the funding.

17.32 Providers must not charge Service Users for funded Childcare hours which will be subsequently covered by this Agreement and then reimburse payment to the Service User at a later date. The Service must be free at the time of delivery and invoices must make this transparent. Examples of transparent invoices can be found on the Capita Provider Portal.

17.33 Parents in receipt of the Service cannot be requested to financially reimburse a Provider for funded hours in the event of their child leaving the Provider without giving notice.
18. Compliance

18.1 The Local Authority will carry out audits with at least two weeks’ notice. These will be focused on the funding processes and paperwork only. The Provider should maintain accurate financial and non-financial records relating to EEF places and should give the Local Authority access to all financial and non-financial records relating to EEF places funded under the Provider Agreement, subject to confidentiality restrictions. This will include, but not be limited to, parental declarations, registers, DAF and EYPP records (where applicable), invoices and bank statements.

18.2 The Provider shall comply with the Funding Schedule at Annex C to submit child data. Failure to comply with these dates will result in late payments.

18.3 Early Years Census is required by the DfE (Spring Term). Providers must submit the data as requested by the Local Authority through the Capita Provider Portal.

18.4 Other adhoc DfE requests may be required throughout the year.

18.5 Providers must update their Capita Self-Update Portal on a termly basis to ensure that the vacancy rates remain current. These will be published on MyLifeWarrington for the public to make an informed choice about their childcare. Deadlines can be found in the Funding schedule at Annex C.
19. Termination and withdrawal of funding

19.1 If the Local Authority is notified or becomes aware that the Provider has not met the conditions within the Agreement, for example, following an Ofsted inspection where a setting was deemed to be ‘inadequate’ or that fraudulent practice has been identified, a letter will be sent to the Provider informing them that EEF may be suspended or withdrawn, depending on the circumstances.

19.2 Providers must inform the Local Authority should they receive an ‘Inadequate’ or ‘Requires Improvement’ judgement within 7 days of the setting’s Ofsted inspection.

19.3 Providers who have knowingly submitted fraudulent claims and received payment will be removed from offering EEF and will be reported to the appropriate authorities where there is evidence to support such a claim.

19.4 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.

19.5 In the event of a Provider being prevented from claiming EEF the following procedure will take effect:

19.5.1 The Local Authority will meet with the Provider and either further investigate or discuss the issues identified. This will be followed by a formal written notification of intention:

a. In relation to issues involving funding – officers from the Council’s Finance and/or Audit section may be involved and in turn they may involve the police.

b. In relation to issues of quality – for example the setting has received an ‘Inadequate’ or ‘Requires Improvement’ outcome from an Ofsted inspection, officers from the Quality Team will work with the setting within the framework laid down in the Early Education and Childcare, Statutory Guidance for Local Authorities (February 2018) for the Provision of Early Education.

19.5.2 Providers must share contact details for the Families Information Service with affected parents in order that the Local Authority can help assist parents to find a new placement for their child.

19.5.3 If the setting become Inadequate :-

- 2 year olds will have a 4 week notice period to find a new placement. The 2 year old Outreach Worker can assist if required.
- 3 and 4 year olds already attending may be allowed to stay at the setting at the discretion of the Local Authority.
- The setting will not be allowed to take on any new children.

19.5.4 If the setting become Requires Improvement in the first half of the term:-
• 2 year olds will have a 4 week notice period to find a new placement. The 2 year old outreach worker can assist if required.
• 3 and 4 year olds will not be affected
• The setting will not be allowed to take on any new 2 year old children.

19.5.5 A formal notification of intention letter will be sent to the Provider informing them that EEF funding may be suspended or withdrawn, depending on the circumstances.

19.5.6 If the formal notification of intention outlines a work programme for improvement, then the setting is obliged to agree and cooperate with the requirements. As part of the action plan the Local Authority will require the setting to provide:
• Written notification to parents of children currently attending the setting.
• Written notification to prospective attendees to advise that the setting cannot provide funding to new children until a subsequent Ofsted inspection has taken place and must have attained either Requires Improvement or above for 3 and 4 year olds and Good or better for 2 year olds. (The setting is required to cooperate with the Local Authority to provide this information so as to minimise the negative impact on children and their families.)
• Agree to work with the Early Years Quality Support Officer and to complete an agreed action plan.
• Agree to regular visits with the Quality Support Officer to address and improve on areas highlighted in Ofsted inspection until a subsequent Ofsted inspection has taken place.
• Providers must inform and share with their Early Years Quality Support Officer when their Monitoring Visit Report has been received from Ofsted.
• Following a subsequent Ofsted inspection, if a Provider receives Requires Improvement judgement they must engage purposefully with monthly quality support visits for a further 6 months or agreed timescale with their Quality Team.
• Following a period of intensive support and challenge from the Quality Team, should a setting with a Requires Improvement or Satisfactory outcome receive an Inadequate judgement, their Ofsted recommendations or actions will be compared to previous notes of visit to determine whether a Provider should continue to receive funding with immediate effect.

19.5.7 If at the end of the specified period the required improvements have not been met then further notification to cease the Agreement will be implemented. This will include:-
• Written notification to the Provider.
• Written notification to parents of children currently attending the Provider.
• Written notification to prospective attendees (the Provider is required to cooperate with the Local Authority to provide this information so as to minimise the negative impact on children and their families).
19.5.8 If the formal notification of intention is to cease the Agreement immediately for the provision of Early Education and the removal of the Provider from the Provider’s Directory it will be done in line with the requirements of the Early Education and Childcare, Statutory Guidance for Local Authorities. Written notification will be sent to:

a. The Provider
b. Parents and children currently attending the Provider
c. Parents of prospective attendees (the Provider is required to cooperate with the Local Authority to provide this information so as to minimise the negative impact on children and their families).

19.5.9 In the event of the Local Authority withdrawing the EEF funding, the decision can only be reversed when a Provider is re-inspected by Ofsted and receives an outcome of Requires Improvement for 3 and 4 year olds or Good or above for 2 year olds.

19.5.10 Family information Services will amend the Provider’s status on MyLifeWarrington to reflect the withdrawal of EEF.

19.5.11 At all three stages parents will be provided with contact details for the Families Information Service, should they decide to find alternative childcare.

19.6 The Council may terminate the Contract with immediate effect by notice in writing to the Provider on or at any time, if in the Council’s reasonable opinion, there is a risk that reputational damage to the Council will occur as a result of the funding continuing.

19.7 The Local Authority may terminate this Agreement by notice in writing to the Provider if the Provider fails to correct any item on a corrective action list served by the Local Authority upon the Provider or fails to correct all items on such a corrective action list on two or more occasions.

19.8 The Local Authority may terminate this Agreement by notice in writing to the Service Provider if the Provider is in material breach of this Agreement which in the reasonable opinion of the Local Authority has seriously prejudiced the interests of the Local Authority or the Service Users.

19.9 The Local Authority may terminate this Agreement immediately by giving notice in writing to the Provider if the Provider shall become bankrupt or have a receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a Court shall make an order to that effect or if the Provider shall enter into any composition or arrangement with its creditors or shall become insolvent.

19.10 The Local Authority do not waive the right to act if it does not act immediately as a slower evidence based approach may be required on occasion.
20. **Appeals process**

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

20.2 In the event of a Provider wanting to appeal about any part of the above process they will be required to follow the Warrington Borough Council’s Complaints procedure which can be found on the Council’s Web Site at the following link:-
http://www.warrington.gov.uk/home/residents/talk_to_us/Comments_compliments_complaint/
21. **Complaints process**

21.1 The Provider should ensure they have a complaints procedure in place that is published and accessible for parents who are not satisfied their child has received their EEF in the correct way, as set out in this Agreement and in Early Education and Childcare Statutory Guidance for the Local Authority (February 2018) and Early years entitlements: Local Authority funding of providers - Operational guide 2018 to 2019 (February 2018).

21.2 If a parent or carer is not satisfied with the way their funding complaint has been dealt with by the Provider, they should contact the EEF Team in the first instance and follow this up in writing. They will receive a response within 10 working days.

21.3 If the parent or carer is not satisfied with the way their funding complaint was dealt with by the EEF Team, they will be required to follow the Council’s Complaints procedure which can be found on the Council’s Web Site at the following link: https://www.warrington.gov.uk/info/201197/contact-us/756/complaints-procedure

21.4 In the event of a Provider wanting to appeal about any part of the funding process they will be required to follow the Council’s Complaints procedure which can be found on the Council’s Web Site at the following link: https://www.warrington.gov.uk/info/201197/contact-us/756/complaints-procedure

21.5 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.
22. **Freedom of Information**

22.1 The Provider shall assist and co-operate with the Local Authority to enable the Local Authority to comply with information disclosure obligations under the requirements of the Environmental Information Regulations. The Provider shall and shall procure that any personnel involved in the provision of the Services shall:

22.1.1 transfer to the Local Authority all requests for information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a request for information,

22.1.2 provide the Local Authority with a copy of all information in its possession, or power in the form that the Local Authority require within five (5) Working Days (or such other period as the Local Authority may specify) of a request from the Local Authority, and

22.1.3 provide all necessary assistance as reasonably requested by the Local Authority to enable the Local Authority to respond to the request for information within the time for compliance set out in the FOIA or the Environmental Information Regulations.

22.2 The Local Authority shall determine, in its absolute discretion, whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

22.3 In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Local Authority.

22.4 The Local Authority may, in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:

22.4.1 without consulting the Provider; or

22.4.2 following consultation with the Provider and having taken their views into account.

22.5 Where this clause 22 (Freedom of Information) applies the Local Authority shall, where appropriate, give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.

22.6 The Provider shall ensure that all information is retained for disclosure and shall permit the Local Authority to inspect such records as requested from time to time.
23. **Data Protection**

23.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a party’s obligations or rights under the Data Protection Legislation. In this Clause 23, **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

23.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Local Authority is the Controller and Capita Business Services Ltd. is the Processor. Schedule 1 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.

23.3 Without prejudice to the generality of Clause 23.1, the Local Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider and/or lawful collection of the Personal Data by the Provider on behalf of the Local Authority for the duration and purposes of this agreement.

23.4 Without prejudice to the generality of Clause 23.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:

(a) process that Personal Data only on the documented written instructions of the Local Authority which are set out in Schedule 1 unless the Provider is required by Applicable Laws to otherwise process that Personal Data. Where the Provider is relying on Applicable Laws as the basis for processing Personal Data, the Provider shall promptly notify the Local Authority of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Local Authority;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Local Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Local Authority has been obtained and the following conditions are fulfilled:

(i) the Local Authority or the Provider has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Provider complies with reasonable instructions notified to it in advance by the Local Authority with respect to the processing of the Personal Data;

(e) assist the Local Authority, at the Local Authority’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Local Authority without undue delay on becoming aware of a Personal Data Breach;

(g) at the written direction of the Local Authority, delete or return Personal Data and copies thereof to the Local Authority on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 23 and allow for audits by the Local Authority or the Local Authority’s designated auditor and immediately inform the Local Authority if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation.
24. **General**

24.1 No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

24.2 No variation of this Agreement will be valid unless recorded in writing and signed by or on behalf of each of the parties to this Agreement.

24.3 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be unenforceable or illegal, the other provisions will remain unaffected and in force.

24.4 Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other party in any way.

24.5 Neither party will make any announcement relating to this Agreement or its subject matter without the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).

24.6 Each party will, at the request of the other party and its own cost, do (or procure others to do) everything necessary to give the other party the full benefit of this Agreement.

24.7 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class or recorded delivery or by commercial courier, to each party required to receive the notice at the addresses specified by the relevant party by written notice to the other (and if no such address is specified), the address set out at the front of this Agreement.

24.8 Any notice shall be deemed to have been duly received:-

   a) if delivered personally, when left at the address and for the contract referred to in this clause 24; or

   b) if sent by pre-paid first class post or recorded delivery, at 9.00 a.m. on the second business day after posting; or

   c) if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed.

24.9 This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will together constitute a single Agreement.
24.10 Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of this Agreement.

24.11 This Agreement constitutes the entire Agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous Agreement between the parties.

24.12 Each of the parties acknowledge and agrees that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

24.13 This Agreement will be governed by and interpreted in accordance with the law of England and Wales.
25. References

- Early Education and Childcare Statutory Guidance for the Local Authority (June 2018)
- Childcare Act 2006
- Childcare Act 2016
- Data Protection Act 2018
- Equality Act 2010
- School Admissions Code 2014
- Early years entitlements: operational guidance for local authorities and providers (June 2018).
- Early Years Foundation Stage Statutory Framework 2017
- Local Authority, (Duty to Secure Early Years Provisions Free of Charge)( Regulations 2014)
- Special Education Needs and disability code of practice: 0-25years 2015
- The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016
- Working together to safeguard children (2018) guidance
- Guidance for learning outside the classroom
- Small, Business, Enterprise and Employment Act 2015
- Warrington Early Years 0-4 - Graduated Approach – Guidance booklet for all education providers (version 1 2018).

References to legislation will be to that legislation as amended from time to time, without express change in the Provider agreement.
SCHEDULE 1 - Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller’s Data Protection Officer are: Sarah Gallear, Information Governance Manager (Data Protection Officer), Business Intelligence & Change Service, Corporate Services Directorate, Warrington Borough Council, New Town House, Buttermarket Street, Warrington, WA1 2NH, Mobile: 07890 560896, Tel: 01925 442405, Email: sgallear@warrington.gov.uk

2. The contact details of the Processor’s Data Protection Officer are:
   Capita Business Services Ltd.
   Registered office: 30 Berners Street, London W1T 3LR.
   Registered in England No. 2081330

3. The Processor shall comply with any further written instructions with respect to processing by the Controller;

4. Any such further instructions shall be incorporated into this Schedule.

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identity of the Controller and Processor</td>
<td>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 23.</td>
</tr>
<tr>
<td>Subject matter of the processing</td>
<td>The processing is needed in order to ensure that the Local Authority can effectively meet its duties under the Childcare Act 2016 and Children’s Act 2014, with regards to Early Education Funding and Information and Guidance.</td>
</tr>
<tr>
<td>Duration of the processing</td>
<td>Processing of student and parent/carer data will be undertaken whilst a child is in Early Education (until they start a school reception class). Processing of Childcare Provider data will be undertaken whilst they are an Ofsted registered provider.</td>
</tr>
<tr>
<td>Description</td>
<td>Details</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Nature and purposes of the processing | Data is collected and recorded for the purpose of  
- Universal Early Education Funding  
- Extended Early Education Funding  
- 2 year old Funding  
- Eligibility for 2 year old Funding  
- Eligibility for 30 hours  
- Eligibility for Early Years Pupil Premium  
- Eligibility of Early Years Free school Meals |
| Type of Personal Data being Processed | - Name  
- Date of birth  
- Address  
- NI number / NASS number  
- Telephone number  
- Email address  
- Hours of attendance  
- Childcare provider funding amounts |
| Categories of Data Subject           | - Students  
- Parents/carers  
- Staff |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | Child, parent or carer data will be retained for as long as the child is in education.  
Childcare provider data will be retained whilst they are an Ofsted registered provider. |