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This agreement applies to funded early education and childcare which includes:

- The 15 hour entitlement for the most disadvantaged 2 year olds
- The 15 hour entitlement for parents of 3 and 4 year olds (universal entitlement)
- The 30 hour entitlement for working parents of 3 and 4 year olds (extended entitlement)

Any reference to legislation will be to that legislation as amended from time to time, without express change to the provider agreement, although Torbay Council reserves the right to unilaterally vary the agreement to reflect changes in legislation and departmental guidance. The agreement will be reviewed and updated as necessary.

1. Key local authority responsibilities

1.1. Torbay Council should ensure that this provider agreement is clear and transparent.

1.2. Torbay Council is required to have due regard to the Model Agreement (issued by the Department for Education) in the exercise of their duty under s7(1) of the Childcare Act 2006 and regulation 39 of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016

1.3. Torbay Council has a duty to secure a free entitlement place for every eligible child in their area.

1.4. Torbay Council will work in partnership with providers to agree how to deliver free entitlement places.

1.5. Torbay Council 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.

1.6. Torbay Council has a duty to contribute to the safeguarding and promote the welfare of children and young people in their area.

2. Key provider responsibilities

2.1. The provider must comply with all relevant legislation and insurance requirements. The provider will be required to have Employers Liability Insurance for not less than £5m per policy for any claim or series of claims arising out of one event and Public Liability Insurance for not less than £10m per policy for any claim or series of claims arising out of one event. However it remains the responsibility of the provider, having taken professional advice, to determine the appropriate level of cover having regard to the nature of the service provision and the perceived level of risk. Providers may also be required to evidence that they have property and motor insurance (if applicable). Evidence of the insurance requirements must be produced to the Local Authority prior to commencement of the service delivery and annually thereafter. This information will be retained for audit purposes.

2.2. 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.

2.3. 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.

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

2.5. The provider must ensure that all required information is submitted in a timely fashion and must pay due care and attention to the content of the data to ensure accuracy; particularly when making claims for funding.

3. Safeguarding

3.1. Torbay Council 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.

3.2. The provider must follow the EYFS and have clear and documented safeguarding policies and procedures in place that are in line with local guidance and procedures for responding to and reporting suspected or actual abuse and neglect. Through the Designated Safeguarding Lead (DSL) role, a lead practitioner must take responsibility for safeguarding and all staff must have training (periodically refreshed where necessary) to identify signs of abuse and neglect. The provider must have regard to 'Working together to safeguard Children' 2018 guidance; this applies to all types of provider and practitioner.

3.3. Torbay Safeguarding Children's Partnership requires all providers delivering early education to children to complete and return a safeguarding audit on an annual basis. All providers in receipt of early years funding shall comply with this requirement.

4. Eligibility

4.1. The provider should check original copies of documentation to confirm a child has reached the eligible age on initial registration for all 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 data privacy guidance set out in Annex A.

4.2. The provider should offer places to eligible two-year-olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for three- and four-year-olds. The provider should only offer a place to an eligible two year old after having seen written evidence of the child's entitlement through sight of a letter, email or printed voucher confirming eligibility. Alternatively a provider can gain parental consent to check the child's eligibility for two year old funding with the Local Authority.

4.3. 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.

4.4. Alongside the 30 hours eligibility code, which is the child's unique 11-digit number, and original copies of documentation (see 4.1), a provider must acquire written consent from, or on behalf of, the parent to be able to receive confirmation and future notifications from the local authority of the validity of the parent's 30 hours eligibility code.

4.5. Once a provider has received written consent from the parent, they should validate the 30 hours eligibility code with Torbay Council using the system provided (Synergy).

4.6. Torbay Council provides a portal system (Synergy) which providers can access to confirm the validity of 30 hours eligibility codes to allow providers to offer 30 hours places for eligible three- and four-year-olds. The Eligibility Checking Service (ECS) allows all local authorities to make instant checks for code validity in the absence of a portal system.

4.7. Thereafter, Torbay Council will 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 Torbay Council'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 received 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

4.8. Parents may receive 30 hour eligibility codes before their child is three but they can only start claiming their 30 hours place the term following the child's third birthday or the term following the date the eligibility code was issued (whichever is the later). If a child is taking up their universal 15 hours entitlement and a parent becomes eligible for 30 hours part-way through the term, the parent can start claiming their additional hours the term following the date on which they received their code. Parents

should be encouraged to apply for the extended entitlement the term before they wish to claim their place.

5. The Grace Period

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

5.2. Torbay Council will be able to access information about whether a child has ceased to meet the eligibility criteria and entered the grace period via the Eligibility Checking Service. The grace period end date will automatically be applied to eligibility codes.

5.3. Torbay Council will continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory guidance for Local Authorities 2018. The provider should ensure that parents are aware that if they cease to meet the eligibility criteria and the "grace period" has expired they can continue to take up their child's universal entitlement to 15 free hours provided they have not exceeded the number of hours they are entitled to. If the parent has been taking up the extended entitlement at more than one provider, the local authority should continue to fund the universal 15 hours at the provider of the parent's choice.

5.4. Torbay Council will perform audits of eligibility codes on the dates listed in table A. The Council will inform all providers by email of any parent and child whose eligibility has ceased and who has entered the grace period. Providers are required to communicate this information to the parents as soon as reasonably practicable and ideally within 5 working days of receiving the information.

6. Flexibility

6.1. Provision must be offered within the national parameters on flexibility as set out in Section A2 of Early Education and Childcare Statutory guidance for Local Authorities. Children should be 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. See Annex B for further information on flexibility from the Statutory Guidance.

6.2. The provider should work with Torbay Council and share information about the times and periods at which they are able to offer free entitlements to support the Council to secure sufficient stretched and flexible places to meet parental demand in the local authority. The provider should also make information about their offer and admissions criteria available to parents at the point the child first accesses provision at their setting.

6.3. Parents can choose to split their entitlement (both universal and extended) across multiple providers provided the child does not attend more than two sites in one day and a maximum of three providers in total over the week. A child will not be funded for a day in excess of 10 hours. Providers should ensure that they check if parents are splitting their entitlement between providers and confirm that the number of hours being claimed across the providers does not exceed the weekly entitlement to 15 or 30 hours. Multiple claims for the same child will be identified and checked termly (both within the Local Authority and with bordering Local Authorities) to prevent any potential over claim.

7. Partnership working

7.1. Partnerships will be supported by Torbay Council on four levels between:

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

- iii. Providers and parents
- iv. Local authorities and parents

7.2. Torbay Council 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.

7.3. 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. The Family Childcare Trust website hosts the interactive toolkit.

7.4. 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 setting and childminder, to ensure a smooth transition for the child.

8. Special educational needs and disabilities

8.1. Torbay Council 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 (January 2015).

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

8.3. Torbay Council will be clear and transparent about the support on offer in their area, through their Local Offer, so parents and providers can access that support.

8.4. The provider should be clear and transparent about the SEND support on offer at their setting and make information available about their offer to support parents to choose the right setting for their child with SEND. The provider should actively encourage and support parents to apply for the Disability Access Fund and where required ALFEY Funding (Torbay Council's SEND Inclusion fund).

9. Social mobility and disadvantage

9.1. Torbay Council will 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.

9.2. The provider should ensure that they have identified the disadvantaged children in their setting as part of the process for checking EYPP eligibility. They will also use EYPP and any locally available funding streams or support to improve outcomes for this group. Disadvantaged children will also be identified by Torbay Council and providers will receive deprivation funding for those children. The deprivation funding will be paid annually to providers, based on the January census data submission and will be paid for all children resident in the top 30% most deprived areas in Torbay using IDACI data from their home postcodes.

10. Quality

10.1. The Early Years Foundation Stage (EYFS) statutory framework is mandatory for all schools that have early years provision and Ofsted-registered early years providers in England. The EYFS sets the standards

that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe.

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

10.3. Torbay Council has a legal duty to provide information, advice and training on meeting the requirements of the EYFS, meeting the needs of children with SEND and on effective safeguarding and child protection for providers who are rated less than 'Good' by Ofsted or newly registered providers.

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

11. Business planning

11.1. Torbay Council has a clearly set out process with regard to the documentation that they need to receive from providers to support payment and delivery of free entitlements and a timetable which providers should follow when submitting their documentation, this includes setting out the importance of timely and accurate census returns (both termly and annual data collections).

11.2. Torbay Council will not charge providers disproportionate penalties for providing late or incomplete information leading to additional administration in the processing of free entitlements. Any late or incomplete data submissions may result in delayed payment. The Council will ensure that any late payments as a result of delayed or incomplete data submissions are clearly communicated to providers.

11.3. Torbay Council reserves the right to audit providers on a regular basis to ensure compliance with the requirements of delivering the free entitlements. The audit regimes should not be disproportionate or be unnecessarily burdensome to providers. Audits will operate on a 3 year cycle.

11.4. The provider should ensure they submit timely and accurate information, including, but not limited to, headcount data, census data, parent declaration forms and invoices, as per the financial guidelines set out by Torbay Council. Failure to do so may result in inaccurate, delayed or suspended funding.

11.5. The provider should maintain accurate financial and non-financial records relating to free entitlement places and should give Torbay Council access on reasonable notice to all financial and non-financial records relating to free entitlement places funded under the provider agreement, subject to confidentiality restrictions.

12. Charging

12.1. Government funding is intended to cover the cost to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services. The Operational Guidance sets out provider expectations in relation to charging.

12.2. 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 musical tuition. Parents should therefore expect to pay for these, although these charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free 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. Providers should be particularly mindful of the impact of additional charges on the most disadvantaged parents.

12.3. 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.

12.4. Torbay Council 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.

12.5. 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 pattern of hours are convenient for parents' working hours.

12.6. 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. Torbay Council considers a reasonable timescale to be within 4 weeks of the child's first paid or funded attendance date.

12.7. The provider cannot charge parents "top-up" fees (the difference between a provider's normal charge to parents 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.

12.8. 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 free of charge and understand fees paid for additional hours. The provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider.

13. Funding

13.1. Torbay Council pays all providers monthly. Providers can request that Torbay Council agrees to continue an existing alternative sustainable method of payment however such agreements are subject to consideration and are not guaranteed. Any change to an existing payment method is entirely at the authority's discretion.

13.2 The provider should accurately complete and submit headcount and other necessary data returns by the agreed dates throughout the year to support Torbay Council to make payments. The 'Early Years Important Dates' document is sent to providers annually in the summer term and sets out the data submission and payment dates for the year.

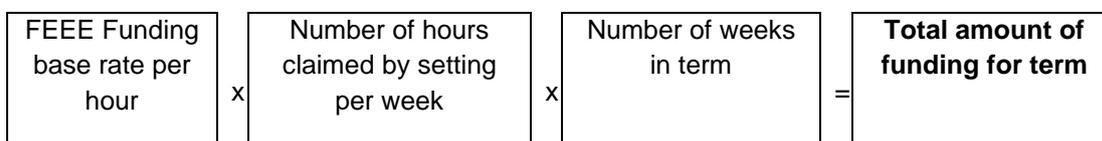
13.3 Children become eligible for the free early education and childcare in the funding period after their 3rd birthday (or 2nd birthday if eligible for this scheme) and remain eligible until the end of the funding period before they start school or until the end of the funding period of their 5th birthday (whichever is sooner). This means that they become eligible for their free early education and childcare entitlement on the following dates;

A child born in the period:	Will become eligible for funding:
1 st April to 31 st August	1 st September following the child's birthday
1 st September to 31 st December	1 st January following the child's birthday
1 st January to 31 st March	1 st April following the child's birthday

If a child is taking up their universal 15 hours entitlement and a parent becomes eligible for 30 hours part-way through the term, the parent can start claiming their additional hours the term following the date on which they received their code.

13.4 Torbay Council will administer termly forecast and headcount counts of the childcare providers registered to receive early years funding in order to accurately allocate funding to settings for the provision of the free entitlements as set out below:

- i. The amount of funding paid to providers by Torbay Council will be based on the number of children attending the setting and how many hours they attend during the term. The actual amount will be calculated in the following way:

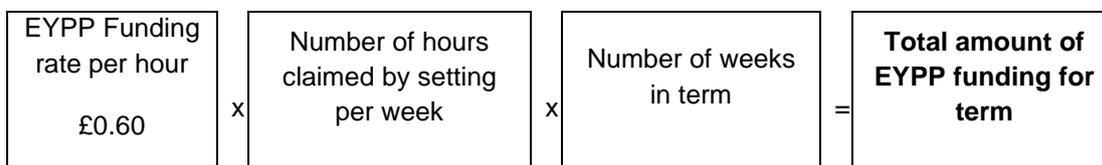


- ii. The FEEE funding base rate is £4.15 per hour for children eligible for the free entitlement for 3 and 4 year olds. The base rate is £5.17 per hour for children eligible for the free entitlement for 2 year olds.
- iii. The funding base rates are subject to local area allocations through the early years block of the DSG and any applicable changes to the early years block as a result of the early years national funding formula may impact on the funding rate made available to providers.
- iv. Early Years Pupil Premium (EYPP) is additional funding for early years settings to improve the education they provide for disadvantaged 3 and 4 year olds. In order to access EYPP for eligible children, providers must return completed application forms (completed and signed by parents or guardians) to Torbay Council by the deadline each term (usually the Monday before headcount). EYPP applications can also be submitted through the Synergy provider portal. Eligibility checks will be processed and providers will receive an additional £0.60 per hour for eligible children.

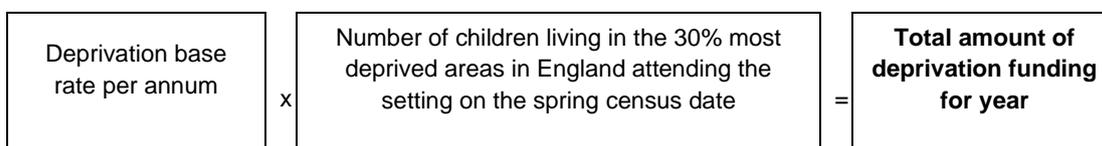
Children whose parents access any of the following benefits or fit into one of the categories may be eligible for this additional funding:

- o Income support
- o Income-based Jobseeker’s allowance
- o Income-related employment and support allowance
- o Support under Part 6 of the Immigration and Asylum Act 1999
- o The guaranteed element of State Pension Credit
- o Universal credit – and have an annual net earned income not exceeding £7,400
- o Child Tax Credit (but not to Working Tax Credit and have an annual income not exceeding £16,190 as assessed by HMRC)
- o Working Tax Credit four-week run on
- o The child is looked after by their local authority
- o The child has left care through special guardianship or an adoption or residence order.

It is the responsibility of the provider to ensure that EYPP application forms are completed in full and returned in a timely manner to be eligibility checked. Torbay Council will not make payments or backdate payments for those children who have not been eligibility checked due to incomplete information on the forms or late submission. In line with national guidance, the allocation of EYPP for looked after children will be the responsibility of the Virtual Head within Torbay Council and any future payments will be made in agreement with them and be subject to a completed Personal Education Plan (PEP).



- v. An additional amount of funding will also be paid to providers based on the level of deprivation experienced by the three and four year olds attending the setting, this will be calculated in the following way:



The minimum deprivation base rate from 1st April 2022 is £203.72 per annum.

- vi. The provider that the child attends, not the home post code of the child, will determine which Local Authority funds the provision. Torbay Council will fund all eligible children attending eligible provision registered on its' Directory of Providers within its boundaries.
- vii. Torbay Council will only provide funding for children for whom there are fully completed parent declaration forms signed by the setting and the parent/carer. Audits of parent declaration forms will take place routinely. Providers will receive a list of children by email (sent securely via Egress Switch) for whom the provider must return electronic copies of parent declaration forms (securely using Egress Switch).
- viii. If a child attends more than one setting it is at the sole discretion of the parent/carer where they claim their FEEE (and how much of this they claim at each provider).
- ix. If a child has inadvertently claimed more than 15 hours across two settings then efforts will be made to rectify the situation according to parental preference. If no agreement can be reached, the setting where they have initially claimed the most hours will receive funding for all of these hours. The secondary provider (where they have claimed fewer hours) will have their claim reduced accordingly to take the child up to their maximum entitlement of 15 hours per week. It is then up to the provider to recoup any losses through private invoices; where appropriate.
- x. The maximum number of hours a child can claim in a week is 15, or 30 hours where eligible. You may not allow a child to take more hours than this over less than 38 weeks in order to make up their 570, or 1140 where eligible, free hours in a year. For example, a child is not allowed to condense their hours and take 17 hours over 33 weeks of the year.
- xi. Funding may not be paid for children who do not attend the sessions they are booked in for and receive funding for. In principle, Torbay Council expects:
- o To continue to fund children who have been unable to attend sessions due to illness. In these cases, the setting is required to keep a record of reasons for all absences which may be requested when auditing a claim.
 - o To fund a maximum of 3 weeks holiday per year (maximum of 2 weeks at a time) providing this has been agreed with the provider prior to taking the holiday. Where longer than this is taken the first 2 weeks of any break will be funded by Torbay Council with the parent being responsible for the charges for any additional weeks/hours. Alternatively, if a setting is open

throughout the year, they may be able to “give” these hours back as free sessions in the non-term time.

- Providers to contact parents and encourage attendance where patterns of absence identified. If the same block of funding is missed for 3 consecutive weeks the parent should be contacted and attendance encouraged as well as a discussion had regarding whether the session is still required.
- xii. In the event of unexplained and unplanned absences it is recommended settings make every effort to contact the family at the end of the week and ascertain the reason for the absence(s). A contact log should be kept, recording all attempts to make contact. Providers should make sure that their safeguarding policies include this procedure and that any concerns are reported to Torbay Council MASH on 01803 208100 as soon as possible
- xiii. If a child for whom you have received funding moves to another setting part way through a term the amount of funding claimed must be adjusted through the supplementary claim process. It is possible for providers to transfer funding directly to the new provider if this is agreed in advance.
- xiv. Providers are entitled to claim funding to cover their notice period as set out in their parental contract up to a maximum of 4 weeks. Where a child moves to a new setting mid-term, the original provider should ensure that parent understands when the funding claim ‘end date’ is to enable the new provider to make a correct claim. Where no notice is given by the parent, the provider is entitled to claim the contractual notice period (up to 4 weeks), however this should be made clear to the parent in writing and the circumstances of the child leaving should be taken into consideration when making the decision to claim for the notice period.
- xv. Providers who accept children to start mid-term should check if a child has attended elsewhere before the child starts attending for funded hours and ascertain when the funding ‘start date’ can be. Any overlap between providers as a result of this risks the funding not being paid.
- xvi. Providers should have clear policies in place relating to ‘unplanned closure’. The policy should clearly outline the expectation on parents in regard to funding and private payment for sessions booked during times when the setting has closed unexpectedly. This may be for reasons including (but not limited to) severe weather, public health incidents, high staff absence or significant damage to the setting.

14. Compliance and Freedom of Information

14.1. The provider shall comply with and facilitate Torbay Council’s compliance with all statutory requirements as regards the requirements of delivering the free entitlements applicable to itself and Torbay Council. The provider must inform Torbay Council immediately of any matters that impact upon the provider’s registration with Ofsted as they arise. The provider must keep Torbay Council informed about developments relating to the providers registration as necessary.

14.2 Torbay Council can carry out checks and/or audits on providers to ensure compliance with the requirements of delivering the free entitlements:

- i. The provider shall on request provide Torbay Council with such further information, explanations and documents as Torbay Council may reasonably require in order for it to establish that the entitlements have been used properly in accordance with this agreement.
- ii. The provider shall permit any person authorised by Torbay Council such reasonable access to its employees, agents, premises and records, for the purpose of discussing, monitoring and

evaluating the provider's fulfilment of the conditions of this agreement and shall, if so required, provide appropriate oral or written explanations from them.

- 14.3 The provider acknowledges that Torbay Council is subject to the requirements of the Freedom of Information Act and shall assist and cooperate with Torbay Council to enable Torbay Council to comply with its information disclosure obligations.

15. Termination and withdrawal of funding

- 15.1. In the event the provider repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement or the Council considers that a serious breach of these conditions has taken place, and the provider has not rectified the serious breach within the time scale laid down by Torbay Council in writing, or if the provider does not comply with any of the criteria and conditions for registration to receive early years funding and the provider has not rectified the non-compliance within the time scale laid down by Torbay Council in writing, the Council may withhold funding from the provider, terminate the agreement and seek to recover funding already paid to the provider, either in whole or in part.
- 15.2. Suspension of registration by Ofsted or a breach of statutory requirements or safeguarding issues including welfare requirement notices may result in the termination of the arrangement and withdrawal of funding.
- 15.3. Other reasons for termination of the arrangement and withdrawal of funding may result from a failure to comply with the Childcare Regulations 2016 and other relevant government legislation and guidance. This includes:
- i. The overall effectiveness of the early years provision (all types of setting including nurseries, pre-schools, school nursery classes, childminders and childminder agencies) is graded requires improvement or inadequate by Ofsted (this applies to settings delivering the free entitlement to eligible 2 year old children);
 - ii. The overall effectiveness of the early years provision (all types of setting including nurseries, pre-schools, school nursery classes, childminders and childminder agencies) is graded inadequate by Ofsted (this applies to settings delivering the free entitlement to 3 and 4 year old children) In the event that the provider is removed from the Directory, the local authority will advise all parents claiming the free entitlement from that provider, in writing, of the removal from the Directory.
- 15.4. Should a provider not have a valid certificate of registration with Ofsted at any time, the local authority will withhold further funds from the provider and may seek to recover funds already paid to the provider either in whole, or in part. Torbay Council may terminate the agreement and withdraw funding. The provider may request to sign the agreement to receive early years funding again, once in receipt of a valid Ofsted certificate of registration, unless this is due to an inadequate inspection outcome.
- i. If a provider has a problem of any kind with their Ofsted registration, Torbay Council may decide to withhold further funding until such time as it receives formal notification from Ofsted that the matter has been resolved. The Council will require the provider to supply a copy of its Ofsted registration certificate in such instances.
 - ii. If following assessment by Ofsted, Torbay Council concludes that the provider is not able to deliver a satisfactory level of provision, Torbay Council may terminate the agreement and withdraw funding. The provider will be notified of such a decision in writing.

- iii. If the agreement with a provider is terminated because the provision is inadequate, they will not be permitted to apply to be registered again until inspected as requires improvement or better by Ofsted. Where this occurs Torbay Council will:
 - o Write to parents/carers of all children attending the setting informing them of the decision to withdraw funding and the reasons why (the provider shall provide a full list of details of all parents/carers for this purpose).
 - o Stop funding the setting from the date of the inadequate inspection. This may result in funding which has already been paid to the setting being recovered through an invoice.

15.5. These procedures are separate to and not reliant upon Ofsted processes and they may take place at any point during Ofsted processes. Where the provider is appealing the grade or decision made by Ofsted through the Ofsted formal appeals process, consideration will be given by Torbay Council on a case by case basis.

16. Appeals process

16.1. A provider may be denied approval to offer the free entitlements or have their funding withdrawn as set out above. The provider can appeal against that decision.

16.2. If a provider decides that it wishes to make representations about a decision to suspend or remove them from the Directory, they must write to Torbay Council within two weeks of the notice being given, providing the grounds for objecting with relevant evidence in support. Torbay Council will acknowledge receipt within one week of receiving this. In the acknowledgement letter, Torbay Council will give the provider a date, time and location for an appeal hearing. The appeal panel will meet within a month of the evidence having been received by Torbay Council.

16.3. Torbay Council will prepare a written report for the appeal panel. This report, along with the provider's evidence will be sent to the panel and the provider at least one week before the date of the hearing. The appeal will be heard by a panel of three senior staff drawn from Torbay Council. The panel members will have had no prior involvement in the matter under appeal. One of the panel members will act as chair. There will also be a clerk present to record the proceedings. A member of staff from the provider may attend the hearing in order to put the provider's case to the panel. He/she may also bring another person with them e.g., a friend, relative, business colleague or a Councillor to help or to put the provider's case on its behalf. In addition, there will be a maximum of two representatives from Torbay Council to put their case to the panel.

16.4. The hearing procedure will be as follows:

- i. Introductions
- ii. Torbay Council will be invited to explain the reasons behind its proposal
- iii. The provider may question Torbay Council's representatives after they have spoken
- iv. The provider will be invited to explain its grounds of appeal against Torbay Council's proposal
- v. Torbay Council may question the provider after its representatives have spoken
- vi. The panel may ask questions at any point
- vii. Torbay Council will then be invited to sum up the reasons behind its proposal
- viii. The provider will then be invited to sum up its grounds of appeal
- ix. Both the provider and Torbay Council representatives will then leave together while the panel makes its decision
- x. The chair will explain to both the provider and Torbay Council representatives that they will hear from the panel in writing within one week.
- xi. The panel's decision will be final.
- xii. If, at any stage the provider, is unhappy with the way in which the Council has dealt with its appeal they can ask the Local Government Ombudsman to examine the proceedings. The Local

Government Ombudsman is an independent person who investigates allegations of maladministration causing injustice to the person who has complained.

16.5. The Local Government Ombudsman website is www.lgo.org.uk.

17. Complaints process

17.1. If a parent is not satisfied that their child has received their free early education place, that the provider meets the requirements expected, or is unhappy about any aspect of their child's funding from Torbay Council then they should in the first instance contact the provider and:

- i. Check their entitlement
- ii. Check any bills/receipts and invoices that they been issued
- iii. Check the provider handbook and Ofsted report

17.2. A parent must follow the provider's complaints process which is available from the setting.

17.3. If a parent or early years setting is not satisfied with Torbay Council processes then they can write to the Head of Service for Early Years or follow the Torbay Council complaints procedure at www.torbay.gov.uk/complaints.

17.4. 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.

17.5. If a parent or provider is not satisfied with the way in which their complaint has been dealt with by Torbay Council or believes the Council 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.

18. Notices

All notices and other communications in relation to this agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

Annex A – Data Privacy

The Data Protection Act 2018 puts in place certain safeguards regarding the use of personal data by organisations, including the Department for Education (DfE), local authorities and education settings. 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,
- To whom it may be disclosed

- A right to see a copy of the information an organisation holds about them (subject access)

A 'privacy notice' is a good way to be able to meet your obligations as a data controller and the DfE recommend they are used to explain to parents, pupils and staff how their data is being stored and used. The department has drafted template privacy notices that settings and local authorities may like to use, however, they should be reviewed and amended as necessary to reflect business need and ideally include a 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 staff and shared with parents, it can also be put on the setting's 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 pupils and staff are made aware of the notices and they are readily available electronically or in paper format. However, they should be updated when anything changes in relation to how you store, use and share information,

Please note that some of the information collected around family financial circumstances, children's health conditions and personal data is sensitive information 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/>

How Torbay Council will use the information you provide to make funding claims and applications for additional funds:

Purpose and legal basis:

The information provided by you will enable the local authority and the Department for Education to process your free education entitlement funding claims as well as assess the eligibility of children for the various entitlements that are available (DAF, EYPP, SEN Inclusion Fund etc). The legal basis for processing this information is the performance of a task carried out in the exercise of official authority vested in the controller and for the carrying out of our obligations under social protection law.

Categories of personal data collected:

- personal information (such as name, DOB, unique pupil number and address)
- Parent or guardian personal details
- characteristics (such as ethnicity, language and EYPP and free school meal eligibility)
- assessment information (such as Early Years Foundation Stage and Key Stage)
- special educational needs information (Inclusion, EHCP, provider support)
- exclusions data (permanent and fixed exclusions)
- attendance information (hours attended, daily attendance marks etc)

The recipients of personal data:

- The Local Authority – Torbay Council
- The Department for Education

Information will be shared with and retained by the organisations listed above in order to process your claim and check your eligibility.

Retention period:

Torbay Council will keep the information you provide on this form and supporting evidence for 7 years in accordance with our Records Management Policy.

Your rights:

To see a copy of the information Torbay Council holds about you please contact infocompliance@torbay.gov.uk or visit www.torbay.gov.uk/sar

Supervisory authority:

If you are concerned about how your information is being processed you have the right to raise a complaint with the Information Commissioner's Office, their details are below:

Email: casework@ico.org.uk

Tel: 0303 123 1113

Website: www.ico.org.uk

Data Controller:

The data controller for the information provided on this form is:

Torbay Council, Town Hall, Castle Circus, Torquay, TQ1 3DR

Data Protection Officer:

Email: infocompliance@torbay.gov.uk

Tel: 01803 207177

Annex B – Flexibility

The extract below is taken from the **Early Education and Childcare Statutory Guidance for local authorities June 2018** (full document available at www.gov.uk)

Outcome: 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.

Two-year-olds and three- and four-year-olds (universal and extended entitlement): To secure flexible delivery, local authorities should:

A2.1 Consult with parents and involve them in local assessments of demand for flexibility.

A2.2 Act as a broker between overall parental demand in the area and provider capacity, seeking to provide the maximum possible flexibility for parents. Support providers to establish parental declarations setting out their hours and patterns of hours during which free places are offered. A parental declaration template is available in the model agreement.

A2.3 Encourage strong partnership working between providers from all sectors (maintained schools, academies and free schools, private, voluntary and independent providers and childminders) to ensure the market offers maximum flexibility for parents to access free hours to meet their needs and the needs of their child.

A2.4 Encourage providers to offer flexible packages of free hours, subject to the following standards which will enable children to access regular, high quality provision, whilst maximising flexibility for parents and ensuring a degree of stability for providers.

- 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

A2.5 Where it is reasonably practicable, local authorities should ensure that children are able to take up their free hours in continuous blocks and avoid artificial breaks being created throughout the day, for example, over the lunch period.

A2.6 Ensure that parents and providers are aware that free places can be delivered:

- over up to 52 weeks of the year if the parent is stretching their child's entitlement (see A2.11)
- outside of maintained school term times
- at weekends

A2.7 Ensure that parents and providers are aware that, subject to the standards set out in A2.4, there is no requirement that free places must be taken on, or delivered on, particular days of the week or at particular times of the day.

A2.8 Ensure that parents and providers are aware that 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 free places.

A.2.9 Ensure that parents and providers are aware that the free entitlement hours cannot be compressed i.e., a parent cannot take more than 15 or 30 hours per week over fewer than 38 weeks of the year. However, a parent can choose a provider that is open for fewer than 38 weeks of the year and therefore receive 15 or 30 hours a week during fewer weeks.

A2.10 Ensure that providers are aware that they can choose not to deliver free places.

A2.11 Ensure parents are aware that the entitlement to a free place does not offer a guarantee of a place at any one provider or a particular pattern of provision.

A2.12 Enable parents to take up their child's free 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 parental demand, for example, just under 12 hours a week for 48 weeks of the year for the universal 15 hour entitlement or around 23 hours a week for 48 weeks of the year for the extended 30 hour entitlement.

A2.13 Support parents to identify providers who can offer free places on the days and at the times needed by the parent.

A2.14 Encourage providers to work with parents to ensure continuity of care for children and effective transitional arrangements to support children's learning and wellbeing when enabling children to take up their free place at more than one provider or on more than one site.

A2.15 Refer to the Department's early years national funding formula operational guidance for the circumstances in which an authority can provide a flexibility supplement (see A4.5).

A2.16 Use their Family Information Service and children's centres, as well as local childminder agencies, if available, to publicise childminders and other flexible wraparound provision in their areas and help match childminders with parents.

A2.17 Ensure that the early years expertise and experience of their maintained nursery schools, if they have them, are used to benefit the whole local area. Maintained nursery schools (MNS) are almost exclusively good or outstanding, the majority are located in disadvantaged areas and. Local authorities should ensure that they have a role in the pedagogical leadership for the local early years system. What this means in practice will depend on local need, but it might include for example: commissioning nursery schools to develop and deliver a quality improvement strategy for the area; having nursery schools work with other providers to share their experience and expertise to raise the overall quality of provision across the area; helping nursery schools to work in partnership with other providers to offer parents who choose a MNS the 30 hours entitlement.

Annex C - Quality

The extract below is taken from the **Early Education and Childcare Statutory Guidance for local authorities June 2018** (full document available at www.gov.uk)

Outcome: all children are able to take up their free hours in a high quality setting. Evidence shows that higher quality provision has greater developmental benefits for children, particularly for the most disadvantaged children, leading to better outcomes. The evidence also shows that high quality provision at age two brings benefits to children's development. This guidance reflects the Government's intention that, as far as possible, free places are delivered by providers who have achieved an overall rating of 'outstanding' or 'good' in their most recent Ofsted inspection report.

The Early Years Foundation Stage (EYFS) statutory framework is mandatory for all early years providers in England. The EYFS sets the standards that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe. Ofsted and inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.

Two-year-olds and three- and four-year-olds (universal and extended entitlement):

A3.1 To secure quality, local authorities are required by legislation to deliver free places through:

- early years providers other than a childminder registered on the Ofsted Early Years Register; or
- a childminder registered on the Ofsted Early Years Register; or
- a childminder registered with a childminder agency which is itself registered with Ofsted on early years register; or
- schools taking children aged two and over and which therefore are exempt from registration with Ofsted as early years providers.

A3.2 Fund places for two-, three- and four-year-old children at any provider judged 'good' or 'outstanding' by Ofsted¹² or at any childminder registered with a childminder agency judged 'effective' by Ofsted if a parent wants their child to take up their free place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.9).

A3.3 Fund places for three- and four-year-old children at any provider judged 'satisfactory' (prior to 2014) or 'requires improvement' by Ofsted¹³ or at any childminder registered with a childminder agency judged 'effective' by Ofsted if a parent wants their child to take up their free place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.9).

A3.4 Fund places for two-, three- and four-year old children at new providers registered with Ofsted until the provider's first full Ofsted inspection judgement is published or at a childminder registered with an agency until the agency's first full Ofsted inspection judgement is published, if a parent wants their child to take up their free place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.9).

A3.5 Fund providers with exemptions from the Early Years Foundation Stage if a parent wants their child to take up their free place at an exempt provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.9).

A3.6 Fund individual children who have exemptions from the EYFS.

A3.7 Local authorities are not required to fund places at providers who do not meet the quality standards set out at A3.2 and A3.3 above but may choose to do so to ensure sufficiency of free places. Local authorities should:

A3.8 Rely solely on the Ofsted inspection judgement of the provider or the childminder agency as the benchmark of quality.

A3.9 Not fund providers who do not actively promote fundamental British values or if they promote as evidence-based, views or theories which are contrary to established scientific or historical evidence and explanations.

A3.10 Only fund places for two-year-old children in 'satisfactory' or 'requires improvement' providers where there is not sufficient, accessible 'good' or 'outstanding' provision.

A3.11 Fund providers with an Ofsted inspection judgement of 'met' until their Ofsted quality inspection judgement is published. Local authorities should not fund providers with an Ofsted inspection judgement of 'not met'.

A3.12 Refer to the Department's early years national funding formula operational guidance for the circumstances in which an authority can provide a quality supplement (see A4.5).

A3.13 Secure alternative provision and withdraw funding from a provider (other than a local authority maintained school), as soon as is practicable, when Ofsted publish an inspection judgement of the provider of 'inadequate' or an inspection judgement of a childminder agency of 'not effective'¹⁴. It is for local authorities to determine an appropriate timeframe for withdrawing funding. When withdrawing funding local authorities should take into account the continuity of care for children who are already receiving their free hours at a provider or with an agency registered childminder and Ofsted monitoring information about the provider or agency. Local authorities should take appropriate action to improve the quality of provision at a local authority maintained school which has been judged by Ofsted to require significant improvement or has been placed in special measures.

A3.14 Not withdraw funding from providers or from childminders registered with an agency until the provider's or childminder agency's Ofsted inspection judgement is published.

A3.15 Not fund childminders registered with a childminder agency where the agency has indicated to the local authority that the childminder is not of the appropriate quality unless it is necessary to do so to ensure sufficiency of accessible places or support parental choice. Local authorities should also consider any information provided by a childminder agency about the childminder registered with them and the childminder's premises.

A3.16 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" by Ofsted may have re-registered their setting with Ofsted to avoid making the quality improvements identified by Ofsted.