

Agreement for the funding of free early years provision for 2, 3 and 4 year-olds

For PVI settings

September 2017

About this Agreement

This agreement for early years provision and free childcare is underpinned by the following legislation, regulations, statutory guidance and codes:

- Early Education & Childcare, Statutory Guidance for Local Authorities 2017
- Childcare Act 2006
- Childcare Act 2016
- Equality Act 2010
- School Admissions code 2014
- Statutory framework for early years foundation stage 2017
- Local Authority (Discharge of Duty to Secure Early Years Provision Free of Charge) Regulations 2014
- The Childcare (Early Years Provision Free of Charge, Extended Entitlement) Regulations 2016
- Special educational needs and disability code of practice 2015
- Data Protection Act 1998

This agreement details the requirements and expectations that early years Providers must meet in order to be eligible to deliver free early education entitlements for two, three and four year-olds and draw down the subsequent funding. It covers the following:

- **The 15 hour entitlement for the most disadvantaged two-year-olds:** Eligible two year-olds will be entitled to three terms of free part time early years education from the term following their second birthday.
- **The 15 hour entitlement for parents of three and four-year-olds (the universal entitlement):** All children aged three and four years are entitled to three terms of free part time (15 hours) early years education from the term following their third birthday.
- **The 30 hours entitlement for working parents of three and four-year-olds (the extended entitlement):** Some children of eligible parents will be entitled to 30 hours of free early years education from the term following their third birthday, as long as they remain eligible.

Funded free part time places are only available in settings that have signed this Agreement.

The Agreement will be kept under review and updated as necessary to reflect any changes to national guidance and legislation.

Any references to legislation will be to that legislation as amended from time to time, without express change in this agreement.

The agreement is structured as follows:

- Schedule 1:** The Agreement
- Schedule 2:** Terms and Conditions of funding
- Annex A:** [Parent Declaration Form](#)
- Annex B:** [Business Planning Processes](#)
- Annex C:** [Appeals Process](#)

SCHEDULE 1: THE AGREEMENT

THIS AGREEMENT IS MADE the _____ day of _____ 2017

PARTIES

(1) **OLDHAM BOROUGH COUNCIL** of Civic Centre, West street, Oldham, OL1 1UG (“**Local Authority**”)

(2) **INSERT PROVIDER NAME** _____ of

ADDRESS: _____

Operating from _____ (Insert name(s) of premises to which this agreement applies if different from the address above) (“**Provider**”)

1. Definitions

In the Agreement except where context otherwise requires, the following words shall mean:

- 1.1 "Local Authority" shall mean Oldham Borough Council whose principal office is: Civic Centre, West Street, Oldham, OL1 1UT.
- 1.2 "Provider" shall mean the person or organisation providing early education services including but not limited to childminders, pre-school, playgroups, private day nurseries, out of school and holiday clubs, Independent schools, and Academies.
- 1.3 "DfE" shall mean the Department for Education.
- 1.4 "EYPP" shall mean Early Years Pupil Premium.

2. Agreement

- 2.1 The Provider hereby agrees to provide early years provision and free childcare (“Service”) as specified in Schedule 2 to this Agreement.
- 2.2 The Service will be provided in accordance with the terms and conditions contained herein.
- 2.3 This Agreement may be varied from time to time to reflect changes in legislation and DfE guidance.

SCHEDULE 2: TERMS AND CONDITIONS OF FUNDING

1. Key Responsibilities

The Local Authority responsibilities

- 1.1. The Local Authority must secure a free entitlement place for every eligible child in their area.
- 1.2. The Local Authority should work in partnership with the Provider to agree how to deliver free entitlement places.
- 1.3. The Local Authority should be clear about its role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as the expectations of the Provider.
- 1.4. The Local Authority must contribute to the safeguarding, and promote the welfare of children and young people in its area.

The Provider responsibilities

- 1.5. The Provider must comply with all relevant legislation and insurance requirements.
- 1.6. The Provider should deliver the free entitlements consistently to all parents, whether in receipt of 15 hours or 30 hours and regardless of whether or not the parents opt to pay for additional services or consumables. This means that the Provider must provide the parents with full details about the days and times on which it offers free places, along with the services and charges. Those children in receipt of the free entitlements should receive the same quality and access to service provision as children whose parents pay for the services.
- 1.7. The Provider must follow the Early Years Foundation Stage (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.
- 1.8. 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. The Provider should utilise the SEN inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about its SEND offer to parents.

2. Safeguarding

The Local Authority Responsibility

- 2.1. The Local Authority has overarching responsibility for safeguarding and promoting the welfare of all children and young people in its area. They have a number of statutory functions under the 1989 and 2004 Children Acts which make this clear, and the 'Working Together to Safeguard Children' 2015 guidance sets these out in detail.

The Provider Responsibility

- 2.2. The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that are in line with local guidance and procedures for responding to and reporting suspected or actual abuse and neglect. A lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider must have regard to 'Working Together to Safeguard Children' 2015 guidance which can be found here:
<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

3. Eligibility

The Local Authority Responsibility

- 3.1. 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.
- 3.2. The Local Authority will confirm the validity of 30 hours eligibility codes to allow Providers to offer 30 hours places for eligible three and four year-olds. The Local Authority will provide a validity checking service to the Provider to enable it to verify the 30 hours eligibility code swiftly and efficiently. This will be through the Synergy online Provider Portal.
- 3.3. The Local Authority will complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at 6 fixed points during the year, both at half-term and at the end of term (in line with the dates as listed at table A below). The Local Authority will notify the Provider where a parent has fallen out of eligibility and inform it of the grace period end date.

Table A

Date Parent receives ineligible decision on reconfirmation:	LA Audit Date:	Grace Period End date:
1 Jan – 10 Feb	11 February	31 March
11 Feb – 31 March	1 April	31 August
1 April – 26 May	27 May	31 August
27 May – 31 August	1 September	31 December
1 September – 21 October	22 October	31 December
22 October – 31 December	1 January	31 March

The Provider Responsibility

- 3.4. 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 should retain paper or digital copies of documentation to enable the Local Authority to carry out audits and fraud investigations. Where the 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.
- 3.5. The Provider should offer places to eligible two-year-olds on the understanding that the child remains eligible until s/he becomes eligible for the universal entitlement for three and four year-olds.
- 3.6. Alongside the 30 hours eligibility code, which is the child's unique 11 digit number and original copies of documentation. The Provider must acquire written consent from, or on behalf of the parent to be able to receive confirmation and future notifications from the Local Authority of the validity of the parent's 30 hours eligibility code. The Provider should use the [Parent Declaration Form](#) at Annex A, which asks the parent for the necessary information and consents.
- 3.7. Once a Provider has received written consent from the parent, it should verify the 30 hours eligibility code with the Local Authority.

The Grace period

- 3.8. 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.
- 3.9. The Local Authority will 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.
- 3.10. The Local Authority should continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory Guidance for Local Authorities, March 2017.
- 3.11. Providers will be informed as a child enters a grace period.

4. Flexibility

The Local Authority Responsibility

- 4.1. The Local Authority will permit a child to split his/her entitlement over no more than two sites per day.

The Provider Responsibility

- 4.2. 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.
- 4.3. The Provider should work with the Local Authority and share information about the times and periods at which they are able to offer free entitlements to support the Local Authority to secure sufficient stretched and flexible places to meet parental demand in the Local Authority.
- 4.4. The Provider should also make information about its offer and admissions criteria available to parents when the child first accesses provision at its setting.
- 4.5. Free entitlement may be "stretched" over a greater number of weeks but this will result in a reduced weekly allowance of hours which in any event must not exceed 570 hours per annum in the case of 15 hour eligible children and 1140 hours in the case of 30 hour eligible children. This must be agreed in writing with the parent.

5. Partnership Working

The Local Authority Responsibility

- 5.1. 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.

The Provider Responsibility

- 5.2. The Provider should, where possible, work in partnership with parents, carers and other providers to improve the provision and outcomes for children in their setting.
- 5.3 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.

6. Special Educational Needs and Disabilities

The Local Authority Responsibility

- 6.1. The Local Authority will strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in their local area as per the Special Educational Needs and Disability code of practice: 0 to 25 years. (January 2015)
- 6.2. The Local Authority will publicise through the Family Information Service the support on offer in the local area, through the Local Offer, so parents and Providers can access that support.

The Provider Responsibility

- 6.3. 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, which can be found here: <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>
- 6.4. The Provider should be clear and transparent about the SEND support on offer at its setting and make information available about its offer to support parents to choose the right setting for their child with SEND.

7. Social Mobility and Disadvantage

The Local Authority Responsibility

- 7.1. The Local Authority 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 his/her potential.

The Provider Responsibility

- 7.2. The Provider should identify and record the disadvantaged children in its setting and use Early Years Pupil Premium (EYPP) payments and any locally available funding streams or support to improve outcomes for this group.
- 7.3. The Provider should ensure that any funding received for the Early Years Pupil Premium is used to improve the quality of early years education for their disadvantaged children and that the Provider consults the evidence on what works in improving quality when making decisions about how to use their EYPP funding.

8. Quality

- 8.1. The EYFS statutory framework is mandatory for all schools that provide 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.
- 8.2. Ofsted is 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.

The Local Authority Responsibility

- 8.3. 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 who have not yet had an inspection report published. Also, for Providers on part A of the Ofsted General Childcare Register that are assessed by Ofsted as not having met the requirements of registration or the requirements relating to their activities.

8.4. To promote high standards in schools and other providers so that children and young people achieve well and fulfil their potential (Education and Inspections Act 2006, Section 13A).

The Provider Responsibility

8.5. Provider must offer provision 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 which can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596460/early_education_and_childcare_statutory_guidance_2017.pdf

http://www.foundationyears.org.uk/files/2017/03/EYFS_STATUTORY_FRAMEWORK_2017.pdf

8.6. Where the Provider achieves a "requires improvement" or "inadequate" Ofsted grade the Provider will be required to:-

- work with officers of the Local Authority to immediately address any recommendations and actions detailed within the Ofsted report;
- provide and implement a detailed action plan which demonstrates how the Provider will achieve and maintain improvement in Ofsted grade.

9. Business Planning

The Local Authority Responsibility

9.1. The Local Authority will provide and maintain an online Provider Portal for the sole purpose of enabling the Provider to submit child and parent details relating to all free entitlements and EYPP safely and securely.

9.2. The Local Authority will publicise the exact dates and timescales for submissions on the Provider payment timetable. All other deadlines will be provided via email to each Provider.

9.3. The Local Authority will carry out audits onsite to ensure that funding is used appropriately and in accordance with DfE and Local Authority funding conditions and protocols. Prior to an audit a confirmation letter along with a copy of the checklist of the documents required will be sent to the Provider. Systems and controls will be checked in order to highlight potential weaknesses and identify opportunities for improvement

9.4 The Local Authority will issue the Provider with a template and guidance notes for completing the annual Early Years Census and then will submit the information to the DfE within the specified timeline.

The Provider Responsibility

9.5. The Provider should submit all child and parent details via the Synergy online Provider Portal by the specified dates each term. Paper contracts and agreements, including proof of entitlement (e.g. birth certificates) should be retained by the Provider. Copies will not be required to be sent to the Local Authority unless requested.

9.6. The Provider should ensure it submits timely and accurate information, including, but not limited to, headcount data, census data, as detailed at Paragraph 9.2 and at other notified

dates for Early Years Census information. Failure to do so may result in inaccurate, delayed or suspended funding.

9.7. The Provider must adhere to and comply with all the processes, procedures and related documents. These include but are not limited to those found in [Annex B](#) of this agreement – Business Planning and Quality Improvement Processes:

- Enrolling a child
- Parent Declaration Form
- Exceptional circumstances
- Mid-term starters, leavers and non-attendance
- Change of hours mid-term
- Child attendance, absences and vacancies
- The funding process and submitting a claim
- Provider process for checking validity of 30 hours eligibility codes
- Ofsted Requires Improvement protocol
- Ofsted Inadequate protocol (or two or more Requires Improvement judgements).

9.8. The Provider must make parents who are entitled to the 30 hours free entitlement aware that the entitlement cannot start until the beginning of each term.

9.9. The Provider must ensure that all parents are asked if their child is attending another early years setting and splitting their universal or extended entitlement.

9.10. The Provider should maintain accurate financial and non-financial records relating to free entitlement places and should give the Local Authority access, upon receipt of reasonable notice, to all financial and non-financial records relating to free entitlement places funded under this Agreement, subject to confidentiality restrictions.

10. Charges to Parents

10.1. 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 Local Authority Responsibility

10.2. The Local Authority will not intervene where parents choose to purchase additional hours of provision or additional services, provided this does not affect the parents' ability to take up their child's free place.

The Provider Responsibility

10.3. The Provider should be completely transparent about any additional charges. The Provider cannot charge parents "top-up" fees (the difference between a Providers' usual fee and the funding it receives 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.

10.4. The Provider may charge for meals and snacks as part of a free entitlement place and can also charge for consumables such as nappies or sun cream and for services such as trips and yoga. These charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the 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.

- 10.5. 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.
- 10.6. The Provider should publish its 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 the Provider should work with parents to ensure that as far as possible the pattern of hours is convenient for parents with normal working hours.
- 10.7. The Provider may charge parents a deposit to secure their child's free place, but should refund the deposit in full to parents within a reasonable time scale.

The following limitations apply:

- Deposits **should not be charged** or held to secure funded two year-old places.
- Deposits **should not be charged** to existing children/parents i.e. a two year-old child who moves to three year-old funding in the following term.
- Requested deposits should not be so high as to be a deterrent.
- Deposits should be returned or deducted from the first payment a parent makes following a placement beginning.

- 10.8. The Provider should ensure that its 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 the fees paid for additional hours. The Provider will also ensure that receipts contain its full details so that it can be identified as coming from a specific Provider.

11. Funding

The Local Authority Responsibility

- 11.1. Funding rates for three and four year-old children in individual settings are determined through the local application of the Government's Early Years National Funding Formula.
- 11.2. The Provider will be entitled to receive payment in accordance with [published hourly rates](#).
- 11.3. **Payment process for three and four year-olds:** The Local Authority will pay Providers two payments each term relating to funding claimed for two, three and four year-old children. The Local Authority will process the first payment (75%) of the estimated hours submitted on the Synergy online provider portal. This payment will include the Provider base rate and the quality supplement. The second payment (25%) plus or minus any adjustments will include the deprivation supplement, and EYPP and will be made using a headcount of eligible children supplied by the Provider through the Synergy online provider portal.
- 11.4. **Payment process for two year-olds:** 100% of the estimated hours will be paid at first payment stage. Any adjustments will be made at the second payment stage.
- 11.5. The Local Authority will publish headcount submission dates and payment dates on a Provider payment timetable.
- 11.6. **Disability Access Fund & SEN Inclusion funding** payments will be made for eligible children to the Provider as soon as possible after an eligible child takes up his/her place with the Provider.

The Provider Responsibility

11.7. To comply Business Planning Processes as set out in [Annex B](#)

12. Compliance

The Local Authority Responsibility

12.1. The Local Authority will carry out checks and/or audits on the Provider to ensure compliance with the requirements of delivering free entitlements and will provide a written record of such checks, including actions and recommendations, to the Provider.

The Provider Responsibility

12.2. The Provider shall agree to audit checks and provide any information that is requested and implement any actions and agreed recommendations.

13. Termination and Withdrawal of Funding

13.1. Suspension of registration by Ofsted or a breach of statutory requirements or safeguarding standards may result in the immediate termination of the Agreement and withdrawal of funding.

13.2. Termination provisions are those required by regulation 4 Local Authority (Discharge of Duty to Secure Early Years Provision Free of Charge) Regulations 2014 and regulation 37 The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016.

13.2.1 Where the Provider does not meet the Ofsted quality standards as set out in section A3 of the Early Education and Childcare statutory guidance for local authorities (March 2017) the Local Authority will be required to remove it from the Directory of Providers.

13.2.2 The Provider will be removed immediately from the Directory of Providers if a judgement of 'inadequate' is received following an Ofsted inspection. This decision can only be overturned if an improved Ofsted judgement is given after a re-inspection within an agreed timescale.

13.2.3 The Provider may be withdrawn from the Directory of Providers eligible to receive Free Early Years Entitlement funding if it fails to comply with [Annex B](#) to this agreement (Business Processes).

13.2.4 Any decision to progress removal will be communicated by the Local Authority to the Provider in writing. The Local Authority reserves the right to issue a final decision without notice if it is felt that there are issues around child welfare, safety and/or protection.

13.2.5 If the Provider is removed from the directory of Approved Providers the Local Authority will send a letter to all parents whose child is in receipt of the free entitlement funding informing them of the decision together with the reasons for its decision. Parents will be advised to contact their local children's centre or check the childcare pages on the Oldham Council website to find an alternative Provider.

13.2.6 If the Provider wishes to voluntarily withdraw from the directory of Providers it should contact the Local Authority and notify parents immediately. If the withdrawal from the directory of Providers is made part way through a term the Local Authority will clawback any funding received where the free entitlement has not been delivered.

The Provider should put in writing its intent to withdraw from the directory of Providers to:

Free Entitlement Team
Oldham Council
Level 4, Civic Centre
Oldham
OL1 1UT
freeentitlement@oldham.gov.uk

14. Appeals Process

14.1. Where the Provider has been denied approval to offer the free entitlements or has had its funding withdrawn as set out above, the Provider will be notified in writing of this intention and the reasons for this action being taken. The Provider will then have seven days in which to appeal in writing to:

Education Improvement Manager
Oldham Council
Free Entitlement Team
Level 4, Civic Centre
Oldham
OL1 1UT
freeentitlement@oldham.gov.uk

14.2. Details of the Appeals Process are set out in [Annex C](#) to this Agreement.

15. Complaints Process (Parents)

The Local Authority

15.1. Where a dispute arises between a parent and the Provider, where the parent is not satisfied that his/her child has received his/her free entitlement in accordance with the legislation or as set out in this Agreement, the Provider will invoke its own complaints procedure.

15.2. If the parent is dissatisfied with the outcome of the Provider's complaints procedure he/she may contact the Local Authority who will investigate the matter on his/her behalf.

15.3. Complaints should be made to:

The Service Manager, Early Years and Childcare
Level 4, Civic Centre
West Street
Oldham, OL1 1XU
Phone: 0161 770 3159
Email: jenny.dennis@oldham.gov.uk

15.4. If a parent or Provider is not satisfied with the way in which his/her complaint has been dealt with by the Local Authority or believes that the Local Authority has acted unreasonably, he/she can make a complaint to the Local Government Ombudsman. www.lgo.org.uk. Telephone: 0300 061 0614. Such complaints will only be considered when the Local Authority complaints procedures have been exhausted.

The Provider

15.5. The Provider should ensure it has a complaints procedure in place that is published which is accessible for parents who are not satisfied that their child has received their free entitlement in the correct way, as set out in this Agreement and in the Early Education and Childcare Statutory guidance for local authorities 2017.

16. Freedom of Information

16.1. The Provider acknowledges that the Local Authority is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).

16.2. The Provider shall:

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

16.2.2. transfer to the Local Authority all requests for information relating to this agreement that it receives as soon as practicable and in any event within two working days of receipt;

16.2.3. provide the Local Authority with a copy of all information belonging to the Local Authority requested in the request for information which is in its possession or control in the form that the Local Authority requires within five working days (or such other period as the Local Authority may reasonably specify) of the Local Authority's request for such information; and

16.2.4. not respond directly to a request for information unless authorised in writing to do so by the Local Authority.

16.3. The Provider acknowledges that the Local Authority may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Provider. The Local Authority shall take reasonable steps to notify the Provider of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Local Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

17. Data Protection

17.1. Oldham Council and the Provider shall each comply with the Data Protection Act 1998 (DPA) and the EU Data Protection Directive 95/46/EC until 23:59:59 on 24 May 2018 and with effect from 25 May 2018 the General Data Protection Regulation (EU) 2016/679. Further, Oldham Council and the Provider shall comply with the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to protection, processing and sharing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner

17.2. The Provider shall (and shall procure that any of its staff involved in connection with the activities under this Agreement shall) comply with any privacy notification requirements under

the Data Protection Act 1998 (DPA) and both Parties will duly observe all their obligations under the DPA, which arise in connection with this Agreement.

- 17.3. The Provider will include a privacy notice with its induction pack for staff and put a privacy notice on the noticeboard/website for parents.
- 17.4. Oldham Council and the Provider shall comply with the Data Sharing Schedule attached to this Agreement at Schedule 1.

18. Withholding, Suspending and Repayment of Funding

- 18.1. The Local Authority's intention is that the Funding will be paid to the Provider in full. However, without prejudice to the Local Authority's other rights and remedies, the Local Authority may at its discretion withhold or suspend payment of the Funding and/or require repayment of all or part of the Funding if:
 - 18.1.1. the Provider uses the funding for purposes other than those for which it has been awarded;
 - 18.1.2. the Provider is, in the reasonable opinion of the Local Authority, delivering the Service in a negligent manner;
 - 18.1.3. the Provider provides the Local Authority with any materially misleading or inaccurate information;
 - 18.1.4. the Provider commits or committed a Prohibited Act;
 - 18.1.5. any member of the governing body, employee or volunteer of the Provider has:
 - (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Service; or
 - (b) taken any actions which, in the reasonable opinion of the Local Authority, bring or are likely to bring the Local Authority's name or reputation into disrepute;
 - 18.1.6. the Provider ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
 - 18.1.7. the Provider becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
 - 18.1.8. the Provider fails to comply with any conditions set out in this Agreement and fails to rectify any such failure within the time period specified in the written notice detailing the failure.
- 18.2. Should the Provider be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Service or compliance with this Agreement it will notify the Local Authority as soon as possible so that, if possible, and without creating any legal obligation, the Local Authority will have an opportunity to provide assistance in resolving the problem or to take action to protect the Local Authority and the Funding monies.

19. Anti-Discrimination

- 19.1. The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 19.2. The Provider shall take all reasonable steps to secure the observance of clause 19.1 by all

servants, employees or agents of the Provider and all suppliers and sub-contractors engaged on the Service.

20. Human Rights

- 20.1. The Provider shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Provider were a public body (as defined in the Human Rights Act 1998).
- 20.2. The Provider shall undertake, or refrain from undertaking, such acts as the Local Authority requests so as to enable the Local Authority to comply with its obligations under the Human Rights Act 1998.

21. Limitation of Liability

- 21.1. The Local Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Provider running the Service, the use of the Funding or from withdrawal of the Funding. The Provider shall indemnify and hold harmless the Local Authority, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Provider in relation to the Service, the non-fulfilment of obligations of the Provider under this Agreement or its obligations to third parties.
- 21.2. Subject to clause 21.1, the Local Authority's liability under this Agreement is limited to the payment of the Funding.

22. Warranties

- 22.1. The Provider warrants, undertakes and agrees that:
- 22.1.1. it has all necessary resources and expertise to deliver the Service (assuming due receipt of the Funding);
 - 22.1.2. it has not committed, nor shall it commit, any Prohibited Act;
 - 22.1.3. it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Local Authority immediately of any significant departure from such legislation, codes or recommendations;
 - 22.1.4. it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Service;
 - 22.1.5. it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
 - 22.1.6. it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
 - 22.1.7. all financial and other information concerning the Provider which has been disclosed to the Local Authority is to the best of its knowledge and belief, true and accurate;
 - 22.1.8. it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Funding;
 - 22.1.9. it is not aware of anything in its own affairs, which it has not disclosed to the Local

Authority or any of the Local Authority's advisers, which might reasonably have influenced the decision of the Local Authority to make the Funding on the terms contained in this Agreement; and

22.1.10. since the date of its last accounts there has been no material change in its financial position or prospects.

23. Insurance

23.1. The Provider shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the Required Insurances).

23.2. The Required Insurances referred to above include (but are not limited to):

23.2.1. Public Liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000 in relation to any one claim or series of claims arising from the Service; and

23.2.2. Employer's Liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Service.

23.3. The Provider shall (on request) supply to the Local Authority a copy of such insurance policies and evidence that the relevant premiums have been paid.

24. Duration

24.1. Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until 31 March 2019 or for so long as any Funding monies remain unspent by the Provider, whichever is longer.

24.2. Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

25. Assignment

25.1. The Provider may not, without the prior written consent of the Local Authority, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Service, transfer or pay to any other person any part of the Funding.

26. Waiver

26.1. No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

27. Notices

27.1. All notices and other communications in relation to this Agreement shall be made 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 5pm 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.

- 27.2. In the absence of agreement under clause 28.1, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

28. No Partnership or Agency

- 28.1. This Agreement shall not create any partnership or joint venture between the Local Authority and the Provider, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

29. Joint and Several Liability

- 29.1. Where the Provider is not a company or an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Provider shall be jointly and severally liable for the Provider's obligations and liabilities arising under this Agreement.

30. Contracts (Rights Of Third Parties) Act 1999

- 30.1. This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

31. Governing Law

- 31.1. This Agreement shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS WHEREOF this document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed on behalf of **OLDHAM BOROUGH COUNCIL**

Signature:

Name:

Position:

Date:

Signed on behalf of **THE PROVIDER.**

Signature:

Name:

Legal Status of the Provider (please tick):

Sole Trader

Charity

Limited Company

Maintained Nursery

Academy

Position:

Date:

I confirm that I am authorised to sign this agreement on behalf of the Provider above named setting /company (please tick box)

Note: Failure to return this Agreement duly signed may result in you being unable to offer free entitlement places and draw the subsequent funding as detailed in this Agreement.

Schedule 1

Data Sharing Schedule

Purposes for which the data is being shared

Oldham Council has a statutory duty to validate the eligibility of access to free and flexible high quality early years provision and submission of child level data for payments to the **Provider**.

There is also a statutory requirement for **Oldham Council** to complete a return to the Department of Education each year containing this information.

Legal basis for sharing

- Sections 1 and 2 of the Childcare Act 2016; and
- Section 6, 7, and 7A of the Childcare Act 2006.

Personal and Sensitive Personal Data to be shared

Field/Data Item	Headcount	2 Year-old Funding	30 Hours
First name	✓	✓	✓
Middle Name	✓		
Last Name	✓	✓	✓
DOB	✓	✓	✓
Gender	✓	✓	
Ethnicity	✓	✓	
Address	✓	✓	
Parents/Carer Forename		✓	
Parents/Carer Surname		✓	
Parent/Carers DOB		✓	
Parents/Carer Gender		✓	
Parents/Carer Relationship to the child		✓	
Parents/Carers Address		✓	
Parents/Carers National Insurance Number		✓	✓
Parent/Carers NASS Number	✓		
Whether the parent/carers has parental responsibility for the child		✓	
Reason for Claiming Funding (LAC, SEN, Adopted, DLA, Universal Credit, Provided an eligibility letter from another LA)		✓	
If provided an eligibility letter from another LAs the name of the LA that gave the letter and the eligibility reference number.		✓	

Field/Data Item	Headcount	2 Year-old Funding	30 Hours
Applicants Email address		✓	
Applicants phone number		✓	
Extra contact information		✓	
30 Hours Eligibility Code	✓		✓
Childs Start Date	✓		
Childs End Date	✓		
Weeks Attended Setting in the term	✓		
Average hours attended per week	✓		
Hours Attended in the term	✓		
Universal hours claimed per week	✓		
Universal hours claimed for term	✓		
Extended hours claimed per week	✓		
Extended hours claimed per for term	✓		

Transmission of Personal Data

The Provider will submit Personal Data to Oldham council via the secure provider portal. Access to the provider portal will be controlled by Oldham council and all access requests will require the user to accept Oldham Council's terms and conditions as set out in this agreement.

Oldham Council will retain the Personal Data received from the Provider in accordance with appropriate retention schedules, as determined by Oldham Council's retention policy (details of applicable retention periods will be supplied to the Provider within a reasonable period on written request) or by legislation.

Data Subjects' Rights

Data Subjects have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. In circumstances where the processing of a Data Subject's Personal Data is not in compliance with Data Protection Legislation, Data Subjects may also request rectification, erasure or blocking of their Personal Data.

Complaints

Oldham Council and the Provider agree that a complaint from a Data Subject or his/her representative about Personal Data transferred between the parties will be investigated first by the party receiving the complaint.

If policies and procedures relating to and impacted by information sharing need to be reviewed as a result of a complaint or otherwise, the relevant party shall undertake this work in a timely manner and inform the other party of any revisions made to such policies and procedures.

Breaches

Oldham Council and the Provider agree that in the event that there is a breach of the Data Protection Legislation or an allegation of a breach of the Data Protection Legislation within a party's organisation, that party shall manage and, where possible, mitigate the breach in accordance with its own reporting and investigation procedures. The party who suffers the breach or who is notified of an alleged breach shall inform the other party of the breach or alleged breach within 2 working days and as soon as reasonably possible that party shall inform the other of all steps taken or to be taken to mitigate and/or contain the breach or alleged breach and prevent a similar incident occurring in the future.

Review

Oldham Council and the Provider agree that this Data Sharing Schedule shall be reviewed and amended in writing as and when required and that any amended version shall form part of this Agreement. No amendments shall be made unless ratified by Oldham Council and the Provider.