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**Agreement for Free Early Years Provision and Childcare**

**For Private, Voluntary or Independent (“PVI”) childcare providers.**

Commencement date: May 2024 - Expiry date: April 2025

# Agreement for free early years provision and childcare

This agreement for early years provision and free childcare is underpinned by legislation, regulations, statutory guidance and codes, including but not limited to:

* [Statutory guidance for Local Authorities](https://www.gov.uk/government/publications/early-education-and-childcare--2/early-education-and-childcare-applies-from-1-april-2024)
* Childcare Act 2006
* Childcare Act 2016
* Equality Act 2010
* School Admissions code 2014
* [Early Years Foundation Stage (EYFS) statutory framework](https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2)
* 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: 0 to 25 years](https://www.gov.uk/government/publications/send-code-of-practice-0-to-25)
* Data Protection Act 1998
* [Working Together to safeguard children](https://www.gov.uk/government/publications/working-together-to-safeguard-children--2)

This document should be read alongside the following processes.

* Business planning and quality improvement processes

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 eligible children and to claim and receive the Department for Education (“DfE”) Early Years National Funding for the provision of such services. It covers the following:

* The 15 hour entitlement for children of eligible working parents from the age of 9 months, the term following the child’s 9 month birthday, 38 weeks a year. (commencing Sept 2024)
* The 15 hours entitlement for children of eligible working parents from the age of 2, the term after the child’s 2nd birthday, 38 weeks a year.
* The 15 hours for the most disadvantaged 2-year-olds the term after the child’s 2nd birthday, 38 weeks a year.
* The 15 hours universal funding for parents of 3 and 4-year-old children, the term after the child’s 3rd birthday, 38 weeks a year.
* The 30 hours entitlement for children of eligible working parents, the term after the child’s relevant birthday (as above), 38 weeks a year. (commencing Sept 2025)

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

Any references to legislation will be to that legislation being amended from time to time, without express variation of the Agreement (or charges).

The Agreement is structured as follows:

**Schedule 1: The Agreement**

**Schedule 2: Specification**

 Annex A:Parent Declaration Form

 Annex B:Business Planning Processes

**Schedule 3: Data Sharing Schedule**

# SCHEDULE 1: THE AGREEMENT

**THIS AGREEMENT** is made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_\_

**BETWEEN**

**Oldham Borough Council** whose principal place of business is The Civic Centre, West Street, Oldham, OL1 1UL (“**Local Authority / LA**”)

**AND**

**INSERT PROVIDER NAME**,a company/charity registered in England, company / charity number **INSERT COMPANY OR CHARITY NUMBER**, whose registered address is **INSERT REGISTERED ADDRESS [OR PERSON]** operating from

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

**[OR SOLE TRADER/CHARITY ORGANSIATION DETAILS]**

**WHEREAS:**

1. The LA wishes to engage the Provider for the provision of early years education and free childcare to those eligible children as listed above (“**Services**”); and
2. the Provider wishes to be eligible to deliver free early education entitlements and provide the Services; and
3. the LA and the Provider wish such Services to be provided in accordance with this Agreement; and

(4) the LA and the Provider have agreed to the terms of this Agreement by executing the Agreement; and

(5) the LA has agreed to make payment to the Provider for providing the Services, as set out in this Agreement.

**NOW IT IS HEREBY AGREED** **AS FOLLOWS:**

* 1. The Provider hereby agrees to provide the Services as specified in Schedule 2 to this Agreement.
	2. The Services will be provided in accordance with the terms and conditions herein.
	3. This Agreement may be varied from time to time to reflect changes in legislation and DfE guidance.

**IN WITNESS** whereof the LA and the Provider have executed this Agreement.

**Signed by an authorised representative for and on behalf of the Provider**:

Signature …………………………………..

Name (Print) …………………………………..

Position …………………………………..

**Legal Status of the Provider (*please tick)*:**

|  |
| --- |
| Sole Trader |[ ]
| School Governor run |[ ]
| Registered Charity |[ ]
| Limited company |[ ]
| Maintained school nursery |[ ]
| Academy |[ ]
| Partnership |[ ]

**If the Provider is a childminder and a member of a Childminding Agency please complete the information below.**

Childminding Agency……………….

Date the childminder joined the agency………………………………..

**Signed by an authorised Officer for and on behalf of Oldham Borough Council:**

Signature ……………………………………

Name (Print) ……………………………………

Position ……………………….…………..

**SCHEDULE 2: SPECIFICATION**

## 1. Key local authority responsibilities

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

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

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

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

## 1.2 Key Provider responsibilities

The Provider must comply with all relevant legislation and insurance requirements.

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.

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.

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

1. **Safeguarding**

The local authority has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. They have a number of statutory functions under the 1989 and 2004 Children Acts which make this clear, and the ‘[Working together to safeguard children’](https://www.gov.uk/government/publications/working-together-to-safeguard-children--2) guidance sets these out in detail.

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’ guidance.

## Eligibility

The Provider should check original copies of documentation to confirm a child has reached the relevant 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: Parent declaration, part 6.

The Provider should offer disadvantaged 2-year-old places on the understanding that the child remains eligible until they become eligible for the universal entitlement for 3- and 4- year-olds.

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

Alongside the working families eligibility code, which is the child’s unique 11-digit number (if applicable), and original copies of documentation (see 2.14), 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 eligibility code.

Once a Provider has received written consent from the parent, they should verify the eligibility code with the local authority.

The local authority will confirm the validity of eligibility codes to allow providers to offer free places for eligible children aged 9 months and above. The local authority will provide a validity checking service to providers to enable them to verify the eligibility code. The Eligibility Checking Service (ECS) allows all local authorities to make instant checks for code validity.

Thereafter, the local authority should complete audit checks to review the validity of eligibility codes for children who qualify for the working parent entitlement at 6 fixed points in the year, both at half-term and at the end of term across the year (in line with the dates as listed at table A below). It is the local authority’s responsibility to notify a provider where a parent has fallen out of eligibility and inform them of the grace period end date.

**Table A: Audit and Grace Period Dates**

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

## The Grace Period

A child will enter the grace period when the child’s parents cease to meet the eligibility criteria set out in the Childcare (Free of Charge for Working Parents) (England) Regulations 2022) as determined by HMRC (or where the child is in foster care, the responsible local authority) or a First Tier Tribunal in the case of an appeal.

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

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 2024

## Flexibility

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](https://www.gov.uk/government/publications/early-education-and-childcare--2/early-education-and-childcare-applies-from-1-april-2024).

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. 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.

Continuity of care is important for the child so the LA and providers should bear in mind the impact that multiple providers may have on a child’s learning, development and wellbeing. Parents can split their free entitlement between multiple providers, though no more than two sites in one day

Where parents split their child’s free entitlement between providers, the following will apply

* If a child splits the entitlement between a school nursery and a PVI provider, the school nursery will claim the universal hours.
* If a child splits the entitlement between two PVI providers it is parental choice which providers receives the universal and extended hours (where extended hours apply)

The LA and providers will need to distinguish between the 15 hours universal entitlement and the additional 15 hours extended entitlement in order to accurately record take-up in either the school census or the early years census. This can be recorded on the parental declaration form in which enables parents to indicate at which provider they are taking the universal 15 hours free entitlement and, where appropriate, pass this information onto the provider or local authority. Statutory guidance states that, if a parent ceases to meet the eligibility criteria for 30 hours, the parent may, at that point, choose which provider they continue to take up their child’s universal 15 hours entitlement.

## Partnership working

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

1. Local authorities and providers
2. Providers working with other providers, including childminders, schools and organisations
3. Providers and parents
4. Local authorities and parents

The local authority should promote partnership working between different types of providers, including childminders, across all sectors and encourage more providers to offer flexible provision, alongside other providers.

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](http://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-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 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.

## Special educational needs and disabilities

The local authority must strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in their local area as per the [Special Educational Needs and Disability code of practice: 0 to 25 years](https://www.gov.uk/government/publications/send-code-of-practice-0-to-25).

The Provider must ensure owners and all staff members are aware of their duties in relation to the SEND Code of Practice 2014 and the Equality Act 2010.

The local authority must be clear and transparent about the support on offer in their area, through their local offer, so parents and providers can access that support.

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.

## Supporting disadvantaged children

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

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 these children.

From April 2024, there may be some circumstances where households meet the eligibility criteria for both the disadvantaged two-year-old entitlement and the working parent entitlement. In these circumstances, the childcare should be provided under the disadvantaged 2-year-old entitlement. The child will remain on the disadvantage entitlement until they become eligible for the universal entitlement for 3- and 4-year-olds or 30 hours free childcare for 3- and 4-year-olds if they meet the eligibility criteria. Therefore, households will not lose eligibility for their 15 hours free early education, as is currently the case for the disadvantage entitlement. From September 2025, when the working parent entitlement increases to 30 hours, where households meet the eligibility criteria for both 2-year-old entitlements, they should be recorded as taking up 15 hours of the disadvantage entitlement and 15 hours of the working parent entitlement. They will need to reconfirm eligibility every 3 months for the working parent entitlement and from September 2025, they will not be defaulted automatically onto the disadvantage entitlement should they lose eligibility for the working parent entitlement.

## Quality

The [Early Years Foundation Stage (EYFS) statutory framework](https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2) is mandatory for all schools that provide early years provision and early years providers registered with Ofsted or with an Ofsted-registered Childminder Agency in England. The EYFS sets the standards that all early year providers must meet to ensure that children learn and develop well and are kept healthy and safe.

Ofsted are the sole arbiter of quality for all childcare 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. Childminder agencies (CMAs) are organisations that can register and quality assure childminders as an alternative to registering with Ofsted.

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

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 2024 and the EYFS statutory framework.

Where the Provider achieves a “requires improvement” or “inadequate” Ofsted grade, the Provider will be required to:

* + - work with officers of Oldham LA or a commissioned organisation to immediately address any recommendations and actions detailed within the Ofsted report;
		- provide and implement a detailed focus improvement plan (FIP) which demonstrates how the Provider will achieve and maintain an improvement in the Ofsted grade.

More information can be found in section 16 of Annex B - [**Business Planning and Quality Improvement Processes.**](https://www.oldham.gov.uk/downloads/file/4744/annex_b_business_planning_and_quality_improvement_processes)

## Business planning

The local authority should clearly set out the documentation that they need to receive from providers to support payment and delivery of the free entitlements and the timetable which providers should follow when submitting their documentation, this includes setting out the importance of timely and accurate census returns.

The local authority should not charge providers disproportionate penalties for providing late or incomplete information leading to additional administration in the processing of free entitlements. Any charges should be reasonable and proportionate to the inconvenience or costs incurred to the local authority as a result of the lateness and local authorities will ensure charges are clearly communicated to providers.

The local authority should not carry out audit regimes which are disproportionate or are unnecessarily burdensome to providers.

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

The provider should maintain accurate financial and non-financial records relating to free entitlement places and should give the local authority 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.

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](https://www.oldham.gov.uk/downloads/file/4744/annex_b_business_planning_and_quality_improvement_processes) of this Agreement – Business Planning and Quality Improvement Processes.

## Charging

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

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. Providers should be mindful of the impact of additional charges, especially on the most disadvantaged parents. Where parents are unable to pay for meals and consumables, providers who choose to offer the free entitlements are responsible for setting their own policy on providing parents with options for alternatives to additional charges, including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals.

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

The local authority should not intervene where parents choose to purchase additional hours of provision or additional services provided, that are not a condition of accessing the free entitlement.

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.

The Provider can charge parents a deposit to secure their child’s free place but should refund the deposit in full to parents within a reasonable time scale.

The Provider cannot charge parents “top-up” fees (any 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.

The Provider shall 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.

The following limitations apply:

* + - Deposits **shall not be charged** or held to secure funded disadvantaged 2-Year-Old places.
		- Deposits **shall 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.

## Funding

The local authority should pay all providers monthly, particularly childminders, unless a provider requests and the local authority agrees to continue an existing alternative sustainable method of payment.

The Provider shall accurately complete and submit headcount and other necessary data returns by the agreed date to support the local authority to make payment. This will include, however is not limited to, EY annual census data, termly sufficiency information and any other information to enable to LA to meet its statutory duty.

Funding rates for all entitlements are determined through the local application of the Government’s Early Years National Funding Formula.

Subject to compliance with this Agreement and the relevant funding conditions, the Provider will be entitled to receive payment in accordance with published hourly rates.

Within each term there are three submission and payment points; Estimates, Actuals and Adjustments

**Payment process for all entitlements:** The LA will pay the Provider up to three payments each term.

The first payment (estimates) will be 75% of the estimated hours submitted on the Synergy online provider portal. This payment will be paid at the provider base rate for the relevant entitlement.

The second payment (Actuals) will be the remaining 25% plus or minus any changes to estimate hours submitted and will include the “deprivation supplement”, EYPP and DAF and will be made using the headcount of eligible children supplied by the Provider through the Synergy online provider portal.

The third payment will only be made where the Provider submits positive adjustments for children. i.e. a late starter or an increase in child’s hours. This will be paid at 100% of the amount owed.

Where the Provider ends the term with a negative balance this will either be rolled over to the next term and clawed back at the next payment point, or an invoice will be raised for immediate repayment.

Where the Provider repeatedly overclaims at estimates and is left with a negative closing balance for the term, the LA may adjust the next term’s estimates to reflect the actual children for whom the Provider claimed for the previous term. Any children who are not captured in this estimate payment can be input into the provider portal for payment at actuals.

Childminders who are part of a childminding agency will be paid any Free Entitlement funding due directly and not via the childminding agency.

The LA will publish headcount submission dates and payment dates on a provider payment timetable. This is emailed to all providers prior to the start of the new financial year and is also available on the provider pages of the Oldham LA website. [PVI agreement for funding | PVI agreement for funding | Oldham LA](https://www.oldham.gov.uk/info/200230/early_years/1838/pvi_agreement_for_funding)

**Disability Access Fund (DAF)** 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 and receipt of evidence is received by the LA.

## Compliance

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

The LA will provide a provider with a minimum of two weeks’ notice if an audit is to be carried out and will refer to the documentation that will need to be made available. The LA will not require the manager/owner to be with the LA while the audit is conducted but may need them at intervals to provide clarification on matters should this be required.

## Termination and withdrawal of funding for quality or registration reasons

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

Termination provisions are those required by regulation 7, Local Authority (Discharge of Duty to Secure Early Years Provision Free of Charge), regulations 2014 and regulation 37 of The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016.

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 2024, the LA will be required to remove the Provider from the “Directory of Providers”.

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.

The LA will secure alternative provision and withdraw funding from any childminder who is registered with a childminding agency where Ofsted publish a second consecutive inspection judgment of the childminding agency as ‘ineffective’. Following a second consecutive ‘ineffective’ inspection judgment, the LA will continue to fund the childminder agency’s providers if the childminder agency assessed them as being acceptable quality and Ofsted has not identified any concerns about the agency’s assessment arrangements. The LA will endeavour to treat all of the childminder agency’s other providers in a comparable way to Ofsted-registered providers with equivalent judgements.

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](https://www.oldham.gov.uk/downloads/file/4744/annex_b_business_planning_and_quality_improvement_processes) to this Agreement (Business planning and quality improvement processes).

Any decision to progress removal will be communicated by the LA to the Provider in writing. The LA 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.

If the Provider is removed from the directory of Approved Providers, the LA 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 the Family Information Service to find an alternative provider.

If the Provider wishes to voluntarily withdraw from the Directory of Providers, the Provider shall contact the LA free entitlement team and must notify parents immediately. If the withdrawal from the Directory of Providers is made part way through a term, the LA will claw back any funding received where the free entitlement has not been delivered, which the Provider shall be required to reimburse.

The Provider shall put in writing its intent to withdraw from the Directory of Providers to:

freeentitlement@oldham.gov.uk

## Appeals process

The 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.

The Provider has seven (7) days in which to appeal in writing to:

Paula.Healey@oldham.gov.uk

## Complaints process

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.

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.

If the parent is dissatisfied with the outcome of the Provider’s complaints procedure, he/she may contact the LA who will investigate the matter on his/her behalf.

Parent complaints should be made to:

The Early Education Provision Manager

Email: Jennifer.wright@oldham.gov.uk

If a Provider wishes to make a complaint with regards to LA it should follow the [LA’s complaint procedure.](https://www.oldham.gov.uk/info/100004/about_the_council/630/complaints_or_feedback_about_the_council)

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

# Freedom of Information

* 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).
	2. The Provider recognises that the LA is subject to legal duties which may require the release of information under the Freedom of Information Act (FOIA) or the Environmental Information Regulations (EIR) or any other applicable legislation or codes governing access to information (“Access Duties”) and that the LA may be under an obligation to provide information on request. Such information may include matters arising out of or under this Agreement, including any Call-Off Contracts, in any way.
	3. In the event that, the LA receives a request for information under its Access Duties, the LA is entitled to disclose all such information and documentation (in whatever form) as it is obliged to disclose under its Access Duties.
	4. The LA shall not disclose Exempt Information provided and that the LA shall be responsible for determining at its absolute discretion what information it is obliged to disclose under its Access Duties and what is Exempt Information.
	5. In respect of any disclosure under its Access Duties, the LA shall, prior to disclosure, endeavour to advise the Provider of the intention to disclose any information which the Provider has marked as Exempt Information in the Tender or the Parties have agreed in writing, may be Exempt Information and allow a maximum of ten (10) Working Days for the Provider to make submissions to the LA in respect of that disclosure.
	6. The LA shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any information relating to this Agreement, including any Call-Off Contract, which the LA is obliged to disclose under its Access Duties.
	7. The Provider will assist the LA in complying with its obligations under its Access Duties. In the event that the LA receives a request for information under its Access Duties and requires the Provider’s assistance in obtaining the information that is subject to such request or otherwise, the Provider will respond to any such request for assistance from the LA at the Provider’s own cost and comply within 10 days of receiving the LA’s request.

# Data Protection

* 1. The LA and the Provider shall each comply with all data protection and privacy legislation in force in the UK including the UK GDPR, which has the meaning given to it in section 3(10) (as supplemented by section 205(4) of the Data Protection Act 2018; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder). Further, the LA 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 Regulations 2003 (SI 2003/2426) 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
	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 2018 (DPA) and both Parties will duly observe all their obligations under the DPA, which arise in connection with this Agreement.
	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.
	4. Oldham LA and the Provider shall comply with the Data Sharing Schedule attached to this Agreement at Schedule 3.

# Withholding, Suspending and Repayment of Funding

* 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:

19.1.1 the Provider uses the funding for purposes other than those for which it has been awarded;

19.1.2 the Provider is, in the reasonable opinion of the Local Authority, delivering the Services in a negligent manner;

19.1.3 the Provider provides the Local Authority with any materially misleading or inaccurate information;

19.1.4 the Provider commits or committed a Prohibited Act;

* + 1. any member of the governing body, employee or volunteer of the Provider has:
			- 1. acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Services; or
				2. 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;

19.1.6 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);

19.1.7 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

19.1.8 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.

* 1. Should the Provider be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Services 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.

# Anti-Discrimination

* 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.
	2. The Provider shall take all reasonable steps to secure the observance of [clause](file:///H%3A%5Cdesktop%5CFrom%20desktop%5CMarch%202022%20provider%20agreement%5CMarch%202022%5CProvider%20agreement%20V7.docx#_bookmark0)  by all servants, employees or agents of the Provider and all suppliers and sub-contractors engaged on the Services.

# Human Rights

* 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).
	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.

# Limitation of Liability

* 1. The Local Authority accepts no liability for any consequences, whether direct or indirect, that may come about from the Provider running the Services, 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 Services, the non-fulfilment of obligations of the Provider under this Agreement or its obligations to third parties.
	2. Subject to clause [22.1](file:///H%3A%5Cdesktop%5CFrom%20desktop%5CMarch%202022%20provider%20agreement%5CMarch%202022%5CProvider%20agreement%20V7.docx#_bookmark1), the Local Authority’s liability under this Agreement is limited to the payment of the Funding.

# Warranties

* 1. The Provider warrants, undertakes and agrees that:

23.1.1 it has all necessary resources and expertise to deliver the Services (assuming due receipt of the Funding);

23.1.2 it has not committed, nor shall it commit, any Prohibited Act;

23.1.3 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;

23.1.4 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 Services;

23.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;

23.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

23.1.7 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;

23.1.8 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;

23.1.9 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

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

# Insurance

* 1. The Provider shall affect 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).
	2. The Required Insurances referred to above include (but are not limited to):
		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 Services; and
		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 Services.
	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.

# Duration

* 1. Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until April 2025 or for so long as any Funding monies remain unspent by the Provider, whichever is longer.
	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.

# Assignment

* 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 Services, transfer or pay to any other person any part of the Funding.

#  Waiver

* 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.

# Notices

* 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.
	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.

# No Partnership or Agency

* 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.

# Joint and Several Liability

* 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.

# Contracts (Rights Of Third Parties) Act 1999

* 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.

# Governing Law

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

**SCHEDULE 3: 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****Disadvantaged** | **Working Families** |
| 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/carer 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. |  |  |  |
| Applicants Email address |  |  |  |
| Applicants phone number |  |  |  |
| Extra contact information |  |  |  |
| Working Families 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.