



NURSERY EDUCATION FUNDING TERMS & CONDITIONS

1st April 2015 - 31 March 2016

These Nursery Education Funding Terms and Conditions govern the terms on which Oxfordshire County Council will provide funding to Early Years Education Providers, who are accepted as Approved Providers for the provision of early years education for:

- three and four year old children who are eligible for free early years education (universal entitlement); and
- Those two year old children who are eligible to receive free early years education

An “Approved Provider” is one of the following:

- (a) An early years provider or childminder registered on Ofsted Early Years Register; or
- (b) A daycare setting which is registered with Ofsted or, if based in a Local Authority primary school, has an Ofsted registration jointly with the school.
- (c) Independent schools, free schools and academies approved by the DFE.
- (d) A childminder (registered with a childminder agency) which agency is registered with Ofsted; or
- (e) A childminder agency which is registered with Ofsted.

Who has been accepted as an “Approved Provider” by Oxfordshire County Council and issued with a notification of approval by the Council.

Funding will be provided in accordance with the Council’s statutory duties under the Childcare Act 2006 and the framework (including the payment funding mechanism) of the Early Education and Childcare Statutory Guidance for local authorities (last published September 2014). The current Statutory Guidance can be found at:
<https://www.gov.uk/government/publications/early-education-and-childcare--2>

The Council reserves the right to amend or vary the Nursery Education Funding Terms to comply with any changes to legislation or further statutory guidance that may be issued. In the event of any amendment or variation to these terms being necessary, the Council will publish details of the changes and the date on which the revised terms are to take effect on its website. Publication of such details will constitute notice of change.

The Council's objective is to support Providers to achieve flexible, high quality provision which meets the needs of parents and children and this objective is reflected in these Nursery Education Funding Terms and Conditions.

If you have any queries regarding the Nursery Education Funding Terms and Conditions, please write to the Council at Early Education, School Organisation and Planning, Oxfordshire County Council, Ground Floor, County Hall, New Road, Oxford, OX1 1ND, or by Email earlyyears.education@oxfordshire.gov.uk with 'Early Education Funding Terms' in the subject line.

OXFORDSHIRE'S NURSERY EDUCATION FUNDING TERMS AND CONDITIONS

(effective date 1 April 2015)

Parties

- (1) Oxfordshire County Council** of County Hall, New Road, Oxford, OX1 1ND
(the "Council"); and
- (2) The Approved Early Years Education Provider** (the "Provider")

Background

- (A) The Council, in accordance with the Council's statutory duties under the Childcare Act 2006, the Early Education and Childcare Statutory Guidance for local authorities, has agreed to pay the Early Years Education Funding Payment to the Provider calculated in accordance with the Early Years Single Funding Formula in respect of eligible children to assist the Provider carrying out the Early Years Education Provision.
- (B) These terms and conditions govern the terms on which the Early Years Education Payment is made to the Provider and are intended to ensure that the Early Years Education Payment is used only for the purpose for which it is made and no other purpose.

Agreed Terms

The Provider agrees to use any Early Years Education Payment received from the Council for the delivery of the Free Early Years Provision in accordance with the terms and conditions set out in below.

1. Early Years Education Provision

To deliver, free of charge at the point of delivery, a core 'free'¹ early education place entitlement of 570 hours a year, over no fewer than 38 weeks of the year.

1.1 As a minimum ensure that parents are able to access the standard offer for their child's free early education place, for example in the following patterns:

- 3 hours a day over 5 days of the week;
- 5 hours a day over 3 days of the week.

(If a Provider is unable to open for the above periods the Council may, in certain cases, make an exception to the above requirement and agree to fund a child care place if this would enable an "eligible child" to take up a place which suits the parent's needs).

¹ ("Free" early years education means the Government funded early years education for eligible 2, 3 & 4 year old children as may be the case.

- 1.1 To provide the early education entitlement within the hours of 7am and 7pm.
- 1.3 To provide each session of the early education entitlement for a minimum daily period (on normal working days between the hours referred to in Condition 1.2) of not less than 2.5 hours per day and a maximum of 6 hours per day.
- 1.4 To ensure that the provision for eligible two year olds under this Agreement shall be made from the start of term on or following the dates set out below, unless the Council has agreed to an earlier start:
 - Children born in the period 1st January to 31st March – **1st April** following the child's second birthday;
 - Children born in the period 1st April to 31st August – **1st September** following the child's second birthday;
 - Children born in the period 1st September to 31st December – **1st January** following the child's second birthday.
- 1.5 To ensure that the provision for eligible three and four year olds under this Agreement shall be made from the start of the term on or following the dates set out below:
 - Children born in the period 1st January to 31st March – **1st April** following the child's third birthday;
 - Children born in the period 1st April to 31st August – **1st September** following the child's third birthday;
 - Children born in the period 1st September to 31st December – **1st January** following the child's third birthday.
- 1.6 Not to impose any mandatory obligation, as a condition of allocation and provision of an early years' education place funded under these Terms, on parents of an eligible child to purchase additional hours or pay any charges for goods, services or optional extras. If the funded early years' education covers a lunchtime period the Provider shall offer parents the option of providing a packed lunch for their child.
- 1.7 Publish clear, transparent and full information on how the “free” entitlement is delivered in the Provider's setting. This information must, as a minimum, be displayed in the prospectus, parental contracts and on websites and invoices as applicable.
- 1.8 To provide flexibility to parents of eligible children as to how they want to access the early years education placement for their child and deliver the entitlement in a way that reflects parental demand so far as is possible. (For example, by enabling parents to take up patterns of fewer free hours a week over more weeks of the year, if there is sufficient capacity).

2. Information and data

The Provider:

- 2.1 Agrees to provide promptly to the Council data (as it may reasonably require) relating to (but not limited to) the number and hours of eligible children at the Provider's setting, and place vacancy data. Furthermore the Provider agrees to provide to the Council with termly headcount data (at least three times a year), annual census returns, Early Years Foundation Stage Profile returns (where applicable) and termly audit requests within the time-scales set by the Council and the Department for Education.
- 2.2 Confirms that it will procure and hold fully completed and up to date parental declaration forms for three and four year olds, which relate to each child receiving funding and the term in which the funding is to be provided and retain these forms for seven years for audit purposes.
- 2.3 Agrees to keep accurate and up to date attendance registers.
- 2.4 Agrees to provide the Council with accurate and appropriate contact details and other required information in the format requested (including electronic returns where applicable) including updates to the Family Information Service and ensure that any changes are notified and kept up to date.
- 2.5 (If the Provider is a childminder agency) Agrees to provide the Council with information on the quality of childminders within the agency.
- 2.6 Gives the Council the right to publish the Provider's address and contact number on the Council's website and the Family Information Service at <http://fisd.oxfordshire.gov.uk> (in respect of a Provider which is a childminder it is agreed that the Council will only publish limited address and contact details) and on lists published for parents seeking a nursery education place.
- 2.7 Agrees to provide the Council with a generic email address to be used for mailings and for service of notices in relation to these Terms, or variation or changes to these Terms (as may be the case) and the Provider agrees to take responsibility for ensuring that communications to the email are periodically monitored and, in the event of changes to the email address, are notified to the Council in writing.
- 2.8 Agrees that it will regularly visit and keep up to date with information provided by the Council on its website at www.oxfordshire.gov.uk/workinginearlyyears and ensure that this is accessible by all relevant staff within the provision.
- 2.9 Agrees that it shall comply with the Data Protection Act 1998, including registering and holding appropriate notifications with the Information Commissioner as required, when processing personal and/ or sensitive data (as defined in that Act) in relation to this Agreement, including providing

appropriate privacy information notices to Parents / Guardians of eligible children to explain how information and data collected in relation to the child may be processed, so that relevant informed consent may be procured. The Provider further agrees, in accordance with its obligations under the 7th Data Protection principle, to take all appropriate security measures to protect any unauthorized or unlawful processing or accidental loss or destruction or damage to such personal / sensitive data.

- 2.10 Acknowledges that the Council is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and that it shall (at the Provider's expense) provide prompt assistance to the Council in connection with any information disclosure requests received by the Council under the respective Acts and, if the Provider is in receipt of an information disclosure request under the Freedom of Information Act 2000, to pass such request within two working days to the Council.
- 2.11 Agrees to provide at least one full term's notice to the Council and to the parents of an eligible child for whom funding under this Agreement is being provided of any planned withdrawal from the Nursery Education Funding scheme to allow the parents sufficient time to find alternative funded places if they so require. (The term dates are the same as those set out in 1.4 and 1.5 regarding eligibility).

In the event that the Provider fails to give notice to the Council, the Council shall be entitled to suspend payments immediately and the Provider shall refund to the Council any Early Years Education Payment made by the Council in respect of an eligible child on the assumption that placement had continued.

- 2.12 Agrees not to withdraw from providing a placement for an eligible child at the Provider's setting where;
 - 2.12. 1 such withdrawal would constitute a breach of the provisions of Condition 1.1; and
 - 2.12. 2 without first giving at least one full term's notice to the Council and to the parent/carer of an eligible child to allow the parents sufficient time to find alternative funded place is they so require.
- 2.13 In the event that the Provider fails to give notice to the Council and the parent/carer, the Council shall be entitled to suspend payments immediately and the Provider shall refund to the Council any Early Years Education Payment made by the Council in respect of an eligible child on the assumption that placement had continued.
- 2.13 Warrants and represents that the information and data it provides in relation to the Nursery Education Funding Agreement, including any forms to claim funding payments shall be accurate.

- 2.14 The Provider further warrants and represents, and repeats such warranties and representation on each occasion a claim for funding payment is made, that it has full capacity and authority and all necessary consents to enter into and perform its obligations under these Terms.

3. Quality

The Provider agrees to:

- 3.1 Comply with the current Early Years Foundation Stage Statutory Framework and Guidance from Ofsted.
- 3.2 Comply with all relevant statutes, enactments, regulations and codes of practice or other similar instructions in the delivery of early year's childcare including, but without limitation, the Children and Families Act (2014), the Special Educational Needs and Disabilities Code of Practice 0 to 25 (2014) and the Equalities Act 2010 (including the "anticipatory duty" in relation to any disabled child who might attend the setting)

Your attention, as a Provider, is drawn to the requirement that all early years providers are required to have arrangements in place to identify and support children with SEN or disabilities and to promote equality of opportunity for children in their care. These requirements are set out in the EYFS framework.

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

In respect of those providers in a group provision, Providers will be expected to identify a Special Education Needs Coordinator (SENCO).

If the Provider is a Childminder, it is encouraged to identify a person to act as SENCO. (Childminders, who are registered with a childminder agency, may wish to share the SENCO role between them on a joint basis).

- 3.3 If the Provider is a childminder, the Provider will comply with the Early Years Foundation Stage Framework with regard to employing an assistant or working with another childminder and will ensure that children are not left in the sole care of child-minder's' assistants for any period exceeding 2 hours in a single day and then only with the parent/ carers prior agreement.
- 3.4 Comply with the requirements and its duties under the Equalities Act 2010 (if applicable) and have policies and practices that ensure equality of access and opportunity to all two, three and four-year-old eligible children without discrimination.
- 3.5 Actively promote fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs and not promote views or theories as facts which are contrary to established scientific or historical evidence and explanations.

- 3.6 Demonstrate a proactive approach to continuous quality improvement through self-evaluation and action planning.
- 3.7 Positively engage with the Council's designated officers as set out in the Oxfordshire Quality Improvement (QIPS) Strategy as updated from time to time. The latest version can be found on the early years pages of the Council's website at <http://www.oxfordshire.gov.uk/cms/content/early-years-quality-improvement-strategy>
- 3.8 Respond to recommendations arising from monitoring visits; which may include the use of monitoring tools including ITERS and a quality checklist for two year olds and integrate such recommendations within the Provider's own quality improvement processes, including provision of appropriate evidence of continued professional development and participation in targeted training, appropriate for relevant age groups.
- 3.9 Have regard to guidance on the use of the early years' pupil premium (for example from the DfE, Ofsted, or the local authority).
- 3.10 Respond co-operatively to workforce surveys as may be issued from Foundation Years from time to time.

4. Collaborative Working

The Provider agrees to:

- 4.1 Work in partnership with parents and provide them with all relevant information or advice about their child's progress and grant entitlements.
- 4.2 Work collaboratively with other early years providers locally, particularly around splitting the entitlement, transition to school, and support local partnership activities, using Council approved transition documentation as published from time to time.
- 4.3 Subject to parents' prior consent, transfer to the Council approved records of eligible children (as appropriate) for release to receiving schools and settings, including those records relating to achievements and identified Special Educational Needs.

5. Safeguarding

The Provider agrees to:

- 5.1.1 Have accurate and up to date policies and procedures in line with statutory guidance and the Oxfordshire Safeguarding Children Board's policies: <http://oxfordsirescb.proceduresonline.com/> and comply with such policies and procedures.

- 5.1.2 Complete an OSCB early years safeguarding audit in line with the Children Act 2004.
- 5.1.3 Follow 'safer recruitment' procedures when recruiting staff and be fully compliant with the EYFS Statutory Framework, September 2014 safeguarding and welfare requirements.

6. Financial

The Provider agrees:

- 6.1 To maintain and make all records relating to the funding received under this Agreement available to the Council's administrators and auditors on request.
- 6.2 To ensure invoices to parents clearly set out which aspects of the provision are funded, which are chargeable (where applicable) and that the information provided clearly shows that they have received their child's full early education entitlement completely free of cost to parents.
- 6.3 Not to charge parents directly for any part of the free entitlement, including deposits, top ups and fees.
- 6.4 To accurately complete all Nursery Education Funding and (if applicable) Two Year Old Entitlement claim forms required to be completed each term by the Council and ensure that all completed claim forms are returned by the required deadline. In the event of late submission, to pay an administration charge of £50 for any late or incomplete returns and to acknowledge that late or incomplete returns may result in funding being suspended.
- 6.5 Subject to paragraph 6.6 below, if the Council has made an overpayment of funding for a term, the Council shall be entitled to request immediate repayment and invoice the Provider for the overpaid sum or deduct it from future payments (if any) made under this Agreement.
- 6.6 To offer free hours to eligible three and four year old children joining after the count day without receiving any funding from the Council on the basis that the Council will not reclaim the funding, in the event that another child for whom funding has been provided leaves or transfers to another provider unexpectedly after the count day for the termly claim form. ("count day" means the day notified to the Provider on which a count of all funded children in the Provider's setting is taken each term)
- 6.7 To inform the Council if the Provider has been granted exemptions to any elements of the Early Years Foundation Stage or if any eligible child has been granted an exemption and the date upon which the exemption is to apply from. (The Council will agree to fund exemptions if it is considered in the best interests of the child)

- 6.8 Acknowledges that the Council may reduce the funding to the extent any funding received by the Council from a third party for the purpose of funding this early years provision is reduced or withdrawn.
- 6.9 (If the Provider is a childminder agency) Not to retain any part of the funding but to pass on the funding in full paid by the Council to the childminders delivering the free early education places.
- 6.10 Acknowledges that the Council may reduce the funding to the extent that any other grant funding received from the Council for any other early years purposes becomes re-payable by the Provider.
- 6.11 In the event of termination of the Provider's appointment by the Council as an approved Provider under these Nursery Education Funding Terms, to repay any unexpended funding paid in advance by the Council within 28 days of formal demand. In the event that the repayment of the required funding is not made the moneys due the Provider agrees it shall be a debt due to the Council which shall carry interest on the overdue amount at the rate of 4% per annum above National Westminster Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. This clause shall survive termination of the Agreement.

7. Council's Obligations

The Council agrees, subject to the terms of this Agreement, to:

- 7.1 Make prompt payments in respect of children entitled to a place in line with procedures under the Council's Early Years Single Funding Formula and the Entitlement for Two Year Olds (as defined by the Early Education and Childcare Statutory Guidance for Local Authorities as published by the Department of Education).
- 7.2 If funding for a Provider is routed via a Childminder agency, to make payments to the respective Childminder agency for all eligible children taking up the free entitlement at the childminder's setting as registered with the agency, unless the Childminder agency has notified the Council that the Provider's childminder is not of satisfactory quality.

In the case of funded three and four year old eligible child the Council will:

- Annually, issue an indicative budget to the Provider, based on the assumption that the number of eligible 3 & 4 year old children at the Provider will continue to be the same as the previous year's counts.
- Make adjustment to indicative budget, in that term, where there is a significant difference if the variation is brought to the attention of the Council by the Provider.

- Make a 60% payment at the beginning of each term, based on the pupil count of the corresponding term in the previous year (as shown in the Provider's Nursery Education Funding claim form). The Council reserves the right to adjust this payment to include adjustments from the previous term.
- Make a final adjusting payment by no later than the end of term, based on the information received from the Provider and verified by the Council through count pack returns. The Council reserves the right to adjust this payment as part of the 60% payment for the start of the following term (see above).
- Pay (where assessed by the Council) additional deprivation funding to the Provider where the Council assesses that an eligible three and four year old child who is being provided with early years education by the Provider is from one of the most disadvantaged families in accordance with the Council's Early Years Single Funding Formula.
- Pay a pupil premium for all eligible 3 and 4 year old children where parents have opted to take this up. ("Eligible 3 and 4 year old children" will be those whose families meet Free School Meals criteria, are looked after by the local authority or have been adopted from care).
- Pay sustainability funding to ensure a minimum of 8 funded places for three and four year old children in settings where there is no alternative provision within 2 miles, in accordance with the Council's Early Years Single Funding Formula.
- If a child leaves or transfers to another provider unexpectedly after the count day for the termly claim, not to seek to reclaim any funding paid to the Provider on the proviso that the Provider will offer free hours to another eligible three and four year old child joining after the count day without requiring any additional funding be paid in substitution.

In the case of funded two year olds the Council will:

- Make a payment at the beginning of the term for those eligible 2 year old children that the Council has agreed, in writing, to fund.
- The initial payment will be based on 60% of the anticipated total early years education provision for an eligible 2 year old child and may include adjustments from the previous term not covered in the end of term adjusting payment referred to below
- Pay a final adjusting payment based on actual take up by the end of term including funding for any eligible children who commenced early year's education after the initial payment was made.
- Continue to provide funding for an eligible child's early years education placement notwithstanding a child's short term absences, but for continued

absence, the Council reserves the right to withdraw funding from the next half term point, unless there are extenuating circumstances.

- 7.3 Make available appropriate information, advice and guidance for early years practitioners delivering the entitlement in accordance with Oxfordshire Quality Improvement Partners (QIPs) strategy on its website at <http://www.oxfordshire.gov.uk/cms/content/early-years-quality-improvement-strategy>
- 7.4 Offer support to maintain and enhance quality in relation to best practice in the delivery of the Early Years Foundation Stage in accordance with Oxfordshire QIPs strategy.
- 7.5 Continue to consult through the Early Years Working Group of the Schools Forum on policy and review of the Early Years Single Funding Formula and Entitlement for Two Year Olds.
- 7.6 Provide support to the Provider in their professional development through relevant and appropriate training programmes, with funding support where possible.

8. Ofsted requirements

The parties recognise the benefits that early years' education brings to eligible children's development and that the Council places reliance on the Ofsted inspection reports in benchmarking the quality of the Provider's settings. In compliance with this objective, unless the Provider is exempt from Ofsted registration in the provision of early year's education, the Provider agrees:

- 8.1 To be registered and to have been inspected by Ofsted. The Council will not terminate this agreement if the provider has not yet been inspected by Ofsted where Ofsted is satisfied at the initial visit that the provision is of sufficient quality and the Council has no concerns over safeguarding or the welfare of children
- 8.2 To notify the Council of all Ofsted inspections both in writing and orally.
(The requirement to notify orally means notifying the Council through the main number for settings 0845 604 2346 of the outcome of the inspection)

For settings and childminder agencies (CMA's) that are rated inadequate by Ofsted, the Provider agrees to inform the Council verbally on the same day of the inspection and as early as possible on the day that an Ofsted inspector arrives to monitor or inspect the setting to enable the Council's officer to attend the Ofsted inspection feedback.

If the outcome of the Ofsted inspection report discloses that the Provider's setting or CMA for early years education requires improvement, the Provider agrees that it shall notify the Council within 3 working days of the inspection and shall not delay notification pending publication of the written report.

8.3 If:

- 8.3. i. the Provider's setting or CMA is categorized by Ofsted as 'inadequate' the Council; or
- 8.3. ii. the Provider's or CMA's registration with Ofsted is suspended the Council reserves the right to terminate the Agreement, and withdraw funding as soon as is practicable for any eligible children who are being funded under this Agreement, including the pupil premium and to secure alternative places.

In the event that the provisions of this clause 8.3.i. or 8.3.ii. occur, then the Provider shall immediately repay to the Council any advance funding paid to the Provider in relation to the allocation and provision of early years' education places.

8.4 Without prejudice to the Council's right of termination of this Agreement under clause 11 where Ofsted categorizes the setting or a childminder as inadequate but the Council considers that the setting is in an area where there is not sufficient alternative high quality provision the provider agrees to:

- 8.4.1 Develop, implement and monitor an action plan for improvement, supported by the Council in accordance with the Council's Oxfordshire Quality Improvement Strategy
<http://www.oxfordshire.gov.uk/cms/content/early-years-quality-improvement-strategy>;
- 8.4.2 Actively participate in the Council's 'Team Around the Setting' support programme, to address concerns raised by OFSTED at inspection;
- 8.4.3 Actively participate in a peer to peer support network, such as through links with other schools and settings, a children's centre, qualified teacher or EYP;
- 8.4.4. Evidence a level of workforce qualifications that indicate higher quality provision with all staff engaged in continuing professional development which shall include (but not be limited to), in the case of childminder, a relevant level 3 qualification.
- 8.4.5 Comply with any other remedial measures that Ofsted or the Council may reasonably impose or require to address the inadequacies or deficiencies in the Ofsted report.

The Provider or CMA agrees to undertake and complete its obligations under this clause within 3 months of the Ofsted inspection (or such longer period as the Council may, having regard to the Ofsted's requirements, require).

8.5 If following re-inspection Ofsted considers that the improvement measures are still not sufficient and / or the Provider's setting or CMA for early years

education remains categorized by Ofsted as ‘inadequate’ the Council may terminate this agreement in accordance with clause 11.

- 8.6 Without prejudice to the Council’s rights of termination, if an Ofsted inspection discloses that the Provider’s setting or childminder offering early years’ education “requires improvement” but the Council, (in its absolute discretion) considers that the Provider’s setting for the provision of early years’ education is in an area where there is not sufficient alternative high quality provision, the Provider agrees to improve the Provider’s setting for early years education in accordance with 8.4.1 to 8.4.5 above, within 6 months and in accordance with Ofsted’s requirements.
- 8.7 If this Funding Agreement has been entered into by the parties pending the Provider’s childcare setting or CMA first being inspected by Ofsted, the Provider agrees to keep the Council informed as to the outcome of the Ofsted inspection in accordance with the above provisions and, without prejudice to the Council’s right of termination if the report is inadequate, to comply with the above provisions to address the inadequacies or deficiencies in the Ofsted report.
- 8.8 If the Provider is a child minder which is registered with a childminder agency, which signals concerns to the Council about the quality of the childminding provision at the Provider’s setting, (regardless as to whether like concerns are raised by Ofsted or the Ofsted rating given to the Provider’s setting or otherwise) the Provider agrees that the Council shall be entitled to exercise its rights under this Condition 8 to the same extent as if such concerns had been raised by Ofsted.

9. Variation

- 9.1 The parties agree that in the event that, due to a change in Government policy, legislation or statutory guidance relating to the funding of early years education for eligible children during to the term of this Agreement, the Council has the right to vary or modify these terms and conditions as may be necessary to effect such changes.
- 9.2 The Council agrees to publish any such variation or modification to these terms and conditions which arise as a consequence of 9.1 on its website and to provide (so far as is possible) advance notice via claim packs as to when such changes shall take effect. The publication of the notice of variation shall constitute notice to the Provider of variation to this Agreement.

10. Duration

- 10.1 The Agreement shall apply from the commencement date of this Agreement and continue until either the withdrawal of the Provider from being an Approved Provider and / or the Agreement is terminated in accordance with the provisions of Clause 11 of this Agreement.

11. Termination

- 11.1 Subject to at least one full term's (autumn, spring or summer) notice given to both the Council and the parents/ carers of any eligible child accessing a funded place a Provider is entitled to give notice to the Council that it no longer wishes to be an Approved Provider.
- 11.2 The Council may terminate the Provider's appointment as an "Approved Provider" by giving notice to the Provider (or emailed to the Provider's email address as notified to the Council) under any of the following circumstances:
- 11.2.1 Ofsted (or a childminder agency) raises concern, by publication of a report or otherwise, that the Provider's setting or provision of early years education for eligible children is inadequate or the Provider's necessary Ofsted registration is cancelled or suspended (or, in respect of a childminder agency, concerns as to the quality of the childminding provision of the Provider's setting is raised) the effect of which might reasonably be considered by the Council to have a material adverse effect on the continued provision of early years' education,
- 11.2.2 Where, in the opinion of the Council, the Provider has breached its obligations under the Agreement and that breach materially and adversely affects the provision of the early year's education provision in accordance with the Agreement,
- 11.2.3 It becomes apparent to the Council that the Provider has made or is making use of the funding for a purpose unconnected with the subject matter of this Agreement,
- 11.2.4 Funding received by the Council from a third party for the purpose of funding this early years' provision is withdrawn,
- 11.2.5 The Provider ceases or threatens not to carry on business or is otherwise unable to meet the requirements set out in this Agreement.
- 11.2.6 The Provider is in persistent breach of its obligations under the Agreement and the Provider has not remedied the breach within 20 business days following receipt of notice from the Council identifying the breach.
- 11.2.7 The Provider has committed a Prohibited Act.
- (“Prohibited Act” means the following acts:
- (a) offering (directly or indirectly), promising or giving any person working for or engaged by the Council a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;
- (b) requesting (directly or indirectly), agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper

performance of a relevant function or activity in connection with the Contract;

- (c) committing any offence: (i) under the Bribery Act 2010; (ii) under any Enactment creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council);

11.2.8 The Provider does not address the Council's safeguarding requirements to ensure that children are kept secure.

If notice is given by the Council to terminate the Provider's appointment as an Approved Provider it shall terminate on the date specified in the notice which shall be as soon as is practicable. If the Council has safeguarding or welfare concerns for children the notice shall have immediate effect.

11.3 Service of a notice of termination shall result in an immediate suspension of any further funding and suspension of the Provider from being an Approved Provider but, provided the circumstances giving rise to the service of the notice of termination do not relate to the Council or Ofsted's concerns for the welfare or safeguarding of the children, the Provider shall have a right of appeal against the Council's notice of termination in accordance with the Council's procedure for appeals at

<http://www.oxfordshire.gov.uk/cms/public-site/nursery-education-fund>

Notice of appeal must be made no later than 10 days after receipt of the notice of termination.

11.4 The notice of termination given by the Council shall (as far as is possible) set out the Council's reasons for terminating the Agreement and the Agreement shall terminate on the date specified in the termination notice or, if an appeal is made to challenge the termination notice, within 10 days of the date of final determination of the appeal.

11.5 The consequence of expiry or termination of the Agreement shall be as follows:

11.5.1 Expiry or termination of this Agreement will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.

11.5.2 The provisions of clauses 2.1; 2.2; 2.8; 2.9; 6.1; 6.5; 6.10 and 8.2 will survive termination or expiry of this Agreement.

12 Complaints and Disputes

- 12.1 If the Provider has any complaints about this Agreement, which do not relate to the Council's rights of termination, these should be made in writing to Complaints and Freedom of Information (complaints), Oxfordshire County Council, 1st Floor, County Hall, Oxford, OX1 1ND or email complaints@oxfordshire.gov.uk
- 12.2 If any dispute between the parties cannot be resolved by the parties acting in good faith within a month of the nature of the dispute being communicated by one party to the other, then at the instance of either party, it may be referred to mediation in accordance with the Oxfordshire Compact Mediation Process.
- 12.3 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation either party may commence proceedings.
- 12.4 For the avoidance of doubt, the provisions as to dispute resolution shall not apply in the circumstances where the Council exercises its right of termination under Condition 11 where the Council has safeguarding concerns for the welfare of children.

13. Insurance

- 13.1 The Provider shall at all times maintain appropriate public liability and employer's liability insurance cover.
- 13.2 The Provider shall supply to the Council within 14 days of request a copy of all insurance policies, cover notes, premium receipts or such other documents as may satisfy the Council that such insurance is in place.

14. Law and jurisdiction

- 14.1 This Agreement shall be governed exclusively by the jurisdiction of England and Wales and interpreted in accordance with English law.

15. General

- 15.1 A reference to any act of Parliament, order, regulation, statutory instrument or similar, shall include a reference to any amendment or replacement of it. Reference to any act of Parliament shall also include any subsidiary legislation made under it.
- 15.2 These Terms (together with any documents referred to in these Terms) represents the entire understanding between the parties in relation to the subject matter of the agreement and supersedes any previous agreement between the parties relating to the subject matter of this Agreement. If any of these terms become or are declared by a court of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall in no way

impair or affect any other terms all of which shall remain in full force and effect.

- 15.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms.
- 15.4 The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and no waiver shall be effective unless communicated by the Party giving the waiver in writing.
- 15.5 The Provider shall not assign, transfer or sub-contract the burden or benefit of the Agreement in whole or in part, nor pay to any other person any part of the Early Years Education Payment.
- 15.6 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Provider providing the Free Early Years Education provision, the use of, or withdrawal of, the funded payments under these Terms.
- 15.7 Subject to clause 15.6, the Council's liability under these Terms is limited to the payment of the Early Years Education Payment.
- 15.8 Nothing in these Terms shall limit or exclude either party's liability for:
 - (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; and
 - (b) Fraud or fraudulent misrepresentation.