

EARLY EDUCATION AND CHILDCARE FUNDING TERMS & CONDITIONS From April 2022

These Early Education and Childcare Funding Terms and Conditions (“the Agreement”) govern the terms on which Oxfordshire County Council will provide funding to providers, who are accepted as Approved Providers for the provision of early years education and childcare for:

- three and four year old children who are eligible for free early years education (universal entitlement);
- the 30 hours entitlement for eligible working parents and foster parents of three- and four-year children (the extended entitlement)
- 15-hour entitlement for two-year old children who are eligible for free early years education

An “Approved Provider” is one of the following:

- Private, voluntary or independent childcare providers registered either on the Ofsted Early Years Register or with the Secretary of State as an academy, free school or independent school.
- Childminders registered on the Ofsted Early Years Register: or childminders who are part of a childminding agency registered with Ofsted
- Nursery units of academy schools.
- Schools taking children age two and over which are exempt from registration with Ofsted as an early years provider.

Funding will be provided in accordance with the Council’s statutory duties under the Childcare Act 2006 and Early Education and Childcare Statutory guidance for local authorities June 2018, as amended from time to time.

[Early Education and Childcare](#)

If any changes are made to legislation and guidance issued by the Department for Education relating to the provision of the free early education and childcare provision, the Council may vary the Agreement to reflect the changes made. In the event of any amendment or variation to this Agreement 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. The revisions to the Agreement shall apply to Providers from the date stated.

If you have any queries regarding the Early Education Funding Agreement please email earlyeducation@Oxfordshire.gov.uk with ‘Early Education Funding Terms’ in the subject line

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 (as amended) and the Early Education and Childcare Statutory Guidance for local authorities, has agreed to pay the Early Years and Childcare Funding to the Provider, calculated in accordance with the National Early Years Funding Formula, in respect of eligible children.

(B) The terms and conditions set out in this Agreement (“the Agreement”) govern the terms upon which the funding is made to an Approved Provider for the provision of the early education and childcare entitlement for two, three and four-year olds (as may be the case).

Agreed Terms

The Provider agrees to comply with this Agreement and use any Early Education and Childcare funding received from the Council in accordance with the terms and conditions set out below and for no other purpose.

1. Early Education and Childcare

1.1 The Provider agrees that it will deliver and provide one or more of the following early education and childcare entitlements:

- to three and four-year olds (universal entitlement) - a core funded place of 570 hours a year; and/or
- to eligible funded two-year olds, a core funded place of 570 hours a year; and/or
- for the 30 hours entitlement for eligible working parents (including foster parents) of three- and four-year-olds (the extended entitlement) - a funded place for up to an additional 570 hours per year,

for up to 52 weeks of the year in accordance with the following standards:

- No child care session shall be longer than 10 hours;
- There shall (subject to requirements of registration of the Provider’s setting on the Ofsted Early Years Register) be no minimum child care session length;
- No child care session shall commence before 6am nor continue after 8pm; and
- The child care sessions shall be provided over no more than two sites per day

1.2 The provision for eligible two-year olds under this Agreement shall be made by the Provider 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.

1.3 The provision for eligible three and four-year olds under this Agreement shall be made by the Provider 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.

1.4 The Provider shall provide consistency and flexibility to parents of eligible children as to how they are able to access their entitlements and deliver it 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 and in continuous blocks, without artificial breaks).

1.5 The Provider must comply with all relevant legislation and insurance requirements in relation to the provision of the childcare at their setting.

2. Safeguarding

The Provider shall:

2.1. Comply with the requirements of the [Statutory Framework for the Early Years Foundation Stage](#) as may be amended from time to time and

2.1.1 Maintain and comply with accurate and up to date policies and procedures in line with statutory guidance and the Oxfordshire Safeguarding Children Board's policies
[Oxfordshire Safeguarding Children Board Procedures Manual](#)

2.1.2 Ensure that a Designated Safeguarding Lead is appointed by the Provider, who must attend a child protection training course that enables them to identify, understand and respond appropriately to signs of possible abuse and neglect; taking account of any advice

from local safeguarding partners or the Local Authority on appropriate training courses

2.1.3 Ensure that all staff understand safeguarding policy and procedures and have training to identify signs of abuse and neglect; and

2.1.4 Have regard to 'Working Together to Safeguard Children' 2018 guidance and the 'Prevent duty guidance for England and Wales 2015'.

2.2. Annually complete an OSCB early years' safeguarding self-assessment audit in line with the requirements of the Children Act 2004; addressing any arising actions and return if/when requested by the Council without delay.

2.3. Always follow 'safer recruitment' procedures when recruiting staff.

3. Eligibility

The Provider shall:

3.1.1 Always check original copies of documentation to confirm a child has reached the eligible age on initial registration for all free entitlements.

3.1.2 Procure the completion of a declaration (sample at appendix 1) that the Parent/ Carer or Guardian consents to the processing of the documentation relating to their child for the purpose of confirming eligibility for the entitlements

3.1.3 Retain, at a site within Oxfordshire, paper or digital copies of any documentation reviewed under Condition 3 to enable the Council to carry out audits / fraud investigations and store documentation retained securely until it is no longer required in accordance with its responsibilities under the Data Protection Act 2018.

3.1.4 Confirm each family's eligibility for the two-year-old funding prior to their child starting their funded place and assist parents in checking their eligibility for funding, through the Early Years Provider Portal.

3.1.5 Offer places to eligible two-year-olds on the understanding that the child remains eligible until the child becomes eligible for the universal entitlement for three-and four-year-olds.

3.1.6 Verify 30 hours eligibility codes with the Council through the Early Years Provider Portal by:

- Signing into the provider portal
- On the Provider Portal home page select **30 Hours Free Childcare**
- Entering the **Child's Forename** and **Surname**, the **Child's Date of Birth**, **Parent's NI Number** and **Eligibility Code**.
- Clicking the **Run Check** button (the results of the eligibility check will be displayed on screen)

3.1.7. Ensure that children do not start a new place during a grace period (see 3.2.3)

3.2 The Council will:

- 3.2.1 In the case of foster children, the Council's early education funding team will generate an 11-digit code; beginning with 400 and email this to the foster parents which will then be used by the foster parent to secure an available place with a provider.
- 3.2.2. In all other cases, confirm the validity of the relevant 30 hours eligibility codes using instant checks to allow the Provider to proceed to offer 30-hour places for eligible three- and four-year-olds (see processes described in 3.1.5 and 3.1.6).
- 3.2.3 Complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at six fixed points in the year, including at half-term and at the beginning of each term across the year and notify the Provider where a parent ceases to meet the eligibility criteria and inform them of their grace period end date.

4. Flexibility

The Provider shall:

- 4.1 Offer provision within the national parameters on flexibility as set out in Section 1.1 of this Agreement.
- 4.2 Work with the Council by updating the Family Information Service on the provider's offer; with the times and periods at which the Provider is able to offer free entitlements to support the Council to secure sufficient stretched and flexible places to meet parental demand.
- 4.3 Make information about the Provider's offer, admissions criteria and chargeable optional services available to parents **before** the child first accesses the provision at their setting.

5. Partnership working

The Provider shall:

- 5.1 Work in partnership with other providers, childminders, schools and other organisations to support the offer of flexible provision to meet parents' needs where this is reasonably practicable.
- 5.2 Work in partnership with parents, carers and other providers, to enable a regular two-way flow of information sharing to improve provision and outcomes for children in their setting. The Provider's attention is drawn to the interactive toolkit:

[Foundation Years Toolkit](#)

which 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.

- 5.3. Discuss and work closely with parents to agree how a child's overall care will work in practice if their free entitlement is split across more than one provider to ensure a smooth transition for the provision for the child.

6. Special educational needs and disabilities

6.1 The Provider shall:

- 6.1.1 Ensure that the Provider's owner(s); those in a governance position within the Provider's organisation and all staff members employed by the Provider are aware of their duties in relation to the SEND Code of Practice and the Equality Act 2015, as amended from time to time.
- 6.1.2 Be clear and transparent about the arrangements it maintains in place to support children with special educational needs and/or disabilities (SEND).

It is expected that these arrangements will include a robust and proactive approach to identifying and responding to SEND.

Providers will be expected to utilise the SEN Inclusion Fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents.

[Supporting the Learning and Development of under 5s with SEND](#)

- 6.1.3 Identify children eligible for SEN inclusion fund and disability access fund and encourage parents to apply for their entitlements.
- 6.1.4 Use Disability Access Fund, SEN inclusion fund and any additional SEN top up funding which may be awarded to support individual children, to rapidly improve outcomes for this group in order to diminish the difference.

6.2 The Council will:

- 6.2.1. Strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in its local area as per the Special Educational Needs and Disability code of practice: 0 to 25 years (January 2015). [SEND Code of Practice 2015](#)
- 6.2.2. Promote the support on offer through the Local Offer, so parents and providers can access that support.
- 6.2.3 Fund the setting nominated by the parent/carer for children eligible for the Disability Access Fund.
- 6.2.4 Fund schools and settings where they have identified three and four-year-old children (not in reception) with low level SEN as noted as a 'K' code as part of the termly headcount task.

7. Social mobility and disadvantage

7.1 The Provider shall:

- 7.1.1 Identify the disadvantaged children in their setting as part of the process for checking Early Years Pupil Premium (EYPP) eligibility.

7.1.2 Use the Early Years Pupil Premium, the deprivation supplement and support offered by the Council to rapidly improve outcomes for this group in order to diminish the difference.

[Early Years Pupil Premium](#)

7.2 **The Council will:**

7.2.1 Fund all children who have been identified as eligible for the EYPP through the online eligibility checker.

7.2.2 Fund a deprivation supplement for all children identified as eligible for the EYPP

8. **Quality**

This Agreement reflects the Government's intention that, as far as possible, free places are delivered by providers who have achieved an overall rating of 'outstanding' or 'good' in their most recent Ofsted inspection report.

The Provider shall:

8.1 Comply with the current Early Years Foundation Stage Statutory Framework and Guidance from Ofsted.
(Currently [EYFS Statutory Framework 2021](#)).

8.2 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 Equality Act 2010 (including the "anticipatory duty" in relation to any disabled child who might attend the setting)

8.3. If the Provider is a childminder, comply with the Early Years Foundation Stage Statutory Framework with regard to employing an assistant or working with another childminder and ensure that children are not left in the sole care of child-minders' assistants for any period exceeding 2 hours in a single day and then only with the parent/ carer's prior agreement.

DBS checks are required by any adults who live with a childminder or work there regularly during childcare hours.(e.g. partner, cleaner, housemate, lodger and children over the age of 16). Providers are required to tell Ofsted about such people so that they can be approved by Ofsted as a suitable person.

8.4 Comply with the requirements and its duties under the Equality 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.

8.5 Actively promote and train staff to fully understand 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. In the case of an independent school, the Provider shall adhere to the independent school standards in relation to the spiritual, moral, social and cultural development of pupils.

- 8.6 Demonstrate a proactive approach to continuous quality improvement through regular self-evaluation, action planning, training and peer to peer support.
- 8.7 Positively engage with the Council's designated officers as set out in the Oxfordshire Early Years Guarantee (as may be updated from time to time). The latest version can be found on the early years pages of the Council's website at "[Our guarantee](http://oxfordshireearlyyears.co.uk)" (oxfordshireearlyyears.co.uk)
- 8.8 Respond promptly to all recommendations arising from the Council's monitoring visits 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. This includes, but is not limited to those in relevant governance positions within the setting.
- 8.9 Be registered with the Secretary of State, Ofsted or a childminder agency and be inspected by Ofsted or the Independent Schools Inspectorate.

(The Council agrees that it will not exercise its rights to terminate this Agreement in circumstances where the Provider has not yet been inspected by Ofsted provided that Ofsted is satisfied on its' initial visit that the Provider's setting is of sufficient quality and the Council has no concerns over safeguarding or the welfare of children).

- 8.10 Inform the Council (Oxfordshire Early Years Team) on the same day as an Ofsted visit by emailing: early.years@oxfordshire.gov.uk if:
- i. A Provider or CMA achieves a requires improvement, inadequate, or not met Ofsted grade and/or
 - ii. Ofsted issues a Welfare Requirement Notice WRN), Notice to Improve (NTI) or suspension.
- 8.11 In the event that the provisions of clause 8.10. occur (with the exception of an Requires Improvement judgement), immediately repay to the Council any advance funding paid to the Provider in relation to the allocation and provision of early years' education places.
- 8.12 If Ofsted categorises the setting or childminder as inadequate and the Council (in its absolute discretion) considers that the Provider's setting is in an area where there is not sufficient alternative high quality provision and that capacity to improve is evidenced through the Ofsted inspection history and monitoring by the Council then, without prejudice to the Council's rights under this Agreement, the Council may agree to defer exercise of its rights of termination provided the Provider adheres to its obligations as set out in 8.12.1 – 8.12.4 (inclusive).

If the above circumstances apply then, within the timescale detailed at 8.13, the Provider shall:

- 8.12.1 Develop, implement and review an action plan for improvement, supported and monitored by the Council in accordance with the Oxfordshire Early Years Guarantee at: "[Our guarantee](http://oxfordshireearlyyears.co.uk)" (oxfordshireearlyyears.co.uk)

- 8.12.2 Work collaboratively with the Council's designated officer and 'Settings of Concern' working group, to swiftly address concerns raised by Ofsted at inspection.
- 8.12.3 Provide evidence of 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 a manager, a relevant level 3 qualification.
- 8.12.4 Comply with any other remedial measures that Ofsted or the Council may reasonably impose or require to address the inadequacies or deficiencies noted in the Ofsted report.
- 8.13 Complete, if the circumstances of Clause 8.12 apply, its obligations under clause 8.12.1 to 8.12.4 (inclusive), within 3 months of the Ofsted inspection (or such longer period as the Council may agree, having regard to Ofsted's requirements). The Provider acknowledges that if it does not undertake and complete its obligations in accordance with the clause 8.12 (1) – (4) the Council may exercise the right to terminate this Agreement under clause 13.2

The Provider acknowledges that if, notwithstanding the Provider's endeavours to comply with clause 8.12 (1) to (4) inclusive, 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/ISI as Inadequate, Unsatisfactory or Requires Improvement, the Council may exercise its rights to terminate this Agreement.

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 for a second time, the provisions of Condition 13.2 may apply at the Council's absolute discretion.

Where Ofsted categorises the setting or childminder as inadequate or requires improvement then the Provider acknowledges that the Council will not place any further funded 2 year old children with the Provider. The Council reserves the right to review the continuing placement of any existing funded 2 year old children attending the Provider's setting. Where the Council considers that the setting is in an area where there is not sufficient alternative high quality provision and it is evidenced through monitoring by the Council that the Provider has demonstrated the capacity to sustain improvements made to the quality of the setting, then the Council may (at its absolute discretion) place funded 2-year-old children at a setting that Ofsted has categorized as requires improvement.

- 8.14 Keep, if this Agreement has been entered into by the parties pending the Provider's childcare setting or CMA first being inspected by Ofsted, 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 under this Agreement, if the report is inadequate, comply with the above provisions to address the inadequacies or deficiencies in the Ofsted report.

If the Provider is a child minder 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 Condition 13 to the same extent as if such concerns had been raised by Ofsted.

The Council will:

- 8.15 Make available appropriate information, advice and guidance for early years practitioners delivering the entitlement in accordance with Oxfordshire's Early Years Guarantee on its website at [Early Years Buy-in Support](#)
- 8.16 Offer support and challenge to maintain and enhance quality in relation to best practice in the delivery of the Early Years Foundation Stage in accordance with Oxfordshire's Early Years Guarantee.
- 8.17 Provide support to the Provider in their professional development through relevant and appropriate training programmes, with funding support where possible.

9. Business planning

The Provider shall:

- 9.1 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 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.
- 9.2 Procure and hold fully completed and up to date parental declaration forms for two, three and four-year olds (including all information as set out in sample at [Forms and Guidance notes](#)), 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 and data protection purposes.
- 9.3 Keep accurate and up to date attendance registers and follow up non-attendance and record the outcome, sending promptly to the council non attendance forms in relation to funded two-year-old children.
- 9.4 Provide the Council with accurate and appropriate contact details and other required information in the format requested (including online electronic returns where applicable) including updates to the Family Information Service and ensure that any changes are notified and kept up to date. This includes ensuring that their Family Information Directory entry is up to date with all relevant details including their free entitlement offer as set out in Section 1.1 of this Agreement.
- 9.5 Provide (if a childminder agency) the Council with information on the quality of childminders within the agency.
- 9.6 Give the Council the right to publish the Provider's address and contact number on the Council's website and the Family Information Service at [Family Information Service](#) (in respect of a Provider being a childminder, it is agreed that the Council will only publish limited address and contact details) and on lists published for parents seeking an early education place.

- 9.7 Comply with the Data Protection Act 2018, when processing personal and/or sensitive data (as defined in the Data Protection Act 2018) 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 shall take all appropriate security measures to protect any unauthorized or unlawful processing or accidental loss or destruction or damage to such personal / sensitive data.
- 9.8 Provide (at the Provider's expense) prompt assistance to the Council in connection with any information disclosure requests received by the Council under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and, if the Provider is in receipt of an information disclosure request under the Acts, to pass such request within five working days to the Council.
- 9.9 Not withdraw from providing a placement for an eligible child at the Provider's setting where;
- 9.9.1. such withdrawal would constitute a breach of the provisions of condition 1.1; and
- 9.9.2 without first giving at least one full term's notice to the Council and to the parent/carer of an eligible child for whom funding under this Agreement is being provided, to allow the parents sufficient time to find an alternative funded place if they so require. (The term dates are the same as those set out in 1.1 and 1.2 regarding eligibility).
- If 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.
- 9.10 Ensure that it provides accurate information and data in relation to the Early Education Funding Agreement, including any forms to claim funding payments.
- 9.11 Ensure that it holds all necessary and requisite consents to enter into and perform its obligations under this Agreement and ensure that any claim for funding payment shall only be made by a person with due authority to make the claim on the Provider's behalf.

10 Charging

The Provider shall:

- 10.1 Government funding is made available to deliver 15 or 30 hours a week of childcare free to parents / carers. The funding cannot be used to cover the costs of meals, consumables, any additional hours or additional services.

Parents can choose to purchase additional hours of provision , additional services and consumables, but you cannot impose restrictions or hamper the parent's ability to take up their child's free place. Any charges for additional

hours, services and consumables should be made clear to the parent as part of their decision to take up the place.

(The Provider acknowledges that it shall be responsible for setting its own policy on how to respond, including options including waiving, or reducing the cost of meals and snacks or allowing parents to supply their own meals, or consumables, where parents are unable or unwilling to pay for meals and consumables).

- 10.2 Deliver the free entitlements consistently so that all children accessing any of the free entitlements will receive the same quality and access to provision, regardless of whether they opt to pay for optional hours, services, meals or consumables.
- 10.3 Publish, in hard media and make available to all clients, its admissions' criteria and ensure parents understand which hours/sessions can be taken as free provision before parents apply and accept a place. (It is acknowledged that 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).
- 10.4 If charging parents a deposit to secure their child's free place, refund the deposit in full to parents by the claim date in the term in which the place is taken up. (The Provider's attention is drawn to the fact that the practice of charging deposits for funded 2-year-old places is discouraged).
- 10.5 Not charge parents "top-up" fees (the difference between a Provider's usual fee and the funding they receive from the Council to deliver free places). Providers must not treat the funding as a discount on invoices or require parents to pay a registration fee as a condition of taking up their child's free place.
- 10.6 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. Funded hours should be taken off the total hours before calculating the cost of additional hours. The invoice should be clear for parents to understand fees paid for any 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. An example is to be found here [sample template invoice](#)

The Council will:

- 10.7 Not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent's ability to take up their child's free place. (The provider must be completely transparent about any additional charges).

11. Funding

The Provider shall:

- 11.1 Accurately complete all Early Education Funding actual and amendment headcount tasks and ensure that all completed tasks are returned by the required deadline date. The Provider acknowledges that tasks cannot be re-opened after the deadline date has passed and if a task needs to be re-issued an administration charge of £50 will be paid by the provider to the Council. The Provider agrees to pay an administration charge to the Council of £50 for any incomplete returns. Any claims from a previous term will not be paid.
- 11.2 Repay any overpayment of funding made by the Council, which the Council shall be entitled to demand and request immediate repayment for, or offset the repayment by way of deduction from future payments (if any) made under this Agreement.
- 11.3 Only claim for actual attendance of children during the funding period (notwithstanding short-term absences as identified in 12.9). When a child leaves for whom a claim has been submitted and paid beyond the final date of attendance, for example mid funding period, the Provider agrees that it shall enter the leaving date of the child and ensure the total hours claimed in the period for the child are correct on the next amendment task once it has been issued. The Provider shall not discount/or reduce in anyway the amount of remaining balance of the funding period to be transferred through such items as notice periods, when entering a leaving date.
- 11.4 Establish (from the parent or carer) the setting where a child may have previously attended in order to clarify the hours remaining for the current funding period in accordance with paragraph 11.3. If a child starts after the Provider has submitted their headcount, the provider must add the child to the amendment task and only claim the remaining entitlement for the term.

Note: Where a child is accessing funded sessions at more than one provider, check the parental declaration form for eligibility. Where necessary follow up with the parent/carer or other provider, prior to completing the actual and any amendment headcount tasks, to ensure that there is no overclaim.

- 11.5 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 only agree to fund exemptions if it is considered in the best interests of the child).

(The Provider 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 year's provision is reduced or withdrawn).

- 11.6 If the Provider is a childminder agency which the Council agrees to fund directly, not to retain any part of the funding but pass on the funding in full paid by the Council to the childminders delivering the free early education places.

(The Provider acknowledges that the Council may reduce the funding to the extent that any other grant funding received from the Council under this Agreement for any other early year's purposes becomes re-payable by the Provider under this Agreement).

11.7 DAF funding

- 11.7.i. Follow the process described in Provider Portal user notes in [Forms and Guidance](#)
- 11.7. ii. Ensure that parents understand that by nominating the Provider's setting, any subsequent settings that the child may attend within the financial year would not be eligible to receive the DAF payment.
- 11.7.iii Keep a record of the DAF Request Form and DLA award letter for audit purposes.

11.8 SEN inclusion funding.

- 11.8.i. Follow the process described in [Children's Services Providers](#) to determine who is eligible for SEN inclusion funding
- 11.8.ii. Complete the request for funding by indicating a K on the termly headcount task on the early years funding portal.
- 11.8.iii. The Provider acknowledges that in respect of children becoming eligible for SEN funding after the headcount return has been submitted they will be funded from the next term.
- 11.8.iv. Keep all evidence for audit purposes.

11.9 Repay, in the event of termination of the Provider's appointment by the Council as an approved Provider under this Agreement, any 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 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 daily from the due date until actual payment of the overdue amount, whether before or after judgment. This clause shall survive termination of the Agreement.

12 Funding Payments

The Council will:

- 12.1 Make prompt payments in respect of children entitled to a place in line with procedures under the Early Years National Funding Formula, and termly guidance notes (as may be issued or published from time to time).
- 12.2 Discuss and agree locally with childminder agencies and each childminder registered with each agency whether funding is paid directly to childminders or is routed to the childminder through the agency.

If funding for a Provider is routed via a Childminder agency, 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.

12.3 *In the case of funded three and four-year-old eligible children 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 for both the universal and extended entitlements 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 Early Education Funding claim). The Council reserves the right to adjust this payment to include adjustments from the previous term.
- Make an adjusting payment by no later than 6 weeks following the headcount deadline, based on the information received from the Provider and verified by the Council through Headcount 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).
- Make an end of term adjustment payment based upon the provider's completed adjustment task for children that have started the provision after the headcount task was completed. For children that left after the headcount submission, the council will deduct any arrears from the next payment the provider is due to receive.
- Pay for a child that becomes ineligible under the extended entitlement for the duration of the grace period, if the child previously received 30 hours funding and the child is not moving to a new provider (except for extenuating circumstances).

12.4 Pay an early years' 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 meeting Free School Meals criteria, are looked after by the local authority or have been adopted from care).

12.5 Pay additional deprivation funding to the Provider for children taking up the early years' pupil premium.

12.6 **Disability Access Fund (DAF)**

Fund all early years' settings providing a place for each child eligible for the DAF within Oxfordshire at the current annual rate set out at [Early Education Funding \(EEF\) for 2, 3 and 4 year olds | Oxfordshire County Council](#) . The DAF will be as a lump sum once per financial year per eligible child as noted on the parent declaration form. If a child eligible for the DAF is splitting their free entitlement across two or more providers, the Council will only pay to the parents' nominated provider as noted on the DAF request form.

If a child receiving DAF moves from one setting to another within a financial year, the new setting is not eligible to receive DAF funding for this child within the same financial year. DAF funding received by the original setting will not be recouped.

12.7 **SEN Inclusion funding**

Pay the Provider in accordance with any validly submitted headcount task
The Council reserves the right to audit claims to ensure each is submitted in accordance with the current scheme [Early Education Funding \(EEF\) for 2, 3 and 4 year olds.](#)

12.8 *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 to fund.
- The initial estimated payment will be based on 60% of the anticipated total early years education provision according to the previous term's attendance and any new children for whom we have received a Placement Request before the start of term. The payment may include adjustments from the previous term not covered in the end of term amendment payment referred to below.
- Make an actual payment based on actual take up by no later than 6 weeks following the headcount deadline according to the provider's Headcount submission. Eligible children that have joined within term will be funded from the date their eligibility was confirmed.
- Make an end of term adjustment payment based upon the provider's completed Amendment Task for children that have started the provision after the headcount task was completed. For children that left after the headcount submission the council will deduct any arrears from the next payment the provider is due to receive.

12.9 In the case of all funded children the Council will:

Continue to provide funding for an eligible child's early years education placement notwithstanding a child's short-term absences¹, but for continued absence, the Council will withdraw funding from the next half term point.

13. Compliance, termination and withdrawal of funding

The Council:

- 13.1 will carry out, either on-site or remote, checks and/or audits on the Provider to ensure compliance with the requirements of delivering the free entitlements referred to in this Agreement.

¹ : A maximum of 20 school days, unless the child is unable to attend by reason of sickness or any unavoidable cause

- 13.2 may, acting reasonably, (in its absolute discretion) terminate the Provider's appointment by giving notice to the Provider's email address as notified to the Council under any of the following circumstances:
- 13.2.1 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 requires improvement 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;
- 13.2.2 Where, in the opinion of the Council (acting reasonably), 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.
- 13.2.3 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;
- 13.2.4 Funding received by the Council from a third party for the purpose of funding this early years' provision is withdrawn;
- 13.2.5 The Provider ceases or threatens not to carry on business or is otherwise unable to meet the requirements set out in this Agreement;
- 13.2.6 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;
- 13.2.7 The Provider has committed a Prohibited Act; or
- ("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 this Agreement;
- (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 Agreement or any other contract with the Council; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council);

- 13.2.8 The Provider does not adhere to the Council's safeguarding requirements to ensure that children are kept safe from harm as laid out in the Early Years Foundation Stage Statutory Framework with which the Provider must comply.

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.

- 13.3 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.
- 13.4 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.
- 13.5 The Provider is entitled to terminate the Agreement on notice to the Council provided that it has first given not less than one term's prior notice (i.e. 12 weeks' notice for autumn, spring and summer term) both to the Council and to the parents/ careers and guardians (as may be the case) of all eligible parents accessing a place funded under this Agreement.
- 13.6 The consequence of expiry or termination of the Agreement shall be as follows:
- 13.6.1 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.

14. Complaints and Appeals Process

Complaints, if any arise in relation to this Agreement, should be made in writing to Complaints Team, FREEPOST RTLL-ECKS-GLUA Oxford OX1 1YA or email complaints@oxfordshire.gov.uk

Complaints made in relation to this Agreement, including by a Provider whose appointment as an "Approved Provider" has been terminated and whose funding has been withdrawn, will be dealt with in accordance with the Complaints and Appeal Process at:

[Complaints Procedure](#)

A parent / carer / or foster parent may, if they are unable to resolve a complaint directly with a Provider as to their child's entitlement to receive a free place or with any aspect of the way they have received such entitlement, may ask the Council to raise the matter with the Provider through the Council's Complaints procedure using the contact details above.

15. Insurance

- 15.1 The Provider shall at all times maintain appropriate public liability and employer's liability insurance cover in respect of its setting(s).
- 15.2 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.

16. Law and jurisdiction

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

17. General

17.1 A reference to any act of Parliament, order, regulation, statutory guidance or 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

17.2 This Agreement (together with any documents referred to in this Agreement) 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.

17.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

17.4 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.

17.5 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.

17.6 If a Provider transfers, sells or disposes of its interest (either wholly or in part) in the setting to a 3rd party or, if a Provider re-registers its setting with Ofsted on a change of name or otherwise, the provisions of Paragraph 17.5 apply. Accordingly, the acquiring or new entity (as the case may be) must itself complete and submit an application to become an Approved Provider. Only if the new application is approved by the Council will the acquiring or new entity be eligible for funding under the Early Education and Funding Scheme. In no other circumstances will funding to the acquiring or new entity be provided by the Council.

17.7 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 or childcare provision, the use of, or withdrawal of, the funded payments under this Agreement.

17.8 Subject to clause 17.9, the Council's liability under this Agreement is limited to the payment of the Early Years Education Payment.

17.9 Nothing in this Agreement 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.

Note:

References throughout these terms to “Ofsted Inspection” shall mean, where the setting is an independent school and is inspected by the Independent Schools Inspectorate (“ISI”), to the outcome of the ISI inspection with an ISA “unsatisfactory outcome” being, for the purposes of these terms and conditions, the equivalent to an Ofsted “inadequate” assessment.