

# **Bury Provider Agreement for the funding of:**

**Early Education and Childcare (EEC)  
& Extended Free Entitlement (EFE)**

**Contract Reference:**

**010-037-005**

Parties to the Contract:

**The Children & Young People Directorate  
Of Bury Council**

**&**

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**Contract Duration:**

**1<sup>st</sup> September 2021 – 31<sup>st</sup> March 2023**

## Contents

<b>Section 1: Overview</b> .....	3
Who is the Bury Provider Agreement for? .....	3
Legal Framework and Statutory Guidance .....	4
<b>Section 2: Key Responsibilities</b> .....	5
Key Local Authority Responsibilities .....	5
Key Provider Responsibilities .....	5
Safeguarding .....	6
Eligibility .....	6
The Grace Period .....	8
Flexibility .....	9
Partnership Working .....	10
Special Educational Needs and Disabilities .....	10
Social Mobility and Disadvantage .....	11
Quality .....	11
Business Planning .....	14
Charges to Parents .....	15
Funding .....	16
Compliance .....	18
Termination and Withdrawal of Funding .....	18
<b>Section 3: Data Protection</b> .....	22
<b>Appendix 1</b> .....	26
<b>Annex A</b> .....	27

## Section 1: Overview

- 1.1. This Bury Provider Agreement refers to early year's provision free of charge (sections 7 and 7A of the Childcare Act 2006) and free childcare (section 2 of the Childcare Act 2016) as the 'free entitlement(s)' or 'free hours' or a 'free place'.
- 1.2. Whilst the statutory duty remains with the Local Authority this Bury Provider Agreement details the requirements and expectations those early years Providers must meet in order to be eligible to deliver free entitlements for 2, 3 and 4 year olds and draw down the subsequent funding.
- 1.3. Although parents may choose where to send their child, funded places are only available in settings who have agreed to this Bury Provider Agreement.
- 1.4. The Bury Provider Agreement applies to the 15 hour entitlement for the most disadvantaged two-year-olds, the 15 hour entitlement for parents of three and four year olds (the universal entitlement) and the 30 hours entitlement for working parents of three and four year olds (the extended entitlement).
- 1.5. This document does not provide guidance on how Providers operate their private businesses, including charges for provision over and above a child's free hours. Local Authorities should not intervene where parents choose to purchase additional hours of provision or additional services providing that this does not affect the parent's ability to take up their child's free place.
- 1.6. This agreement will be kept under review and updated as necessary to reflect any changes to national guidance and legislation. Any references to legislation will be to that legislation as amended from time to time, without express change in this agreement.

### Who is the Bury Provider Agreement for?

#### 1.7. This Bury agreement is for:

Early Years Providers who are referred to as 'Providers' and include:

- Early years Providers and childminders registered on the OfSTED Early Years Register;
- Childminders registered with a childminder agency that is registered with OfSTED;
- Independent Schools and Academies taking children age two and over and which are exempt from registration with OfSTED as an early years Provider.

- 1.8. This agreement is made the 1st day of November 2019 between Bury Council and The Provider so named in [Annex A](#)

#### 1.9. Definitions in the Agreement

- "Local Authority" shall mean the Bury Council whose principal office is at the Town Hall, Knowsley Street, Bury BL9 0SW.
- "Provider" shall mean the person or organisation providing early learning services. These would include childminders, pre-school playgroups, private day nurseries, independent schools, maintained nursery classes and

maintained nursery schools, this list is not exhaustive.

#### 1.10. **Bury Provider Agreement**

- The Provider hereby agrees to provide a service as specified in this document.
- The Service will be provided in accordance with the terms and conditions contained herein.

#### 1.11. **Statutory and other regulations**

- The Provider will operate in accordance with all Acts of Parliament, amendment or re-enactment of any Act, Statutory Regulation, or other such laws, recommendations, guidance or practices as may affect the provision of the Service(s) specified under the Agreement.
- The Provider will comply with the Data Protection provisions set out in [Section 3: Data Protection](#)
- The Provider guarantees that all Services provided will comply with the requirements of the Health and Safety at Work Act 1974, of the relevant statutory provisions as defined in the Act and of any regulations made by virtue of the provisions of the Act or the relevant statutory provisions and C.O.S.H.H regulations and undertakes to take all necessary steps to secure the health and safety of employees and third parties.

#### 1.12. [Annex A: Agreement to be signed by Provider](#)

### **Legal Framework and Statutory Guidance**

1.13. The Provider shall comply with all current and future legislation relevant to the performance of the Services.

1.14. Local Authorities are required to have due regard to the [Early Education and Childcare Statutory guidance for local authorities - June 2018](#) in the exercise of their duty under [s7 \(1\) of the Childcare Act 2006](#)

1.15. This contract is in line with the statutory guidance and is subject to any changes within the Early Education and Childcare Statutory guidance for local authorities – June 2018 as per 1.14 (above)

## Section 2: Key Responsibilities

### Key Local Authority Responsibilities

- 2.1. Local Authorities must secure a free entitlement place for every eligible child in their area and ensure that this meets the needs of working parents as far as practicably possible.
- 2.2. The Local Authority should work in partnership with Providers to agree how to deliver free entitlement places.
- 2.3. 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.
- 2.4. The Local Authority must contribute to the safeguarding and promote the welfare of children and young people in their area.

### Key Provider Responsibilities

- 2.5. The Provider must comply with all relevant legislation and insurance requirements including public liability.
- 2.6. The Provider should deliver the free entitlements consistently to all parents, whether in receipt of 15 or 30 hours and regardless of whether they opt to pay for optional services or consumables. This means that the Provider should be clear and communicate to parents details about the days and times that they offer free places, along with their services and charges. Those children accessing the free entitlements should receive the same quality and access to provision.
- 2.7. The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that link to Bury Local Authority's safeguarding board guidance for recognising, responding, reporting and recording suspected or actual abuse.

Please see [Appendix 1](#) 5. Bury Safeguarding Children Boards Procedures and useful documents

If this link is unavailable please contact Bury Local Safeguarding Board, details can be located on [The Bury Directory](#).

- 2.8. The Provider must have arrangements in place to support children with special educational needs and/or disabilities (SEND). These arrangements should include a clear approach to identifying and responding to SEND. Providers should utilise the Early Years SEN Nursery & Pre-school funding and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents.
- 2.9. Providers must actively promote fundamental British values and not promote views or theories as facts which are contrary to established scientific or historical evidence and explanations.

## Safeguarding

- 2.10. 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' 2015 guidance<sup>1</sup> sets these out in detail.
- 2.11. The **Provider** must follow the Early Years Foundation Stage (EYFS) and have clear safeguarding policies and procedures in place that are in line with Bury Local Authority Safeguarding Board guidance and procedures for responding to and reporting suspected or actual abuse and neglect. A lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider must have regard to 'Working Together to Safeguard Children' 2015 guidance.

Please see [Appendix 1](#) 1. Working together to safeguard children

## Eligibility

### Two Year Olds

A child will be entitled to the free entitlement hours from the term after their second birthday providing both of the following conditions are satisfied;

- The child has attained the age of two
- The child or parent meets the eligibility criteria

***The child remains eligible, regardless of change in circumstance, until they become eligible for the 3&4 year old universal entitlement.***

### Three & Four Year olds

All three and four year olds are entitled to the universal entitlement of 570 hours from the beginning of the term after their third birthday. Three and four year olds of eligible working parents (extended entitlement) will be entitled to the additional free hours from the term **after** both of the following conditions are satisfied.

- The child has attained the age of three
- The child's parent(s) has a current positive determination of eligibility from HMRC

Where parents become eligible for the extended entitlement mid-term, funding for the additional hours **cannot** start until the nearest following term (i.e. if a parent becomes eligible in February the child's additional free entitlement will begin April).

**Table A:**

<b>Term Child First Eligible</b>	<b>Child turned 2* or 3 years old between</b>
Autumn	1 <sup>st</sup> April and 31 <sup>st</sup> August
Spring	1 <sup>st</sup> September and 31 <sup>st</sup> December
Summer	1 <sup>st</sup> January and 31 <sup>st</sup> March
<b><i>*only 2 year olds who meet certain criteria are eligible</i></b>	

- 2.12. The **Local Authority** must ensure that a child has a free entitlement place no later than the beginning of the term following the child and the parent(s) meeting the eligibility criteria for the free entitlements.
- 2.13. The **Local Authority** will confirm the validity of 30 hours eligibility codes to allow Providers to offer 30 hours places for eligible three-and four-year-olds. The Local Authority will provide a validity checking service to Providers to enable them to verify the 30 hours eligibility code swiftly and efficiently.
- 2.14. The **Local Authority** will complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at 6 fixed points in the year, both at half-term and at the end of term across the year (on or around the dates as listed at Table B below). The Local Authority will communicate the grace period (through providers) to parents who are found to be ineligible for the extended entitlement at the audit check date. The Local Authority is aware of the importance of prompting providers to notify parents in good time and as such will endeavour to undertake additional audit checks every two weeks on a Friday throughout the year. **Good practice is for providers to notify parents within five working days.**

**Table B:**

<b>Date Parent receives ineligible decision on reconfirmation</b>	<b>LA Audit Date</b>	<b>Grace Period End Date</b>
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

- 2.15. The **Provider** should check original copies of documentation to confirm a child has reached the eligible age on initial registration for all free entitlements. The Provider should record the necessary information which confirms these checks on the Parental Agreement to enable the Local Authority to carry out audits and fraud investigations (see also [Business planning](#) – page 14). For an example parental declaration, please see [Appendix 1](#), 14. Parental Declaration
- 2.16. The **Provider** should consider advice from the Information Commissioner’s Office (ICO) on holding personal data including sensitive personal data available at: [ICO.org.uk](http://ICO.org.uk) see [Appendix 1](#), - 6. ICO.
- 2.17. The **Provider** should offer places to eligible two-year-olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for three and four year olds.
- 2.18. The **Provider** should request the 30 hours eligibility code, which is the child’s unique 11 – digit number, and original copies of documentation from the family.

- 2.19. 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 parents 30 hours eligibility code. The Provider should use a parental declaration form which asks the parent for the necessary information and consents. The Provider must also confirm if they are offering the universal offer, the extended entitlement or both. When consent is acquired Providers must ensure the relevant box is ticked on the Provider Portal which will authorise the Local Authority to undertake the necessary checks to process.
- 2.20. The **Provider** should verify the 30 hours eligibility code via the local authority once they have received written consent from the parent to do so.
- 2.21. Children in foster care are also eligible for the additional hours (from September 2018), providing they meet certain criteria. This is that it is consistent with the child's care plan and the foster parent is taking up paid employment outside of their fostering role. The eligibility of children in foster care will be determined by the responsible local authority.

## **The Grace Period**

- 2.22. A child will enter the grace period when the child's parents cease to meet the eligibility criteria and if parents fail to re-validate their code in time as set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016, as determined by HMRC or a First Tier Tribunal in the case of an appeal.
- 2.23. The **Local Authority** will access information about whether a child has ceased to meet the eligibility criteria and entered the grace period via the Eligibility Checking Service. The grace period end date (as specified in Table B (see page 7) will automatically be applied to eligibility codes.
- 2.24. The **Local Authority** will continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory Guidance for Local Authorities 2018.
- 2.25. The **Local Authority** will inform Providers within seven working days of the audit check date detailed in Table B (see page 7) of any children families who have fallen out of eligibility for the additional 15 hours and include the date when those children/families grace period will expire, at which point those children families will revert to the universal 15 hour entitlement.
- 2.26. The **Provider** will inform parents who have fallen out of eligibility of this and inform them of their grace period end date. Good practice is for providers to notify parents within five working days.
- 2.27. Providers should check the eligibility of all 30 hours codes before allocating a place, a parent should not start a new 30 hours place in their grace period. This includes in the following scenarios:
- Where a parent falls into their grace period before the child has started a 30 hours place
  - Where a parent falls into their grace period whilst their child is in a 30 hours place, and the parent attempts to move the child to a different setting.



- 2.28. **Appeals against an eligibility decision.** Parents may appeal the decision that has determined their ineligibility. Any appeals must be made directly to HMRC via their appeals process. The Local Authority has no influence or discretion regarding this.

## Flexibility

- 2.29. The **Local Authority** will permit the provision to be offered within the national parameters on flexibility as set out in Section A2 of Early Education and Childcare Statutory Guidance for local authorities (See [Appendix 1](#), 2. Early Education and Childcare Statutory Guidance for local authorities).
- 2.30. The **Provider** should offer flexible packages of free hours, subject to the following standards.
- No session to be longer than 10 hours
  - No minimum session length (subject to the requirements of registration on the OfSTED Early Years Register)
  - Not before 6.00am or after 8.00pm
  - A maximum of two sites in a single day

*Continuity of care is important for the child so local authorities 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. See example below:*

*A child may attend a breakfast club based on the school site in the morning, followed by nursery class and then move to a childminder at lunchtime. This would still class as two sites, even though the child could be attending three different providers.*

- 2.31. 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. Places can be delivered:
- A minimum of 38 weeks up to 52 weeks of the year
  - Outside of maintained school term times
  - At weekends
- 2.32. The **Provider** should where it is reasonably practicable ensure that children are able to take up their free hours in continuous blocks and avoid artificial breaks being created throughout the day, for example the lunch period.
- 2.33. The **Provider** should also make information about their childcare offer and admissions criteria available to parents at the point the child first accesses provision at their setting.
- 2.34. The **Provider** should publish information about their childcare offer and keep it

current and up to date on The Bury Directory [www.theburydirectory.co.uk](http://www.theburydirectory.co.uk)

- 2.35. The **Provider** may “stretch” the free entitlement over a greater number of weeks but this will carry a reduced weekly allowance of hours which shall not exceed 570 hours per annum in the case of 15 hour eligible children and 1140 hours in the case of 30 hour eligible children. This must be agreed with the parent in advance and clearly shown on the individual parent agreement held by the Provider.

## Partnership Working

- 2.33 The **Local Authority** will support partnerships on four levels between:
- Local Authorities and Providers and multiagency professionals
  - Providers working with other Providers, including childminders, schools and organisations
  - Providers and parents
  - Local authorities and parents
- 2.34 The **Local Authority** will promote partnership working between different types of Providers, including childminders, across all sectors and encourage more Providers to offer flexible provision, alongside other Providers.
- 2.35 The **Provider** should, where possible, work in partnership with parents, carers and other Providers to improve provision and outcomes for children in their setting.
- 2.36 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. **Providers** should agree in partnership with the parent and record whether they are delivering the universal or the extended entitlement or both.

## Special Educational Needs and Disabilities

- 2.37 The **Local Authority** will strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in their local area as per [Appendix 1](#) 2. Special Educational Needs and Disability code of practice: 0 to 25 years (January 2015).
- 2.38 The **Local Authority** will be clear and transparent about the support on offer in their area, through their Local Offer, so parents and Providers can access that support. Early Years SEN panel process and graduated response for Early Years SEND Inclusion funding, information on this can be found at:
- See [Appendix 1](#), 7. Early Years Special Educational Needs & Disability (SEND) Information for Funding Requests
  - The **Provider** must ensure owners, managers and all staff members are aware of their duties in relation to the SEND Code of Practice and the Equality Act 2010.

- 2.39 **The Provider** should be clear and transparent about the SEND support on offer at their setting including access to the Early Years SEND Inclusion funding and make information available about their offer to support parents to choose the right setting for their child with SEND. This means as a minimum, the Provider populating the local offer section within their entry on The Bury Directory.
- 2.40 The **Provider** should identify those parents whose children may qualify for Disability Access Funding (DAF) and follow local process for claiming the funding:  
See [Appendix 1](#), 8. Disability Access Fund – Provider Information.
- 2.41 Information about whether a child is in receipt of Disability Living Allowance (DLA) is sensitive personal data which should be handled appropriately. Providers are asked to pay particular note to advice from the ICO on holding personal data including sensitive personal data available at:
- [Appendix 1](#), 6. Ico.org.uk

## Social Mobility and Disadvantage

- 2.42 The **Local Authority** will promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to free places and working with parents to give each child support to fulfill their potential.
- 2.43 The **Provider** should ensure that they have identified and recorded the disadvantaged children in their setting as part of the process for checking Early Years Pupil Premium (EYPP) eligibility:
- Please see [Appendix 1](#), 9. Early Years Funding Information - EYPP
- 2.44 The **Provider** should use EYPP and any locally available funding streams or support to improve outcomes for this group. Early Years Pupil Premium should be used to improve the quality of early years education for their disadvantaged children. **Providers** should consult evidence on what works in improving quality when making decisions about how to use their EYPP funding.

## Quality

- 2.45 The Early Years Foundation Stage (EYFS) statutory framework is mandatory for all schools that provide early years provision and OfSTED-registered early years Providers in England. The EYFS sets the standards that all early years Providers must meet to ensure that children learn and develop well and are kept healthy and safe. See [Appendix 1](#), 4. Early years foundation stage statutory framework (EYFS)

Providers must deliver the full Learning and Development requirements of the Early Years Foundation Stage (EYFS) unless:

- they are an independent school which has met the quality requirement (most recent Ofsted inspection judgement is “good” or better) and notified the Secretary of State that they intend to take up exemption from the Learning and Development requirement; or
- the Department has granted an exemption from one or more of the Learning and Development requirements on the grounds that the provider’s established

principles cannot be reconciled with one or more of the Learning and Development requirements.; or

- they are providers offering care exclusively before and after school or during school holidays for children younger than those in the reception class age range. In this case they should be guided by, but do not have to meet, the Learning and Development requirements.

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

2.47 The **Local Authority** has a legal duty to provide information, advice and training on meeting the requirements of the EYFS for Providers who are rated less than 'Good' by OfSTED or newly registered Providers.

2.48 The **Local Authority** is not required to fund places at Providers who do not meet the quality standards stated below, but may choose to do so to ensure sufficiency of places.

2.49 The **Local Authority** will fund places;

- for two, three and four year old children at any Provider judged "good" or "outstanding" by OfSTED
- for three and four year old children at any Provider judged "satisfactory" (prior to 2014) or "requires improvement" by OfSTED
- for two three and four year old children accessing a new provision registered with OfSTED until the Providers first full OfSTED inspection judgement is published
- **may only fund** places for two year old children in a provision judged "satisfactory" or "requires improvement" where there is not sufficient accessible "good" or "outstanding" provision

2.50 The **Provider** must offer provision in accordance with the national parameters on quality as set out in Section A3 of Early Education and Childcare Statutory Guidance for local authorities and the EYFS statutory framework.

Please see [Appendix 1](#):

- 3. - Statutory Guidance for local authorities
- 4. - EYFS statutory framework

2.51 Where a Provider receives an 'Inadequate' grade or 'not met' from OFSTED they will be removed from the directory when the outcome is published on the OfSTED website or received by the Local Authority directly via their OFSTED Import (whichever comes first).

### **What will happen next?**

- The Provider is removed from the Directory of Providers list and informed by telephone of this
- No further claims for funding will be processed

- The Local Authority will send written notification to all parents/carers who are affected within 2 weeks outlining their options and offering support to find alternative childcare provision.
- The Provider is given written notification of intention to withdraw funding within 2 weeks of published OfSTED report. In the event of OfSTED advising a serious safeguarding issue the LA can, on OfSTED advice, remove all funding with immediate effect.
- The Provider will be invited to a formal meeting with a relevant Lead Officer to discuss the next steps and share the action plan the Provider has produced for OfSTED in response to the recommendations and actions set by OfSTED
- This plan must identify the following:
  - (a) How the Provider is going to satisfactorily address any actions or recommendations raised at inspection by OfSTED including the responsibilities and timeframes
  - (b) How this will impact on the children's progress
  - (c) How improvements will be monitored to evaluate their success
- The Provider must ensure that staff attend training and access sector led support which improves knowledge and understanding to contribute to an improved OfSTED grade and individual children's school readiness

2.52 Where a Provider receives a 'Requires Improvement' grade from OFSTED they will be removed from the directory to fund 2 year old children once the outcome is published on the OfSTED website or received by the Local Authority directly via their OFSTED Import (whichever comes first).

- An email will be sent to the Provider stating that the local authority will allow existing 2 Year Old children to continue to receive their funded place and remain in the setting until they move onto 3YO funding if their parents wish them to do so.
- Written notification of the OfSTED grade given to all parents/carers with funded children at the setting within 2 weeks, together with advice on how to access a copy of the report.
- Should parents wish to move their child to an alternative setting, as a result of concerns from the OfSTED report, it is good practice for providers to waive any notice periods in these circumstances.
- The Provider is removed from the Directory of Providers list in the respect of 2 Year Old funding, but can continue to offer 3 & 4 year old funding
- The Provider will share the action plan they have produced for OfSTED in response to the recommendations and actions set by OfSTED to email [earlyyearsfunding@bury.gov.uk](mailto:earlyyearsfunding@bury.gov.uk)

This plan must identify the following:

- (a) How the Provider is going to satisfactorily address any actions or recommendations raised at inspection by OfSTED including the responsibilities and timeframes
- (b) How this will impact on the children's progress

(c) How improvements will be monitored to evaluate their success

- The Provider must ensure that staff attend training and access sector led support which improves knowledge and understanding to contribute to an improved OfSTED grade and individual children's school readiness

2.53 Where a Provider is served with a suspension notice funding will be suspended immediately.

Where the Provider is removed from the Directory of Providers, in accordance with the relevant provisions of this Agreement, the Provider shall not be eligible to be included on the Directory of Providers until the Council has received notification from OfSTED that they have received a higher grade at re-inspection or receive OfSTED notification the suspension has been lifted.

## **Business Planning**

2.54 The **Local Authority** will provide and maintain an online Provider Portal for the sole purpose of enabling Providers to submit, safely and securely, child and parent details relating to all free entitlements and EYPP. Providers must adhere to all security procedures including any new or revised password policy.

2.55 The **Local Authority** will notify providers of the exact dates and timescales for submissions each term.

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

2.57 The **Provider** is required by legislation to complete an annual early years census.

2.58 The **Provider** must submit onto the Provider Portal information requested such as headcount, census and sufficiency by the dates specified by the Local Authority on The Bury Directory to support the processing, payment and delivery of free entitlements.

2.59 The **Provider** must submit all child and parent details via the Provider Portal by the specified dates each term. Copies of paper contracts and agreements, including proof of entitlement (e.g. birth certificates, eligibility letters for 2 Year Olds) will not be required to be sent to the Local Authority.

***\*Child's names input onto the Provider Portal should reflect the names on the birth certificate.***

2.60 The **Provider** should ensure they submit timely and accurate information, including, but not limited to, headcount data and census data as per the financial guidelines of their Local Authority. Failure to do so may result in inaccurate, delayed or suspended funding or may result in penalty charges.

2.61 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.

## Charges to Parents

- 2.62 Government funding is intended to cover the cost to deliver 15 or 30 hours a week (570 or 1140 hours a year) of free, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.
- 2.63 The **Local Authority** will 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.
- 2.64 The **Provider** cannot:
- charge parents "top-up" fees (the difference between a Provider's usual fee 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.
- 2.65 The **Provider** can as part of a free entitlement place:
- charge for meals and snacks
  - charge for consumables such as nappies or sun cream
  - charge for services such as trips and yoga

These charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, Providers who choose to offer the free entitlements are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals.

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

The Department for Education advise that Local Authorities may use their discretion regarding what may be a "reasonable" time and when deposits may be charged. For the purpose of this agreement:

- deposits should be returned or deducted from the first payment a parents makes following a placement beginning
- deposits should not be charged or held to secure funded 2 year old places
- deposits should not be charged to existing children/parents i.e. a 2 year old child who moves to 3 year old funding in the following term
- Parents should not have to re-apply each term
- The **Local Authority** may intervene where parents make them aware that they are being charged additional amounts outside of those detailed in this agreement, or where the parent raises concerns with the explanation given by the Provider for those additional charges.



- 2.66 The **Provider** should deliver the free entitlements consistently so that all children accessing any of the free entitlements will receive the same quality and access to provision, regardless of whether they opt to pay for optional hours, services, meals or consumables.
- 2.67 The **Provider** should be completely transparent about any additional charges.
- 2.68 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 is convenient for parents' working hours.
- 2.69 The **Provider** should ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their free entitlement completely free of charge and understand fees paid for additional hours. The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific Provider.
- 2.70 The **Provider** should ensure that parents who receive only their free entitlement are given a clear and transparent breakdown of their free hours if requested so they can see that they have received their full entitlement.

## Funding

- 2.71 The funding rates for 3 and 4 year old children in individual settings are determined through a local Single Funding Formula which is devised following national funding guidance – Early Years National Funding Formula (EYNFF) issued by the Department for Education.
- 2.72 The **Provider** will be entitled to receive payment as per the EYNFF. Payment will be for each child receiving their free early years provision for a maximum of 15 hours or 30 hours (dependent upon eligibility) over 38 weeks per year or any combination of weeks and hours over the academic year but not exceeding a maximum of 570 hours or 1140 hours (dependent upon eligibility) per annum.
- 2.73 2 year old places are funded at a flat hourly rate of attendance per child.
- 2.74 Change to: The **Local Authority** will notify providers of headcount submission and payment dates on a termly basis at least two weeks in advance of the start of each term. The **Local Authority** will acknowledge and respond timely to a Provider's query on funding. These should be made to [EarlyYearsFunding@bury.gov.uk](mailto:EarlyYearsFunding@bury.gov.uk)
- 2.75 The **Local Authority** will pay Providers a minimum of three payments each term.
- 2.76 The **Local Authority** will split payments accordingly across a maximum of two sites on one day where a parent chooses to access provision over more than one Provider
- 2.77 Early Years Pupil Premium payments will be paid in addition to free entitlement funding and paid termly at the prescribed rates set by government. Providers will be notified of children eligible for this funding via the Provider Portal and the amount payable per child.



- 2.78 Disability Access Fund payments will be made for eligible children and Providers as soon as possible after an eligible child begins at a setting. Providers should identify children accessing DLA and contact the Local Authority. This payment is made separately to other funding and is a lump sum paid once a year further information can be found at: [www.theburydirectory.co.uk](http://www.theburydirectory.co.uk)
- 2.79 Deprivation payments will be made for children who live in the appropriate IDACI postcode areas
- 2.80 The **Provider** should accurately complete and submit headcount and other necessary data returns by the agreed date to support the Local Authority to make payment. If for whatever reason the Provider Portal is inaccessible to Providers the Local Authority will extend the submission dates by working days of at least the time the system is out of service or make alternative arrangements to collect the headcount data.
- 2.81 The **Provider** should ensure that all required free entitlement eligibility checks are undertaken accurately and the correct details are entered into the Provider Portal along with any supporting evidence (for non-income based applications). Incorrect submissions may result in delayed payments or funding being re-claimed for incorrectly funded children.
- 2.82 The **Provider** should record the presence or absence at each session of each child for whom grant funding has been claimed. The Provider should have an appropriate policy for monitoring attendance which includes informing appropriate agencies and following a safeguarding procedure should the Provider have concerns raised by poor attendance.
- 2.83 The Local Authority will ensure that providers are not penalised for short term absences of children, for example sickness, arriving late or leaving early, or a family emergency through withdrawing funding, but use their discretion where absence is recurring or for extended periods taking into account the reason for the absence and the impact on the provider
- 2.84 The **Provider** should use due diligence to safeguard these arrangements against fraud on the part of directors, governors, staff or parents with particular regard to inaccurate, incomplete or misleading claims for payment; please see [Appendix 1](#), 10. Contact HMRC.
- 2.85 Where a child leaves a setting without notice and the provider holds a valid contract signed by the child's parent/guardian stating notice should be given, funding will continue for the notice period no longer than 4 weeks.
- 2.86 Early years provision by a childminder (either independently registered with Ofsted or registered with a childminder agency) for a related child does not count as childcare in legal terms. Government funding cannot be claimed by, or spent on, childminders providing childcare for their own child or a related child, even if they are claiming for other children.
- 2.87 In the event of a future pandemic/lockdown, funding is determined in line with statutory government guidance

## Compliance

- 2.88 The **Local Authority** may carry out checks and/or audits on Providers to ensure compliance with the requirements of delivering the free entitlements and will provide a written record of such checks, including actions and recommendations, to the Provider.
- 2.89 The **Provider** shall agree to audit checks and provide any information that is requested and implement any actions and agreed recommendations. These checks will not be disproportionate or unnecessarily burdensome to Providers.

## Termination and Withdrawal of Funding

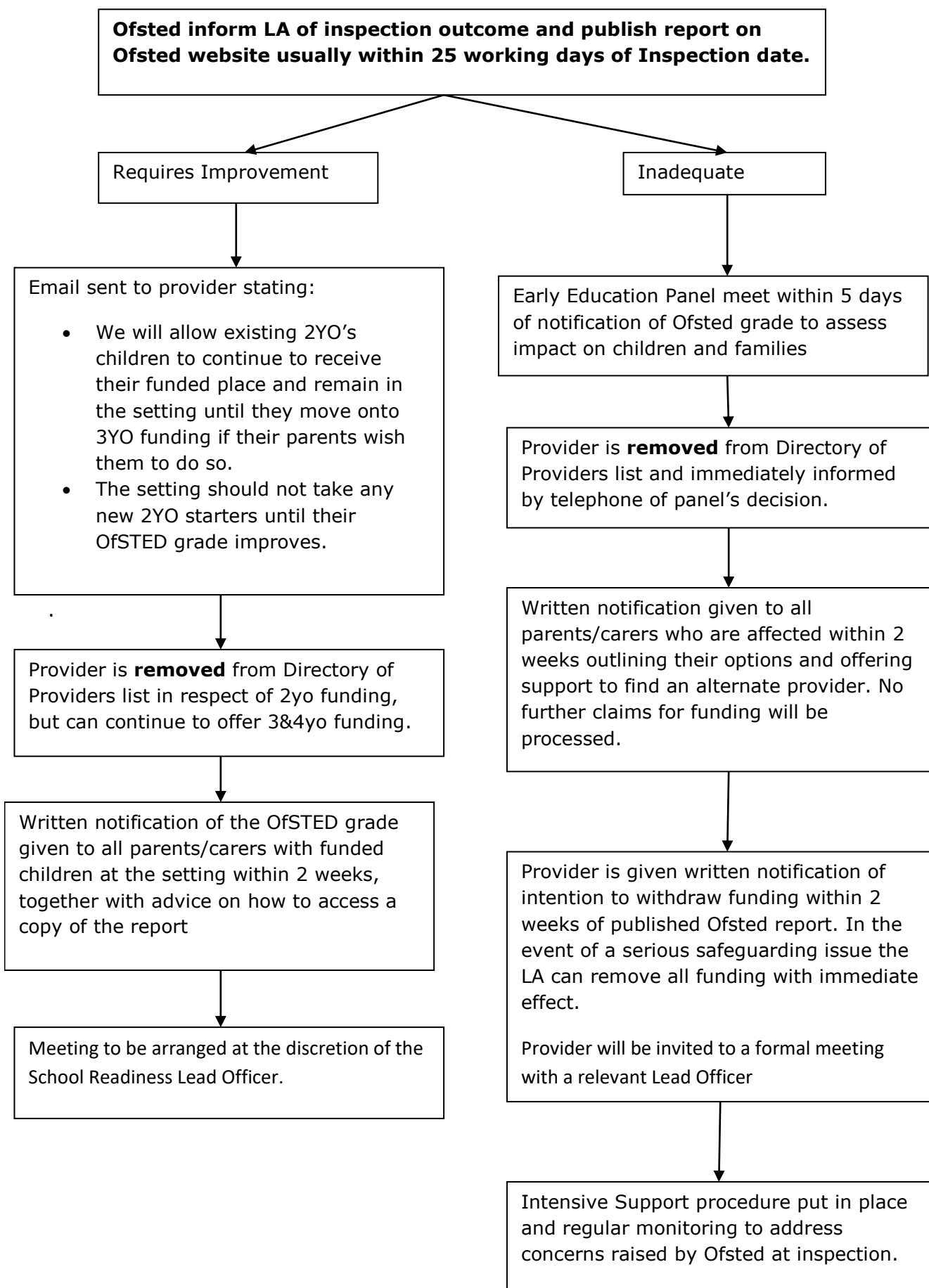
- 2.90 Suspension of registration by Ofsted or a breach of statutory requirements or safeguarding issues may result in the termination of the arrangement and withdrawal of funding.
- 2.91 Termination provisions are those required by regulation 7 (Termination of the arrangements) [Appendix 1](#), 11. Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 and regulation 37 (Arrangements between Local Authorities and early years Providers: termination) [Appendix 1](#), 12. The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016.
- 2.92 The **Local Authority** will be required to remove Providers from The Directory of Providers if they:
- do not meet the quality criteria as specified within the 2017 statutory guidance relating to Early Education and Childcare.
  - have their registration suspended by OfSTED.
  - are in breach of statutory requirements - such as not actively promoting fundamental British values, applying "top up" fees or making fraudulent claims.
  - have serious safeguarding issues (which may result in the registration being suspended)
- 2.93 Any **Provider** appeal on the OfSTED grade should be directed to OfSTED through their appeals procedure.
- 2.94 If the Provider does not meet the conditions specified at 2.91 Providers will be notified in writing of the Local Authority intention to terminate the Provider agreement and the withdrawal of funding and state the reasons for this action being taken.

## Removal

2.95 Where a setting receives an "Inadequate" grade from OFSTED they will be removed from the directory immediately when the outcome is published or received by the Local Authority directly via their 'OfSTED Import' (whichever comes first). A letter will be sent out to parents accessing a funded place within 2 weeks of the announcement to advise that they will no longer be able to access their place at this setting

- Children attending the setting at the time will be found alternative provision as soon as is feasibly possible with the assistance of the Family Information Service where necessary
- The setting will be required to repay any outstanding EEC payments from the date of removal.
- Payment will be reclaimed from the date the child ceases to access their place. The Council will not fund notice periods.
- When a setting has been removed from the Directory they will be unable to re-apply for inclusion until OfSTED publish a grade of at least "Requires Improvement."

## Requires Improvement & Inadequate Procedure



## Appeals & Complaints Process

- 2.96 A **Provider** may be denied approval to offer the free entitlements or have their funding withdrawn as set out on pages 18 & 19. The Provider can appeal against that decision through the Local Authority's Complaints Procedure see [Appendix 1](#) 13. Bury Councils Complaints Procedure. 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 The Early Education and Childcare Statutory guidance for Local Authorities.
- 2.97 If a parent or Provider is not satisfied with the way in which their complaint has been dealt with by the Local Authority or believes the Local Authority has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.
- 2.98 The **Local Authority** will consider concerns from parents who are not able to resolve their concern directly with the Provider where the parent is not satisfied that their child has received their free entitlement in accordance with the legislation or as set out in this agreement and in The Early Education and Childcare Statutory guidance for Local Authorities.

## Section 3: Data Protection

### **DATA PROTECTION**

**Definition: Data Protection Legislation** means Regulation (EU) 2016/679 (the General Data Protection Regulation) as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

- 3.0 The parties acknowledge that if, in providing the Services, the Provider is required to process Personal Data, for the purposes of the Data Protection Legislation, the Council shall be the Data Controller and the Provider shall be a Data Processor and, where the Provider or a Provider Sub-processor is required to process Personal Data, the following shall apply:
- 3.1 the only processing that the Provider, or a Provider Sub-processor, shall be authorised to do shall be specified by the Purchaser and may not be determined by the Provider;
- 3.2 the Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation;
- 3.3 the Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- a systematic description of the envisaged processing operations and the purpose of the processing;
  - an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - an assessment of the risks to the rights and freedoms of Data Subjects; and
  - the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
- 3.4 the Provider shall, in relation to any Personal Data processed in connection with its obligations:
- process that Personal Data only as specified by the Council, in accordance with Clause 3.1, unless the Provider is required to do otherwise by law. If it is so required, the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by law;
  - ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
    - a) nature of the data to be protected;
    - b) harm that might result from a Data Loss Event;
    - c) state of technological development; and
    - d) cost of implementing any measures;

- ensure that :
  - a) its employees, its Sub-processors and agents do not process Personal Data except in accordance with this Clause;
  - b) it takes all reasonable steps to ensure the reliability and integrity of any Provider Sub-processor personnel who have access to the Personal Data and ensure that they:
    - are aware of and comply with the Provider’s duties under this Clause;
    - are subject to appropriate confidentiality undertakings with the Provider or, in the case of Provider Sub-processor personnel, the relevant Provider Sub-processor;
    - are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Clause; and
    - have undergone adequate training in the use, care, protection and handling of Personal Data;
- not transfer Personal Data outside of the EU unless the prior written consent of the Purchaser has been obtained and the following conditions are fulfilled:
  - a) the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Purchaser;
  - b) the Data Subject has enforceable rights and effective legal remedies;
  - c) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavors to assist the Council in meeting its obligations); and
  - d) the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Provider is required by law to retain the Personal Data, and
- ensure that records are created, managed, used, retained and/or destroyed in such a manner so as to maintain their confidentiality, integrity and availability in accordance with relevant laws;

3.5 Subject to Clause 3.6, the Provider shall notify the Council immediately if it:

- receives a Data Subject Access Request (or purported Data Subject Access Request);
- receives a request to rectify, block or erase any Personal Data;
- receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;

- receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
  - becomes aware of a Data Loss Event;
- 3.6 The Provider's obligation to notify under Clause 3.5 shall include the provision of further information to the Council in phases, as details become available.
- 3.7 Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 3.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- the Council with full details and copies of the complaint, communication or request;
  - such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
  - assistance as requested by the Council following any Data Loss Event; or
  - assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Purchaser with the Information Commissioner's Office;
- 3.8 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause.
- 3.9 The Provider shall allow for audits of its data processing activity by the Council or the Council's designated auditor.
- 3.10 The Provider shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 3.11 Before allowing any of its Sub-processors to process any Personal Data related to this Contract, the Provider must:
- notify the Council in writing of the intended Sub-processor and processing;
  - obtain the written consent of the Council;
  - enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 21 such that they apply to the Provider Sub-processor; and
  - provide the Council with such information regarding the Provider Sub-processor as the Council may reasonably require.



- 3.12 The Provider shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 3.13 The Provider shall comply, and ensure that any of its Sub-processors comply, with the Council's "Data Protection Policy" or any replacement document, a copy of which is available on the Purchaser's internet homepage at <https://www.bury.gov.uk> or upon request.

## Appendix 1

### List of Accompanying Documents

1. [Working together to safeguard children](#)  
A guide to inter-agency working to safeguard and promote the welfare of children - July 2018
2. [Special educational needs and disability code of practice: 0 to 25 years](#)  
Statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities - January 2015
3. [Early education and childcare](#)  
Statutory guidance for local authorities – June 2018
4. [Early years foundation stage statutory framework \(EYFS\)](#)  
Setting the standards for learning, development and care for children from birth to five - April 2017
5. [Bury Safeguarding Children Board](#)
6. <https://ico.org.uk/>
7. [Early Years Special Educational Needs & Disability \(SEND\) Information for Funding Requests](#)
8. [Disability Access Fund - Provider Information](#)
9. [Early Years Funding Information - EYPP](#)
10. [Contact HMRC](#)
11. [The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) Regulations 2014](#)
12. [The Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) Regulations 2016](#)
13. [Bury Council Complaints Procedure](#)
14. [Parental Declaration](#)

**Annex A  
Education and Childcare (EEC)  
& Extended Free Entitlement (EFE)**



**Must be signed by the parties that accept the above named Agreement:**

Signed on behalf of Bury Council

<b>Signed:</b>		
<b>Name</b>	<b>Status</b>	<b>Date</b>
Steve Goodwin	Head of Strategic Business & Finance	

**THE ORGANISATION- I agree to the conditions in the Bury Provider Agreement for funding.**

<b>Organisation Name:</b>

<b>Registered/Nominated Person:</b>	<b>EY Number:</b>
<b>Address Line 1:</b>	
<b>Address Line 2:</b>	
<b>Address Line 3:</b>	
<b>Postcode:</b>	
<b>Signed by: (registered/nominated person)</b>	
<b>Name:</b>	
<b>Status:</b>	
<b>Date:</b>	

A copy of this page signed and dated **must** be returned to the Local Authority for you to be entered on to our list of eligible Providers. Failure to return this signed agreement will result in you being unable to offer free entitlement places and draw the subsequent funding as detailed in this agreement.

Please tick which of the following you will be offering

2 Year Old (EEC)	<input type="checkbox"/>	3&4YO (EEC)	<input type="checkbox"/>	3YO (EFE)	<input type="checkbox"/>	Tax Free Childcare	<input type="checkbox"/>
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