

DATED

2020

LICENCE AGREEMENT

BETWEEN

MINISTER FOR EDUCATION

AND

[INSERT NAME OF NON-EDUCATION SERVICE PROVIDER]

[INSERT ACN OF NON-EDUCATION SERVICE PROVIDER IF A COMPANY]

AT

[INSERT NAME OF SCHOOL/PRESCHOOL]



**Government
of South Australia**

Department for Education

31 Flinders Street Adelaide SA 5000

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SERVICES SCHEDULE

PART A

AGREEMENT dated

2020

PARTIES

MINISTER FOR EDUCATION a body corporate pursuant to the operation of the *Administrative Arrangements Act 1994* of 31 Flinders Street Adelaide (**Minister**)

AND

[INSERT NAME (ACN IF A COMPANY) AND STREET ADDRESS OF THE NON-Education SERVICE PROVIDER] (Non-Education Service Provider)

BACKGROUND

- A. The core business of preschools, schools and educational programs is teaching and learning. Therefore it is essential that the child or young person's preschool or school education is the primary focus of their attendance at and participation in preschool or school. To ensure this, Education provides 15 hours of preschool education and 1600 minutes of school education to children and young people per week.
- B. The Non-Education Service Provider has been engaged by the Parents of the child or young person to provide the Services to the child or young person, which Services are funded or subsidised by the National Disability Insurance Scheme, Medicare or a mental health service.
- C. The Parents have requested that the Non-Education Service Provider provide the Services to their child or young person at the Preschool or School during Preschool or School Hours. That request has been approved by the Director or Principal.
- D. The Minister will permit the Non-Education Service Provider access to the Preschool or School for the purposes of providing the Services to the child or young person subject to the provisions of this Agreement.

IT IS AGREED

1. DEFINITIONS

- 1.1 **Agreement** means the terms and conditions of this licence agreement (Part A) and incorporates the schedule attached to it (Part B) or any schedule or document incorporated by reference to Parts A or B;
- 1.2 **Child or young person** means the child or young person specified in a Services Schedule;

- 1.3 **Director** means the person appointed to the position of director of the relevant Preschool specified in a Services Schedule or the person acting in that position;
- 1.4 **Licence** means the licence granted by the Minister to the Non-Education Service Provider under clause 6;
- 1.5 **NDIS** means the National Disability Insurance Scheme;
- 1.6 **Nominated Area** means the area specified in a Schedule where the Services are to be provided;
- 1.7 **Nominated Observer** means the Education employee who is responsible for line of sight supervision of the Non-Education Service Provider;
- 1.8 **Non-Education Service Provider** where the context requires, includes any Non-Education Service Provider employee, agent, subcontractor and any other person employed or engaged by the Non-Education Service Provider to provide the Services;
- 1.9 **Parents** means the child or young person's parents or guardians as specified in a Services Schedule;
- 1.10 **Permitted Purpose** means the purpose for which the Non-Education Service Provider may use the Preschool or School Premises as described in a Services Schedule;
- 1.11 **Premises** means the premises of the School or Preschool located at the address specified in a Services Schedule;
- 1.12 **Principal** means the head teacher of the School to whom the administration and control of the relevant School has been committed pursuant to the *Education Act 1972 (SA)* or the person acting in that capacity;
- 1.13 **Reception Area** means area within preschool/school where visitors announce their arrival and negotiate service provision;
- 1.14 **School** means the Preschool/School specified in this Agreement and a Services Schedule;
- 1.15 **School Term** means the period determined by the Minister of a duration between eight and twelve weeks where it intends to hold classes for the purpose of educating its children or young people;
- 1.16 **Services** means the services to be provided by the Non-Education Service Provider as specified in a Services Schedule;
- 1.17 **Services Schedule** means a schedule in the form of the schedule attached to this Agreement completed when a Non-Education Service Provider is approved by the Principal to provide services on the Preschool/School Premises to a child or young person;
- 1.18 **Teacher Facilities** means the teachers' common room and toilet facilities at the Preschool/School; and
- 1.19 **Within Line of Sight** means an Education employee must be able to see the child or young person at all times during the provision of Services by a non-Education Service Provider.

2. INTERPRETATION

In this Agreement, unless a contrary intention is evident:

- 2.1 A reference to this Agreement is a reference to this Agreement as amended, varied, novated or substituted from time to time.

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- 2.2 A reference to any legislation or to any provision of any legislation includes:
 - 2.2.1 all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and
 - 2.2.2 any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision.
 - 2.3 A word importing:
 - 2.3.1 the singular includes the plural;
 - 2.3.2 the plural includes the singular; and
 - 2.3.3 a gender includes every other gender.
 - 2.4 Words denoting individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures.
 - 2.5 A reference to a party includes that party's administrators, successors and permitted assigns.
 - 2.6 If any act pursuant to this Agreement would otherwise be required to be done on a day which is not a Business Day then that act may be done on the next Business Day.
 - 2.7 Where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning.
 - 2.8 A reference to two or more persons is a reference to those persons jointly and severally.
 - 2.9 A reference to a clause or schedule is a reference to a clause of, or a schedule to, this Agreement.
 - 2.10 A reference to a clause number includes a reference to all of its subclauses.
 - 2.11 A reference to dollars is to Australian dollars.
 - 2.12 The clause headings are for convenience only and they do not form part of this Agreement.

3. INTENT OF AGREEMENT

- 3.1 This Agreement contemplates that the Non-Education Service Provider may enter into arrangements with one or more parents in relation to their child for the provision of certain services to their child on the Premises during preschool/school hours.
- 3.2 Where the Non-Education Service Provider will deliver services to more than one child under this Agreement, the details of each arrangement requested by a parent for each child and approved by the Director or Principal for the provision of Services on the Premises, will be committed to writing in a Services Schedule in the form of the schedule attached to this Agreement as Part B.
- 3.3 The Minister and the Non-Education Service Provider acknowledge and agree that the terms and conditions of this Agreement will apply to each Services Schedule completed by the Director or Principal in relation to the provision of Services to a child or young person at the School.

4. MINISTER NOT RESPONSIBLE FOR FEES

The Non-Education Service Provider acknowledges and agrees that:

- 4.1 The Parents are solely responsible for payment of any fees due to the Non-Education Service Provider for the provision of Services to a child or young person; and
- 4.2 There is no liability whatsoever by the Minister to the Non-Education Service Provider to pay for any Services provided to a child or young person.

5. DELEGATION BY MINISTER

- 5.1 The Minister authorises the Director or Principal to act on behalf of the Minister to exercise such of the powers, duties, discretions and authorities as are vested in the Minister in relation to this Agreement.
- 5.2 An appointment under this clause does not prevent, exclude or render invalid or inoperative, the exercise of a power, duty, discretion or authority by the Minister.

6. GRANT OF LICENCE

- 6.1 The Minister grants a non-exclusive licence to the Non-Education Service Provider to enter onto and remain on the Premises only for the Permitted Purpose during the hours specified in a Services Schedule.
- 6.2 Access to the Premises for the Non-Education Service Provider is confined to the Nominated Area, the Teacher Facilities, Reception Area and internal access corridors.
- 6.3 The Minister grants a non-exclusive licence to the Non-Education Service Provider including the access-ways and entrances at the times specified in clause 6.1 during the initial term in common with the Minister for the sole purpose of ingress to and egress from the Preschool or School and Nominated Area.

7. LICENCE FEE

The Non-Education Service Provider will pay an annual licence fee of \$1.10 (inclusive of GST) on demand by the Minister.

8. ADDITIONAL CHARGES

If specified in a Service Schedule, the Non-Education Service Provider may be charged for the use of the School's facilities as determined by the Minister.

9. TERM, REVIEW AND RENEWAL

- 9.1 The Licence is granted for the period specified in a Services Schedule (**initial term**).
- 9.2 If the Parents wish to have the Non-Education Service Provider continue to provide the Services on the Premises, the Non-Education Service Provider must send a written request to the Principal requesting that the Licence be extended in accordance with the parents' wishes. The request for an extension of the Licence must be endorsed by the Parents.
- 9.3 Prior to making a decision whether or not to extend the Licence, the Principal may make enquiries, call a meeting with either or both the Non-Education Service Provider and the Parents.

- 9.4 The Principal will then advise if the Minister grants an extension of the Licence by endorsing the request received from the Non-Education Service Provider and providing a copy to the Non-Education Service Provider.
- 9.5 The endorsed request will have the effect of renewing the Agreement for the term specified on the request.
- 9.6 The renewed term will be on the same terms and conditions as the initial term, except where varied as indicated in the request.

10. PERMITTED PURPOSE

- 10.1 The Non-Education Service Provider and all persons lawfully authorised by it to use the Nominated Area pursuant to this Agreement must only use the Nominated Area for the provision of Services to the child or young person specified in a Services Schedule and for any purpose reasonably incidental to that.
- 10.2 The Non-Education Service Provider must not do or permit to be done in, upon, or about the Nominated Area anything which is or is likely to become a nuisance or annoyance to the persons occupying premises adjoining or in the vicinity of the Nominated Area.
- 10.3 The Non-Education Service Provider must inform the Preschool or School Representative when the Non-Education Service Provider will be on the Premises in accordance with the notice of attendance requirements in a Services Schedule.

11. INDUCTION AND COMPLIANCE WITH RELEVANT POLICIES

- 11.1 The Non-Education Service Provider must comply with any requirements by the Director or Principal for an induction in relation to the Premises.
- 11.2 The Non-Education Service Provider must comply with all policies nominated and provided to the Non-Education Service Provider by the Director or Principal.

12. NON-EDUCATION SERVICE PROVIDER REPRESENTATIONS

The Non-Education Service Provider represents that the Non-Education Service Provider has provided copies of all documentation as specified on page 5 in the Non-Education Service Providers in Preschool, School and Educational Programs Procedure, which Procedure has been provided to the Non-Education Service Provider.

13. KEEP NEAT AND TIDY

The Non-Education Service Provider must ensure that the Nominated Area is left clean and tidy and free from rubbish and refuse after the Non-Education Service Provider's use of the Nominated Area.

14. SMOKING AND ALCOHOL

- 14.1 Smoking is not permitted at any time in or on the Premises or any part of them.
- 14.2 The consumption of alcohol is prohibited in or on the Premises or any part of them at all times.

15. CHILD SAFETY

15.1 Additional Definitions

15.1.1 **Child Safety Act** means the *Children and Young People (Safety) Act 2017* (SA);

15.1.2 **Non-Education Service Provider's Personnel** means the Non-Education Service Provider's employees, agents, volunteers and other persons employed or engaged by the Non-Education Service Provider to work at the Premises;

15.1.3 **Prescribed Offence** has the meaning given in the Prohibited Persons Act;

15.1.4 **Prescribed Position** has the meaning given in the Prohibited Persons Act;

15.1.5 **Presumptive Disqualification Offence** has the meaning given in the Prohibited Persons Act;

15.1.6 **Prohibited Person** has the meaning given in the Prohibited Persons Act;

15.1.7 **Prohibited Persons Act** means the *Child Safety (Prohibited Persons) Act 2016* (SA);

15.1.8 **Prohibition Notice** has the meaning given in the Prohibited Persons Act;

15.1.9 **Working with Children Check** has the meaning given in the Prohibited Persons Act.

15.2 Fundamental Term

Despite any other clause, the parties acknowledge that the rights and obligations under this clause are fundamental to this Agreement.

15.3 No Prohibited Persons

15.3.1 The Non-Education Service Provider must:

- (a) comply with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act in relation to Non-Education Service Provider Personnel that are employed in Prescribed Positions and who will be present on the Premises;
- (b) as required by the Principal, verify that a Working with Children Check has been conducted in relation to the Non-Education Service Provider Personnel employed in Prescribed Positions and who will be present on the Premises;
- (c) subject to clause 15.3.3, immediately procure the ongoing exclusion from the Premises of any Non-Education Service Provider Personnel that are employed in Prescribed Positions, if they are found to be a Prohibited Person; and
- (d) immediately suspend access to the Premises of any Non-Education Service Provider Personnel that are employed in Prescribed Positions if they are the subject of any allegation, arrest, charge or conviction for a Prescribed Offence or a Presumptive Disqualification Offence (whilst not being the subject of a Prohibition Notice), until such time as:

- (i) the relevant Non-Education Service Provider Personnel is found to be a Prohibited Person (in which case clause 15.3.1(c) will apply); or
- (ii) the Minister consents in writing to the suspension being revoked, such that the relevant Non-Education Service Provider Personnel may return to the Premises.

15.3.2 Unless such notification causes the Non-Education Service Provider to be in breach of the Prohibited Persons Act the Non-Education Service Provider must promptly notify the Principal if it becomes aware that Non-Education Service Provider Personnel employed in Prescribed Positions who are or have been present on the Premises:

- (a) is a Prohibited Person; or
- (b) is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence or a Presumptive Disqualification Offence (whilst not being the subject of a Prohibition Notice).

15.3.3 The Non-Education Service Provider will not be in breach of its obligation under clause 15.3.1(c) where the Non-Education Service Provider has complied with its obligations under the Prohibited Persons Act and the central assessment unit has failed to provide notification to the Non-Education Service Provider in accordance with section 41(1) of the Prohibited Persons Act.

15.3.4 As often as reasonably requested by the Minister, the Non-Education Service Provider must give the Minister evidence satisfactory to the Minister of the Non-Education Service Provider's compliance with the obligations of employers under Division 2 Part 4 of Prohibited Persons Act.

15.4 **Imposing Obligations on Non-Education Service Provider Personnel**

The Non-Education Service Provider must ensure that:

- 15.4.1 Non-Education Service Provider Personnel are aware of and act in a manner consistent with the Non-Education Service Provider's obligations under this clause 15 at all times; and
- 15.4.2 Non-Education Service Provider Personnel (not being the Non-Education Service Provider) immediately inform the Non-Education Service Provider if the relevant Personnel is the subject of any allegation, arrest, charge or conviction for a Prescribed Offence.

15.5 **Child Safe Environment**

In addition to all other obligations under this Agreement, where the Non-Education Service Provider is an organisation to which section 114 of the Child Safety Act applies, the Non-Education Service Provider must:

- 15.5.1 **(policies and procedures)**: have in place appropriate policies and procedures to ensure that, as required by the Child Safety Act:
 - (a) safe environments for children and young people are established and maintained; and
 - (b) appropriate reports of child abuse and neglect are made;
- 15.5.2 **(lodge statement)**: lodge the statement required by section 114 of the Child Safety Act about the Non-Education Service Provider's child safe policies and procedures with the Chief Executive of the Department for Child Protection, or such other government agency as the State or South Australian Government publicly notifies (**Successor Children's**

Protection Agency), within 10 Business Days after putting in place those policies and procedures; and

15.5.3 (**response**): respond, as soon as reasonably practicable (and in any event within 10 Business Days), to any written request by Department for Child Protection, Successor Children's Protection Agency or the Minister for information relating to the Non-Education Service Provider's compliance with the requirements of this clause 15.

15.6 **Compliance with Child Safety Practices and Procedures**

The Non-Education Service Provider must at all times comply with any practices, policies and procedures in relation to child safe environments notified in writing by the Principal.

15.7 **Effect of Non-Compliance**

If the Non-Education Service Provider does not strictly, fully and immediately comply with any or all of its obligations under clauses 15.3.1 and 15.3.2, then such failure to comply will constitute a fundamental breach of the Agreement entitling the Minister to terminate the agreement immediately upon giving notice in writing to the Non-Education Service Provider.

16. **RELEASE AND INDEMNITY**

16.1 The Non-Education Service Provider uses the Nominated Area at its own risk.

16.2 To the fullest extent permitted by law, the Non-Education Service Provider releases the Minister, in the absence of any default, neglect or omission on the Minister's part, from all and any claims, demands and damage of every kind resulting from:

16.2.1 any loss of life;

16.2.2 accident or injury to persons; or

16.2.3 damage to property

whatsoever and howsoever occurring in, upon or in any other way connected with the use of the Nominated Area and the Premises by the Non-Education Service Provider (including loss or damage to any of the Non-Education Service Provider's personal property or of any person lawfully authorised by the Non-Education Service Provider to use the Nominated Area pursuant to this Agreement).

16.3 The Non-Education Service Provider agrees to indemnify the Minister and keep the Minister and its employees, servants and agents indemnified from and against any actions, costs, claims, charges and expenses which may be brought against the Minister in connection with any loss of life, personal injury and/or loss of or damage to property arising from, or out of, or in connection with, the use by the Non-Education Service Provider of the Nominated Area or the Premises (including, but not limited to, any loss of or damage to personal property of the Non-Education Service Provider, its agents, employees, contractors or invitees), except where such loss of life, personal injury and/or loss of or damage to property is occasioned by any neglect, default or omission by the Minister or its agents, employees, contractors or invitees.

17. **INSURANCE**

17.1 The Non-Education Service Provider must effect and maintain a public and products liability insurance policy for an amount not less than \$20 million.

- 17.2 The Non-Education Service Provider must ensure that any requirements in relation to workers compensation legislation are complied with in respect of any employees, subcontractors or other persons engaged by the Non-Education Service Provider in relation to this Agreement.
- 17.3 The Minister may require the Non-Education Service Provider to provide proof that the policies of insurance required by this clause have been effected and maintained.
- 17.4 The Minister may terminate this Agreement if the Non-Education Service Provider does not comply with this clause.

18. TERMINATION

- 18.1 The Minister may terminate this Agreement immediately by written notice to the Non-Education Service Provider if:
- 18.1.1 the Non-Education Service Provider commits or permits any breach or default of the obligations imposed on the Non-Education Service Provider by this Agreement, and following the giving of written notice of such breach or default by the Minister, the Non-Education Service Provider fails to rectify such breach or default within a reasonable time, having regard to the nature and circumstances of such breach or default; or
- 18.1.2 the Non-Education Service Provider commits or permits any further breach or default of the obligations imposed on the Non-Education Service Provider by this Agreement for which the Minister has previously given notice in writing of such breach or default pursuant to clause 18.1.1, notwithstanding rectification of the previous breach or default; or
- 18.1.3 any of the following occur to the Non-Education Service Provider:
- (a) the Non-Education Service Provider is unable to pay its debts as and when they fall due or is otherwise insolvent;
 - (b) an order is made for the winding up or liquidation of the Non-Education Service Provider;
 - (c) the Non-Education Service Provider is wound up or dissolved;
 - (d) the Non-Education Service Provider enters into a scheme of arrangement, compromise, moratorium or other form of composition with its creditors or any class of its creditors;
 - (e) a receiver, a manager or a receiver and a manager, an administrator or other insolvency administrator is appointed to the Non-Education Service Provider;
 - (f) a mortgagee, chargee or other encumbrancee is appointed over or takes possession of or appoints an agent to take possession of all or any of the Non-Education Service Provider's assets.
- 18.2 The Minister may terminate this Agreement without cause by providing not less than seven (7) days' written notice to the Non-Education Service Provider.
- 18.3 Notwithstanding any other provisions in this Agreement, this Agreement will terminate automatically if:
- 18.3.1 the Minister ceases to operate the Preschool/School; or

18.3.2 the Minister sells, transfers or otherwise disposes of or leases the land or the Minister contracts to sell, transfer or otherwise dispose of the land on which the School is situated.

18.4 Termination of this Agreement does not affect any accrued right or liability of either party nor will it affect the coming into force or the continuation in force of any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after termination

19. **RIGHT TO REFUSE ENTRY TO THE PREMISES**

The Minister reserves the right, in its absolute discretion, to refuse entry to the Premises to the Non-Education Service Provider or any of the Non-Education Service Provider's employees, agents, contractors or volunteers.

20. **GENERAL**

20.1 **No Assignment**

This licence is personal to the Non-Education Service Provider and must not be assigned.

20.2 **Consent**

Where the Non-Education Service Provider requires the Minister's consent under this Agreement, the Minister may, in its absolute discretion, give or withhold its consent (subject to any provision in this Agreement to the contrary) and if giving consent, the Minister may impose any condition on that consent that it considers appropriate. The Minister's consent will not be effective unless it is in writing and signed.

20.3 **Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes any prior agreement, understanding or representation of the parties on the subject matter.

20.4 **Proper Law**

The laws in force in South Australia apply to this Agreement.

20.5 **Jurisdiction of Courts**

20.5.1 The courts of South Australia and the Federal Court of Australia have exclusive jurisdiction to determine any proceedings in relation to this Agreement.

20.5.2 Any proceedings brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

20.5.3 The supplier undertakes not to apply to transfer any proceedings to another registry of the Federal Court.

20.6 **Audit**

The Non-Education Service Provider acknowledges the provisions of the *Public Finance and Audit Act 1987 (SA)*.

20.7 **Compliance with Laws**

The Non-Education Service Provider must comply with the laws in force in South Australia in the course of performing this Agreement.

20.8 Notices

- 20.8.1 A “**notice**” means a consent, approval or other communication required to be in writing under this Agreement.
- 20.8.2 A notice or other communication is properly given or served if the Party delivers it by hand, posts it or transmits it by electronic mail to the other Party to the address specified in the Schedule.
- 20.8.3 A notice or other communication is taken to be received if:
- (a) delivered by hand before 5.00 pm on a Business Day, on the day of delivery, otherwise on the next Business Day;
 - (b) sent by pre-paid mail, on the third Business Day after posting;
 - (c) transmitted by electronic mail:
 - (i) when the relevant email appears in the sender’s sent log with properties disclosing an appropriate routing; and
 - (ii) the sender does not receive a message from the system operator to the effect that the relevant email was undeliverable.
- 20.8.4 If the result under clause 20.8.3 is that a notice would be taken to be given on a day that is not a Business Day in the place to which the notice is sent, then it will be taken to have been given on the next Business Day in that place.
- 20.8.5 A Party may from time to time notify of a change to its contact details by written notice to the other Party.

20.9 Waiver

- 20.9.1 Any waiver of any provision of this Agreement is ineffective unless it is in writing and signed by the party waiving its rights.
- 20.9.2 A waiver by either party in respect of a breach of a provision of this Agreement by the other party is not a waiver in respect of any other breach of that or any other provision.
- 20.9.3 The failure of either party to enforce at any time any of the provisions of this Agreement must not be interpreted as a waiver of that provision.

20.10 Modification

Any modification of this Agreement must be in writing and signed by each party.

20.11 Severance

- 20.11.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.
- 20.11.2 If a court determines that a part of this Agreement is unenforceable, invalid, illegal, void or voidable that court may sever that part.
- 20.11.3 Severance of a part of this Agreement will not affect any other part of this Agreement.

20.12 Reading Down

Where a word, phrase, sentence, paragraph, clause or other provision of this Agreement would otherwise be unenforceable, illegal, void or voidable the effect of that provision shall so far as possible, be limited and read down so that it is not unenforceable, illegal, void or voidable.

Executed as an agreement

SIGNED for and on behalf of the **MINISTER**)
FOR EDUCATION by a person duly authorised) Julia Polisená Deputy Principal
.....)
by the Minister to do so, in the presence of:) *Authorised signatory*

.....
Witness
[Print Name:]

SIGNED for and on behalf of the)
NON-EDUCATION SERVICE PROVIDER)
by a person authorised by the)
Non-Education Service Provider to do so,) *Authorised signatory*
in the presence of:)

.....
Witness
[Print Name:]

