



# Third Party Provider - Standard Terms and Conditions

Version: April 2025

## Binding Obligations:

These are the Standard Terms and Conditions (**Terms**) which are to be read in conjunction with and as part of any agreement for the supply of goods or services under which Affinity Education Group Pty Ltd (**Client**) engages a third party provider (**Supplier**) for the provision of goods or services, as detailed in the relevant Agreement.

Client may update and amend these Terms, from time to time, and Supplier will be deemed to have accessed, read and agreed (including as updated and amended) these Terms each time any part of the Service is performed by Supplier.

## Agreed Terms:

### 1. Definitions

In these Terms and the Agreement, the following terms will have the meanings below, provided that other capitalised terms shall have the meaning provided in the Agreement:

**Agreement** means any agreement for the supply of goods or services under which Client engages Supplier for the provision of Services from time to time, including any Statement of Works.

**AI** means a machine-based system that, for explicit or implicit objectives, infers from the input it receives how to generate outputs such as predictions, content, recommendations or forecasts developed by means including, but not limited to, large language model technology.

**authority** means any public or other authority which has jurisdiction in relation to the Services.

**Background IP** means the Intellectual Property Rights of a party:

- (a) which existed before the date of the Agreement; or
- (b) which that party subsequently develops independently of, and for purposes unconnected with, the Agreement.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Brisbane, Queensland.

**Centre Manager** means the centre manager of the relevant Child Care Centre, as notified to Supplier from time to time, who has day to day operational management of the relevant Child Care Centre, or if the centre manager is unavailable, the centre manager's delegated assistant.

**Certified** means officially certified to Standards Australia AS 4454 (or equivalent) and any other relevant industry standards, so that the

Services completed are fit for purpose to ensure safety and well-being of all occupants of the Premises.

**Child Care Centre** or **centre** mean the Client's child care centres listed in the Agreement where the Services are provided.

**Claims** means any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, including those arising out of the terms of any settlement.

**Client** means Affinity Education Group Pty Ltd.

**Client Data** means all data and information relating to Client and its business, operations, facilities, customers, personnel, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed as part of the Services and any other data and Information Assets relating to the Services and Deliverables, including Confidential Information of Client and (for clarification) Personal Information.

**Client Material** means any material that is proprietary to or has been developed independently of the Agreement by Client or its licensors, including Background IP and Client Data, and provided to or accessed by Supplier in connection with its performance of the Agreement.

**Client Code of Conduct** means Client code of conduct as adopted or amended from time to time.

**Confidential Information** means:

- (a) all confidential, non-public or proprietary information, regardless of whether it is marked or notified to the other party as being confidential or how the information is stored or delivered, exchanged between the parties (including provided by a Related Body Corporate of a party) before, on or after the Commencement Date relating to the business, technology or other affairs of the Discloser of the information;
  - (b) in the case of Client, all Personal Information, all Client Material, all New Material, all information disclosed by a third party which Client is required to keep confidential, and all information created by Supplier or its Representatives in the course of providing the Services or in respect of Intellectual Property Rights owned by Client; and
  - (c) the existence and content of the Agreement,
- regardless of the form or source but does not include information which:
- (d) is in or becomes part of the public domain other than through breach of the Agreement or an obligation of confidence owed to the Discloser;
  - (e) the Recipient can prove by contemporaneous written documentation was:
    - (1) already known to it at the time of disclosure by the Discloser (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or

(2) independently developed by the Recipient without reference to the Confidential Information of the Discloser; or

(f) the Recipient acquires from a source other than the Discloser or any of its Representatives where such source is entitled to disclose it on a non-confidential basis.

**Consumer Law** means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Contract IP** means Intellectual Property Rights created by Supplier or Personnel in the course of supplying the Services or otherwise performing its obligations under the Agreement.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Data Security Incident** has the meaning given in clause 7.

**Defective goods and/or Services** means goods and/or services which are not supplied in accordance with the requirements of the Agreement and clause 8 of these Terms, or otherwise do not conform with the Agreement.

**Deliverables** has the meaning in the Agreement and includes any New Material.

**direction or directed** means any decision, demand, determination, direction, instruction, request, order, approval, rejection or other requirement of Client or Client's Representative, subject to being commercially reasonable.

**Discloser** has the meaning given in clause 7.

**Dispute** has the meaning in clause 18.

**Dispute Initial Period** has the meaning in clause 18.

**Dispute Notice** has the meaning in clause 18.

**Fees** means the fees payable by Client to Supplier in accordance with the terms of the Agreement.

**Force Majeure Event** means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

(a) act of God, earthquake, cyclone, fire, explosion, flood, epidemic, pandemic, landslide, lightning, storm, tempest drought, meteor or other event beyond the reasonable control of a party;

(a) war (declared or undeclared), invasion, act of a foreign enemy, act of terrorism, hostilities between nations, civil insurrection or militarily usurped power;

(b) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;

(c) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority: or

(d) industrial action not specific to Supplier.

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

**GST** has the meaning given to that term in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Law** has the meaning given to that term in the GST Act.

**Information Asset** means information and information technology, including software, hardware and data (both soft and hard copy) of Client.

**Information Security Control** means a prevention, detection or response measure to reduce the likelihood or impact of a Data Security Incident.

**Insolvency Event** means having an administrator appointed, being in receivership, in liquidation, in provisional liquidation, wound up, subject to any arrangement, assignment or composition, protected from creditors under any law dissolved (other than to carry out a restructure while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any relevant jurisdiction.

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the convention establishing the *World Intellectual Property Organisation 1967*.

**laws** mean all:

(a) legislation, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, or State or Territory government;

(b) common law, subordinate legislations, ministerial directions, directions of relevant regulators and binding codes of conduct that apply to the parties;

(c) certificates, licenses, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Services;

(d) the requirements of any authority with jurisdiction in respect of the provision of the Services; and

(e) fees and charges payable in connection with the foregoing.

**Loss** has the meaning in clause 14.3.

**Moral Rights** means any moral rights including the rights described in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works 1886* (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any other law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

**New Material** means all material created by Supplier or its subcontractors in the performance of the Agreement, including Contract IP.

**Nominated Representative** is the person identified as such for each party in the Agreement.

**Notices** has the meaning in clause 22.

**Personnel** means Representatives of Supplier, including Key Personnel if any, that will provide the Services from time to time.

**Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth).

**Premises** means the location in which the Services are being carried out.

**Privacy Laws** means:

- (a) the *Privacy Act 1988* (Cth), including the Australian Privacy Principles; and
- (b) any other legislation or administrative requirements imposing obligations in relation to the collection, use, disclosure, storage and transmission of Personal Information and which apply to the Supplier in the performance of its obligations under this Agreement, including any codes, principles or guidelines contained in or arising out of such legislation.

**Recipient** has the meaning in clause 7.

**Regulatory Authority** means any body, entity or public or regulatory authority with responsibility for the supervision or regulation of activities of an entity or industry, including the Services.

**Related Body Corporate** has the same meaning as in the Corporations Act.

**Representative** of a party includes an employee, manager, agent, officer, director, auditor, adviser, partner, consultant, contractor or subcontractor (including employees, representatives, officers, directors, partners, agents, consultants and contractors of any subcontractors) of that party or any of its Related Bodies Corporate.

**Restricted Person** means:

- (a) a person who has been convicted of offences involving sexual conduct with a child, grooming of children, child exploitation material offences, child related offences or any murder, sexual offences or violence offences against a child or adult; or
- (b) a person who has been charged with any of the above kinds of offences but the matter has not yet been finalised; and/or
- (c) a person who holds a suspended Working with Children Check, Blue Card, Working with Children Vulnerable People, and/or Ochre Card.

**Services** means the services, Deliverables and/or supply of goods which Supplier must perform, provide, supply and complete under and in accordance with the Agreement, and any services, functions or responsibilities not specifically described in the Agreement which are necessary for the proper performance and provision of the Services and Deliverables, or customarily performed by well-managed and experienced providers of services similar to the Services, as directed

from time to time by Client or Client's Nominated Representative and includes variations, remedial work, goods and temporary works.

**Specification** means the details, terms, conditions, quality, standards and requirements detailed in the Agreement, where applicable.

**Statement of Works** means a statement of work issued from time to time in accordance with the Agreement, or as a standalone work-order issued by Client.

**Supplier** means any third party provider engaged by Client for the provision of goods or services under the Agreement.

**Term** has the meaning in the Agreement.

**Warranty Period** means the period commencing on the first date of delivery of goods and/or performance of Services under the Agreement, ending 12 months after that date.

**WHS Requirements** means all relevant obligations under any laws and other legal requirements relating to workplace health and/or safety (including regulations and codes of practice relating to dangerous goods, life cycle assessment, public health, occupational health and safety).

**Working With Children Check** means the working with children check relating to working with or around children issued by the relevant governing body applicable for each state.

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## 2. Interpretation

Unless the contrary intention appears, a reference in the Agreement to:

- (a) **(variation or replacement)** a document (including the Agreement) includes any variation or replacement of it;
- (b) **(clauses)** a clause, is a reference to a clause in the Agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(singular includes plural)** the singular includes the plural and vice versa;
- (e) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (f) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (g) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (h) **(dollars or \$)** an amount of money is a reference to the lawful currency of Australia;
- (i) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (j) **(reference to a day)** a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (k) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;

(l) (**headings**) headings are inserted for convenience only and do not affect the interpretation of the Agreement; and

(m) (**construction**) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, the Agreement or any part of it.

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### 3. **Commencement & Performance**

(a) Supplier must not commence performing the Services until:

(1) Supplier has effected such insurances required under clause 15 and provided evidence of such insurances to Client;

(2) Subject to clause 3(b), unless the Services are to be completed outside of Client's usual operating hours, Supplier has provided to Client a current Working With Children Check for Personnel which, where applicable, is to be uploaded via Client's Rapid Induct portal;

(3) Personnel have attended a pre-start meeting with Client's Representative at the Premises, during operating hours at the Premises (unless this requirement is waived by Client); and

(4) Personnel have successfully completed induction in accordance with clause 10.2.

(b) Notwithstanding anything to the contrary in these Terms, in the event Supplier or any subcontractor duly appointed by Supplier is not required or is exempt from obtaining Working With Children Check (**Exempt Person**) then the Exempt Person is required to:

(1) Provide a copy of their national police history check to Client at least 3 business days prior to entering the Premises (if requested by Client) which, where applicable, is to be uploaded via Client's Rapid Induct portal; and

(2) warrant that they are not a Restricted Person.

(c) In performing the Services, Supplier must ensure Personnel attend any such meetings as reasonably required by Client.

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### 4. **Completion**

(a) In the Agreement, Completion shall mean:

(1) the Services are, in Client's reasonable opinion, completed in accordance with the Agreement;

(2) the Premises is ready to be handed over in a compliant, safe, clean, proper state ready for operation on the commencement of the next business day, if applicable; and

(3) Supplier has provided to Client any documents and other information regarding the Services reasonably requested by Client.

(b) When Supplier considers the Services have reached Completion, it shall notify Client. Client will assess (by inspecting the Premises, if relevant) whether Completion has been achieved and either:

(1) advise Supplier that Completion was achieved; or

(2) advise Supplier of what further Services are required to achieve Completion.

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### 5. **Invoicing & Payment**

(a) Supplier will invoice Client at monthly intervals for Services provided during the previous month.

(b) Each invoice must:

(1) be a tax invoice identifying applicable GST, if any;

(2) correctly calculate the amount payable in accordance with the Agreement;

(3) relate to Services which have been supplied in accordance with the Agreement; and

(4) be accompanied by documents that adequately demonstrate to Client that the Services or Deliverables (as applicable) have been provided and the basis on which the amounts payable are claimed.

(c) Supplier will provide consolidated invoices unless Client requests otherwise.

(d) Supplier will provide third party invoices as evidence of the expense incurred, if applicable, at the request of Client.

(e) Subject to clauses 5(h) to 5(j), Client must pay within 30 days of receiving the date of the valid tax invoice.

(f) Payment shall be made by electronic online banking transfer or by other method as agreed between the parties.

(g) Client's payment of an invoice does not constitute:

(1) evidence or an admission by Client that Supplier has complied with its obligations under the Agreement;

(2) an admission of liability by Client; or

(3) acceptance or approval by Client of Supplier's supply of Services,

and must be taken as payment on account only.

(h) Client may dispute the amount of a tax invoice issued by Supplier (in whole or in part) by notifying Supplier of the amount in dispute and the reasons for the dispute within 14 days of receipt. Any amount(s) not in dispute must be paid in accordance with clause 5(e) to 5(g) and the parties must use all reasonable endeavours to resolve the dispute as soon as practicable.

(i) Supplier may not suspend, alter, cancel or withdraw the provision of the Services in whole or in part as a result of a disputed invoice.

(j) Supplier may not:

(1) issue an invoice to Client more than 60 days after the end of the month in which the Services to which the invoice relates were provided; or

(2) raise a claim for payment of a previously issued invoice more than 90 days after the invoice date,

(each, a **Late Claim**), and for clarification:

(3) Client is not obliged to pay Late Claims: and

(4) Supplier waives all rights and remedies relating to any Late Claims, but excluding any tax obligations for Services provided, if any.

(k) If provided in the Specifications or Statement of Work, as applicable, Client will reimburse Supplier for any reasonable out of pocket expenses and reasonable third-party costs (including for goods or services required in connection with the provision of the Services), provided that:

(1) such expenses and costs are approved by Client prior to being incurred; and

(2) Supplier provides receipts, invoices or other documents acceptable to Client to support those expenses and costs, and in each case subject to the limits (if any) set out in the Specification or Statement of Work, as applicable.

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## 6. **Intellectual Property**

(a) The parties agree that other than as provided in this clause 6, nothing in the Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.

(b) If Client provides any material to Supplier that contains Client Material, then Client grants to Supplier a non-transferable, non-exclusive, royalty-free licence during the Term to use Client Material for the sole purpose of Supplier meeting its obligations to Client under the Agreement.

(c) The parties acknowledge and agree that all Intellectual Property Rights in any New Material vests in Client, and Supplier:

(1) assigns, and must procure that its Personnel assign to Client all of the Intellectual Property Rights in the New Material (including as a present assignment of future copyright), and will obtain (and provide to Client, upon request) any Moral Rights waivers and consents necessary to allow Client to freely use, modify and exploit that New Material at its absolute discretion;

(2) will do all things necessary to effect the assignment and ownership of all Intellectual Property Rights and Moral Rights in the New Material to Client, including by executing and delivering documents; and

(3) must not and must procure that its Personnel do not make any Claims against Client in respect of any Intellectual property Rights (including Moral Rights) in the New Material.

(d) Supplier grants to Client a perpetual, irrevocable, non-transferable, non-exclusive, royalty-free licence to use, reproduce, copy, modify, communicate to the public and sub-license such Intellectual Property Rights of Supplier which are required or necessary to allow Client to receive the benefit of, and to use and exploit, the Services at its absolute discretion.

(e) Client grants to Supplier a non-transferable, non-exclusive, royalty-free licence during the Term to use the New Materials for the sole purpose of performing its obligations under the Agreement.

(f) Supplier is granted no right to use, and must not use the names, logos, trademarks or other Intellectual Property Rights of Client or refer to the Agreement whether for endorsement of its products and services or otherwise, without the prior written consent of Client.

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## 7. **Confidentiality, Privacy & Security**

### 7.1 **Treatment of Confidential Information**

Each party undertakes to keep the Confidential Information of the other party strictly confidential and to not use or disclose that Confidential Information except as permitted by the Agreement.

### 7.2 **Use and disclosure of Confidential Information**

A party (**Recipient**) may only use the Confidential Information of the other party (**Discloser**) for the purposes of performing its obligations or

exercising its rights under the Agreement and must not disclose the Confidential Information of the Discloser to any person, except:

(a) to its Representatives on a need-to-know basis, provided that such Representatives are made aware of the confidential nature of such Confidential Information and are bound by confidentially obligations no less onerous than those in this clause 7.

(b) with the prior written consent of the Discloser (such consent not to be unreasonably withheld); and

(c) if the Recipient is required to disclose the information by law, order of any court or tribunal of competent jurisdiction, or any Government Agency, securities exchange or other Regulatory Authority or administrative body that has the legal right to require disclosure, provided that to the extent reasonably practicable and permitted by law, prior to (or, where immediate disclosure is required, as soon as practicable after) such disclosure the Recipient:

(1) notifies the Discloser of any actual or anticipated disclosure requirement;

(2) consults with the Discloser in relation to the disclosure; and

(3) takes such steps as the Discloser may reasonably request and permit the Discloser to have a reasonable opportunity to restrict the disclosure by lawful means.

### 7.3 **Use of AI**

Without limiting any other provisions of the Agreement, Supplier acknowledges and agrees that Information Security Controls apply to Supplier's use of AI, and Supplier must not disclose any Client Material or New Material to any AI without the prior written approval of Client.

### 7.4 **Return of Confidential Information**

(a) On request by Client and immediately following expiry or termination of the Agreement, Supplier must deliver to Client all documents or other materials containing or referring to the Confidential Information of Client which is in the possession or under the control of Supplier. Compliance with this clause 7.4 does not release Supplier from its obligations under clause 7.

(b) The obligation under clause 7.4(a) does not apply to Confidential Information of Client that Supplier reasonably requires in order to perform any continuing obligations under the Agreement (provided that once completed such Confidential Information will be immediately returned to Client) or is required by law to retain.

### 7.5 **Information Security Controls**

Without limiting any other provisions of the Agreement, Supplier must comply with Client's reasonable requirements from time to time in relation to:

(a) appropriate Information Security Controls to protect Client Material and New Material;

(b) mechanisms for detecting, responding to, remediating, and the notification of Data Security Incidents; and

(c) assurance, testing, evaluations, reviews and audits of the Information Security Controls and mechanisms referred to in this clause 7.

### 7.6 **Privacy**

Without limiting any obligation under this clause 7, Supplier must:

- (a) comply, and assist Client to comply, with Privacy Laws and all other applicable privacy and data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information as if it were a person subject to and regulated by these laws;
- (b) comply with any privacy code, policy or terms which have been adopted by or are binding on Client as if it were directly bound by them;
- (c) comply with any reasonable directions of Client which are consistent with the laws, codes and policies referred to in this clause 7;
- (d) not collect or use any Personal Information other than for the purpose of performing its obligations under the Agreement;
- (e) collect, use and disclose Personal Information only in ways which ensure it remains under Client's effective control;
- (f) not disclose any Personal Information to any other person, or disclose, transfer any Personal Information obtained in connection with the Agreement outside Australia, or allow anyone outside Australia to have access to such information, without the prior written consent of Client;
- (g) return all Personal Information obtained in connection with the Agreement to Client (or destroy or de-identify all Personal Information as directed by Client) upon termination or expiry of the Agreement or when requested by Client;
- (h) not match or otherwise combine any Personal Information Supplier is provided with or accesses in connection with the Agreement with any other information from any source other than Client without Client's prior written consent;
- (i) promptly notify Client of any request made by an individual for access to or correction of any Personal Information and respond to such requests only in accordance with Client's reasonable directions;
- (j) take all reasonable steps within its power and authority to:
  - (1) protect against unauthorised access to, or loss or alteration of, any Personal Information in Supplier's possession or control, including complying with its other obligations under this clause 7; and
  - (2) ensure that it does not do or allow anything to be done which may identify or facilitate the identification of any individual whose identity has not been directly disclosed by Client as part of any Personal Information Supplier is provided with or accesses in connection with the Agreement (including through any form of re-identification of anonymised information); and
- (k) co-operate with Client and comply with Client's reasonable directions in the resolution of any complaint under, or relating to, any of the laws, codes and policies referred to in this clause 7.

#### 7.7 Data security

- (a) Client Material and New Material remains the property of Client at all times.
- (b) Supplier:
  - (1) must keep Client Material and New Material logically separate to data collected, stored or processed on behalf of any other third party; and
  - (2) must not, and must ensure that its Personnel do not:
    - (i) use Client Material or New Material for any purpose other than as strictly necessary for the performance of its obligations under the Agreement;

- (ii) sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Client Material or New Material;
- (iii) make any Client Material or New Material available to any other person (including any subcontractor) without the prior written consent of Client; and
- (iv) remove any Client Material or New Material from a Premises or Information Asset, transfer Client Material or New Material to any non-Client premises or systems, or store any Client Material or New Material on non-Client systems, without the prior written consent of Client. Any data emailed to Supplier or loaded into a Supplier location (e.g. share drive, portal) by a Client Representative will be deemed to have consent to use for the purpose intended to deliver requirements under the Services.

(c) Supplier must establish, maintain and enforce appropriate:

- (1) policies, procedures and standards; and
- (2) access controls, technical and organisational measures and safeguards,
  - to protect against unauthorised access to, or loss or alteration of, Client Material and New Material in Suppliers possession or control, which:
- (3) are consistent with those maintained by Client to secure that Client Material and New Material;
- (4) are no less rigorous than those implemented through generally accepted industry practice (including ISO27001 and PCI DSS compliance);
- (5) comply with all laws and Client security policies notified to Supplier from time to time applicable to Supplier's use and custody of Client Material and New Material; and
- (6) without limiting the foregoing, ensure Client Material and New Material is only accessible to those Personnel who require such access for the purpose of performing their assigned tasks in providing the Services.

#### 7.8 Data Security Incidents

- (a) Without limiting Supplier's obligations under this clause 7, Supplier must:
  - (1) immediately (and in any event within 24 hours) notify Client, including by email and give Client full details about any actual or suspected:
    - (i) misuse, interference or loss;
    - (ii) accidental or unauthorised access, use, modification, or disclosure;
    - (iii) weakness in any Information Security Control; or
    - (iv) data or system breach, including any breach of this clause 10 or other technology or information security incident,
      - involving any Client Material or New Material (**Data Security Incident**);
  - (2) keep Client updated about all known details relating to the Data Security Incident, including what Client Material and

New Material have been accessed or compromised, the nature of the Data Security Incident, whether the Data Security Incident has ceased or is ongoing, the location and cause of the Data Security Incident, and whether any data has been accessed, lost or corrupted;

(3) take immediate preventative action to stop the Data Security Incident (including where relevant by preventing access) and mitigate the effect of the Data Security Incident;

(4) retain all data critical to identifying the nature, extent and cause of the Data Security Incident and preserve all logs that detail access to and interactions with relevant Client Material and New Material;

(5) follow all directions from Client regarding the Data Security Incident; and

(6) co-operate with Client in any investigation or audit in respect of the Data Security Incident.

(b) Supplier:

(1) agrees that Client will be solely responsible for determining whether a Data Security Incident would be likely to result in serious harm to any of the individuals to whom any Personal Information the subject of the actual or suspected Data Security Incident relates;

(2) must comply with Client instructions to assist Client in making the determination referred to in this clause 7; and

(3) must not disclose to any third party (including the Information Commissioner as defined in the *Australian Information Commissioner Act 2010* (Cth)) the existence or circumstances surrounding any Data Security Incident, without the prior written consent of Client (such consent not to be unreasonably withheld or delayed).

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## **8. Standards & Directions**

(a) Supplier must perform the Services to a standard of skill, care and diligence expected of a skilled and competent contractor undertaking works similar to the Services and in accordance with all applicable standards, including those of Standards Australia NCC (National Construction Code) if applicable, and any other relevant industry standards, so that the Services, once complete, are fit for purpose.

(b) Any plant, equipment or materials supplied by Supplier must be of first-class quality and fit for the purpose for which they are supplied.

(c) The use of recycled or contaminated mulch, sand and/or materials is strictly prohibited at any of Client's Premises, and Supplier must use Certified mulch and Certified sand, if applicable.

(d) Supplier must comply with the directions of Client's Representative as to the standard of the Services, the hours of work, the period within which the work the subject of a direction is to be performed and any other matter or thing relating to the performance of the Services.

(e) Client's Representative is the agent of Client in all respects and does not act as an independent assessor, certifier or valuer.

(f) Client's Representative may carry out its functions under the Agreement in accordance with instructions given to it by Client (acting in its absolute discretion).

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## **9 Defective Goods and/or Services**

(a) If upon inspection during the Warranty Period, the Client identifies Defective Goods and/or Services, it may reject them by giving notice to the Supplier and, at its election:

(1) direct the Supplier to refund the Client any payments made by the Client in respect of any Defective Goods and/or Services that the Client rejects;

(2) direct the Supplier to make good free of charge the Defective Goods and/or Services; or

(3) make good the Defective Goods and/or Services itself and seek reimbursement from the Supplier for all costs and expenses incurred.

(b) The remedies provided in this clause do not exclude any other remedies provided by law.

(c) If the Supplier identifies Defective Goods and/or Services or carries out any product or safety recall or equivalent process in respect of any goods and/or services, it must promptly notify the Client in writing.

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## **10 Access & Induction**

### **10.1 Access**

(a) Subject to compliance with this clause 10, Client will provide Supplier and Personnel with reasonable access to such Premises and Client Material as are required for the purpose of allowing Supplier to perform its obligations under the Agreement, provided that Supplier must (and must procure that its Personnel) abide by the security and access procedures advised by Client from time to time.

(b) Client may revoke any Personnel's access to a Premises and Client Material at any time.

(c) Supplier will ensure that when Personnel attend a Child Care Centre, they comply with all reasonable directions of the Centre Manager or Client.

(d) Supplier will carry out in a reasonable way the clean up after the Services have been completed with the removal of any debris or rubbish, if applicable.

### **10.2 Inductions**

(a) Supplier acknowledges that Client may require all Personnel to be inducted prior to the arrival at the Premises and to understand each of Client's policies and procedures relevant to the completion of the Services which, where applicable, may include successful completion of a rapid induction course facilitated by Client.

(b) Inductions may be completed online and include a randomised competency assessment for each worker.

(c) The induction process shall require Personnel to hold a current valid Working With Children Check (also known as a Blue Card) or to provide evidence of an application for the same. Supplier will notify Client when a Personnel's valid Working With Children Check card has been cancelled or suspended.

(d) Supplier will be responsible for the reasonable costs of completing the induction process.

### 10.3 Non-solicitation

(a) During the Term and for a period of 12 months thereafter, neither party for its benefit or the benefit of another shall directly or indirectly solicit or retain the services of employees of the other party.

(b) In the event of a breach of the clauses 10.3(a), the party in breach shall pay to the other party an amount equal to 3 months revenue for that person at 16 days per month, where the revenue will be determined by multiplying the hourly or daily rate for that person by 48 days or 384 hours.

(c) This clause 10.3 shall not apply in the event where either party has provided prior written consent to soliciting or retain the services of its employee.

### 10.4 Investigations

(a) Supplier will:

(1) ensure that Personnel participate with any investigation carried out by or at the request of Client relating to any incident and/or claim that allegedly arises in the provision of the Services;

(2) upon request, immediately provide the names and details of all Personnel who were or should have been in the general vicinity of the incident or claim location; and

(3) upon request, immediately provide contact information including the latest or last known address and phone numbers of all Personnel and their supervisors, identifying which are current or former employees, agents and subcontractors.

### 10.5 Keys

(a) Any keys supplied to Supplier are only provided for the purpose of gaining entry to the Child Care Centre to enable Personnel to perform the Services.

(b) Supplier will ensure that the keys are not used for any other purpose and will not be reproduced or copied nor given to any other party without the express written consent of Client.

(c) If any key is lost or stolen from Supplier, Supplier must pay for any costs of rekeying the Child Care Centre or reproducing the keys.

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### 11 Childcare Procedures

Supplier must observe, and must ensure Personnel observe, the following childcare procedures when accessing an operational Premises during trading hours, if applicable:

(a) upon accessing the Premises, Supplier must sign-in and then present to the Centre Manager and make themselves known;

(b) all gates and exit/entry doors (including safety zone areas) must always be closed, locked and secure. When exiting the Premises through front doors and gates (including safety zone gates), Supplier must ensure that no children are following;

(c) at no times are any gates or doors to be pinned back or held open without a second centre staff spotting and supervising;

(d) if Supplier is temporarily exiting the Premises, Supplier is to alert centre staff so they can ensure children are moved away or taken inside away from any unlocked gate or exit point; and

(e) Supplier must ensure they sign-out and that the Centre Manager is aware they are leaving the Premises.

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### 12 Facilities, Equipment and Materials

Supplier must provide all facilities, equipment and materials necessary for the performance of the Services.

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### 13 Work Health & Safety

Supplier must, and must procure that all Personnel will:

(a) comply with all relevant obligations under any laws and other legal requirements relating to workplace health and/or safety (including regulations and codes of practice relating to dangerous goods, life cycle assessment, public health, occupational health and safety) (collectively, **WHS Requirements**);

(b) perform the Services under the Agreement in a manner that does not, and is not likely to, give rise to any risks to the health and safety of themselves or any other person;

(c) develop and implement all necessary safe systems of work and/or work health and safety policies and procedures in connection with the performance of the Services;

(d) receive appropriate training regarding health and safety matters relating to the performance of the Services;

(e) are provided with, trained in the correct use of, and correctly use, appropriate health and safety equipment in relation to the safe performance of the Services;

(f) without limiting the foregoing, have documented systems in place to identify, assess, manage and eliminate risks and hazards at the Premises, which satisfy all applicable WHS Requirements;

(g) ensure that, where work health and safety risks and hazards cannot be eliminated:

(1) the risks and hazards are adequately controlled in a way which satisfies all applicable WHS Requirements; and

(2) the assessment of such risks and hazards, and their associated control measures, are appropriately documented;

(h) promptly report to Client any health and safety risks or hazards identified in relation to the performance of the Services;

(i) promptly notify Client of any incidents which are notifiable under applicable WHS Requirements (including, without limitation, any injuries or near-misses); and

(j) promptly notify Client of any work health and safety investigations, notifications or inspections, issued by any work health and safety regulator or trade union.

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### 14 Liability & Indemnity

#### 14.1 Liability

Subject to this clause 14:

(a) otherwise than in respect of a material breach by Client of the Agreement, Client has no liability to Supplier in relation to any Claims under or in connection with the Agreement or its subject matter (other than the obligation to pay Fees);

(b) the aggregate liability of Supplier to Client for all Claims under or in connection with the Agreement or its subject matter is limited to the greater of:

(1) 3 times the total Fees paid and payable under the Agreement (where "payable" means amounts that have been paid and those amounts that have not been paid but which would



be payable if both parties were to continue to properly perform all of their respective obligations under the Agreement to the end of the Term, and is not limited to amounts that have become due and payable); and

(2) \$1 million.

#### 14.2 No limitation

Nothing in the Agreement operates to limit or exclude:

- (a) liability that cannot be limited or excluded by law;
- (b) Supplier's liability in respect of any of the indemnities in clauses 14.3(b) to 14.3(f) inclusive.

#### 14.3 Indemnity

Supplier indemnifies, will keep indemnified, will hold harmless and make good on demand Client and its Representatives against all losses, damages, liabilities, Claims and expenses (including reasonable legal costs) (**Loss**) whether or not actual or contingent incurred by Client and its Representatives, arising out of or in connection with:

- (a) any breach of the Agreement by Supplier or Personnel;
- (b) any fraud, wilful misconduct or unlawful actor omission by Supplier or Personnel;
- (c) any death or injury to persons, and any loss or damage to the real or personal property of Client or a third party caused or contributed to by any act or omission of Supplier or Personnel;
- (d) any breach of confidentiality or Intellectual Property Rights by Supplier or Personnel;
- (e) a breach of any of the warranties under the Agreement by Supplier or Personnel; and
- (f) defending any Claims against Client or any of its Representatives in connection with any injury or disability suffered by any Personnel in the performance of the Services, where such Claim is not upheld by a court of competent jurisdiction.

#### 14.4 Contribution

Any amount claimed by Client pursuant to the indemnity in this clause 14 will be reduced proportionately to the extent the Loss is directly caused by the gross negligence or wilful default of Client or its Representatives.

#### 14.5 Exclusion of consequential loss

Supplier will not, in any circumstances, be liable to Client for any Loss which may fairly and reasonably be considered not to arise naturally, directly or in the ordinary course of events from the breach of the Agreement or other wrongful act or omission giving rise to the relevant liability. Nothing in this clause 14 precludes the recovery of any Loss incurred by Client in relation to any of the following (which, for the avoidance of doubt, the parties agree are direct losses):

- (a) intentional wrongful acts or omissions or wilful default by Supplier or Personnel; and
- (b) any fines or penalties imposed on or incurred by Client resulting from any breach of law or regulation by Supplier or Personnel.

#### 14.6 General applicability of limitations and exclusions

The limitations and exclusions of the liability set out in the Agreement apply regardless of where such liability arises and regardless of the basis on which such liability arises, whether such basis is in contract, breach

of statutory duty, laws, tort (including negligence), in equity or under statute.

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### 15 Insurances

(a) Supplier must maintain, to the satisfaction of Client, and at Supplier's own cost, comprehensive insurance policies in relation to any liability arising out of the Agreement and ensure that its subcontractors (if any) have sufficient insurance for the services they will perform in relation to the Agreement, including:

- (1) workers compensation insurance as required by law;
- (2) professional indemnity insurance for no less than \$5 million per claim and \$10 million in the aggregate;
- (3) public and products liability insurance for no less than \$20 million per claim;
- (4) Cyber (Network Security & Privacy Liability) insurance of no less than \$5 million in the aggregate; and
- (5) any other insurance(s) specified in the Specification or Statement of Work, as applicable.

(b) If a policy is a "claims made" or "claims made and notified" policy, Supplier must maintain that policy or a "run off" policy satisfactory to Client for a period of 3 years after the termination or expiry of the Agreement.

(c) Supplier must provide to Client written evidence of such insurances (including certificates of currency of insurance from the insurer) within 10 Business Days of request.

(d) Supplier must not do or omit to do any action that invalidates or adversely affects, or that may invalidate or adversely affect, any of the insurance policies referred to in this clause 15.

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### 16 GST & Withholding Tax

(a) Unless expressly stated otherwise in the Agreement, all amounts payable under Agreement are exclusive of GST.

(b) If GST is payable on any supply made under the Agreement, for which the consideration is not expressly stated to include GST, Client agrees to pay to Supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided, however:

- (1) Client need not pay the additional amount until Supplier gives Client a valid tax invoice or an adjustment note;
- (2) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and Client or Supplier (as the case may be) must make any payments necessary to reflect the adjustment;
- (3) this clause 15(b) does not apply to the extent that the GST on the supply is payable by Client under Division 84 of the GST Act; and
- (4) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

(c) If a party is required under the Agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 16(b) will apply to the reduced payment.

(d) If an amount payable under the Agreement is to be calculated by reference to:

(1) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and

(2) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

(e) If a law requires Client to deduct an amount in respect of taxes from a payment under the Agreement, then:

(1) Client agrees to deduct the amount for the taxes; and

(2) Client agrees to pay an amount equal to the amount deducted to the relevant Government Agency in accordance with the applicable law and give copies of receipts to Supplier.

(f) Supplier acknowledges that Client is not required to pay an additional amount to Supplier so that, after the deduction is made, Supplier would receive a net sum equal to the sum that it would have received if the deduction had not been made.

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## 17 Subcontractors

(a) Supplier shall be entitled to engage one or more subcontracts for the performance of all or any part of the Services.

(b) If Supplier subcontracts any Services to a subcontractor:

(1) Supplier is solely responsible for all acts and omissions of its subcontractors as if they were those of Supplier and Client's consent to any subcontract does not relieve Supplier from any liability or obligations under the Agreement and subcontractors will be deemed to be Personnel;

(2) Supplier will ensure that its subcontractors comply with all relevant terms of the Agreement;

(3) Supplier must ensure that any work undertaken by the subcontractor is undertaken to the same standard as required by the Agreement;

(4) to the extent that the terms of the subcontract stipulate a higher standard for any of the Services than the standards set out in the Agreement (including as to timing or quality), then Supplier must ensure that any Services supplied by the relevant subcontractor are supplied to that higher standard; and

(5) Client may at any time instruct Supplier not to employ or engage a person in the provision of the Services. Client must act reasonably in relying upon this clause 17(b)(5) and Supplier must promptly remove such Personnel from the provision of the Services and provide a replacement satisfactory to Client.

(c) Supplier warrants that it, all subcontractors and Personnel:

(1) hold all applicable insurances and industry qualifications necessary or desirable to enable them to provide the Services in accordance with the Agreement; and

(2) have received all necessary or desirable training required to provide the Services to relevant industry standards.

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## 18 Dispute Resolution

(a) If there is any dispute, claim, controversy or an assertion of a right, claim or demand by one party, met by contrary claims or allegations by the other party (**Dispute**) concerning the Agreement, the parties will attempt to resolve any such Dispute by the dispute resolution process set out in this clause 18 before resorting to alternatives, including litigation.

(b) Both parties agree not to start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has complied with this clause 18.

(c) A party claiming that a Dispute has arisen must notify the other party in writing, giving details of the Dispute (**Dispute Notice**).

(d) During the 10 Business Day period after a Dispute Notice is issued (or longer period if agreed between the parties) (**Dispute Initial Period**) each party to the Dispute must use its reasonable commercial endeavours to resolve the Dispute.

(e) If the parties are unable to resolve the Dispute within the Dispute Initial Period, each party to the Dispute agrees that the Dispute may, within 7 Business Days, be referred by mutual agreement to mediation in accordance with the mediation rules of the Queensland Law Society.

(f) The Parties acknowledge and agree that:

(1) the role of the mediator is to assist in negotiating a resolution to the Dispute and the mediator may not make a decision which is binding unless both parties have so agreed in writing;

(2) the mediator may fix the charges for the mediation which must be paid equally by the parties;

(3) the mediator is not bound by the rules of natural justice and may discuss the Dispute with a party in the absence of any other party and

(4) any information or documents disclosed by a party during a Dispute must be kept confidential and may not be used except to attempt to resolve the Dispute.

(g) If the Dispute is settled by way of the above mediation process, the parties must sign a settlement agreement and those terms are binding on the parties.

(h) If mutual agreement is not reached following mediation or the period in clause 18(e) has expired, either party may:

(1) commence court proceedings;

(2) exercise its rights under the Agreement.

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## 19 Compliance Audits

(a) Supplier must, if requested, provide Client with the following reports within 30 days of the end of the immediately preceding calendar month (for the month immediately prior) or such other frequency as Client may reasonably require to be sent via email to the designated email address notified by Client from time to time:

(1) monthly cost breakdown of the Services provided during that period;

(2) monthly cost breakdown of disbursements relating to the Services provided during that period; and

(3) any other reports specified in the Specification or Statement of Work, as applicable,

with the content and format of such reports to be specified by Client (acting reasonably).

(b) This clause 19 will not apply where details outlined are provided with an invoice.

(c) Supplier must:

(1) keep records in relation to the provision of, and payments made in connection with, the Services in sufficient detail to enable Client to examine Supplier's compliance with its

obligations under the Agreement and must permit Client (or its Representatives) to inspect and copy such records; and

(2) provide Client (or its Representatives) with reasonable and appropriate documentation to determine that the Services are being performed in accordance with the Agreement.

(d) Client may audit Supplier for compliance with the Agreement by giving Supplier at least 10 Business Days' prior notice. If Client gives Supplier notice of an audit, Supplier must provide all reasonable assistance to Client and its Representatives in connection with the audit, including all documentation, logs, materials and other information (including information in electronic form) relating to Supplier's performance of its obligations under the Agreement, and (where applicable) the Personnel.

(e) Client may retain copies of records or information gathered during the audit to the extent they relate to provision of the Services.

(f) All reasonable costs relating to the compliance audit will be paid by Client including costs for the reproduction of documentation and any time spent by Personnel in excess of 8 hours.

(g) Supplier must permit all relevant Regulatory Authorities access to its premises and all documents, records, reports and other information relating to the Agreement and the Services.

(h) If requested by a Regulatory Authority or Client, Supplier must permit the Regulatory Authority to conduct an audit of Supplier. Supplier must provide all reasonable assistance to the Regulatory Authority in connection with the audit.

(i) All costs relating to the Regulatory Authority audit will be paid by Client including reasonable costs for the reproduction of documentation and any reasonable time spent by Personnel in excess of 8 hours, except costs caused or contributed to by Supplier due to non-compliance.

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## **20 Anti-bribery Anti-corruption & Modern Slavery**

(a) The parties warrant and represent that:

(1) the conduct of each party and its Representatives in connection with the negotiation of and entry into the Agreement does not infringe any applicable laws and regulations relating to bribery, corruption or prohibited business practices;

(2) in performing its obligations under the Agreement, each party and its Representatives will comply with all applicable laws, statutes and regulations in force from time to time in the countries in which it operates relating to:

(i) bribery, corruption and prohibited business practices (including the *Criminal Code Act 1995* (Cth) and the *Criminal Code Act 1899* (Qld)); and

(ii) slavery and human trafficking (including the *Modern Slavery Act 2018* (Cth)); and

(3) neither parties nor any of its Representatives or other persons associated with it, including the Personnel:

(i) has been convicted of any offence involving bribery, corruption, prohibited business practices, slavery or human trafficking;

(ii) having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any

investigation, inquiry or enforcement proceedings by any Regulatory Authority or Government Agency regarding any offence or alleged offence of or in connection with bribery, corruption, prohibited business practices, slavery or human trafficking: or

(iii) has, in the period of 5 years prior to the Commencement Date, received a notice to terminate any contract to which it is partly in relation to matters addressed in this clause 20.

(b) Supplier must:

(1) take reasonable steps to ensure that there is no bribery, corruption, prohibited business practices, slavery or human trafficking in Supplier's or its subcontractors' supply chains or in any part of their business, including by implementing appropriate due diligence procedures for its suppliers, subcontractors and other participants; and

(2) respond promptly to all due diligence questions and requests for information issued to it by Client from time to time and ensure that its responses to all such questions and requests are complete and accurate.

(c) Without limiting any other rights or remedies of the parties, if either party breaches any of the warranties in clause 20(a) or Supplier fails to comply with any of its obligations under clause 20(b):

(1) the breaching party must comply with any reasonable directions or instructions regarding the remediation of the breach (including directions or instructions with respect to the timing of any remedial actions);

(2) the breaching party must submit a plan detailing how they will comply with such provisions and all applicable laws and regulations (including through education of Representatives and changes to business processes) and comply with that plan; or

(3) the other party may immediately terminate the Agreement with immediate effect by notice to the breaching party.

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## **21 Force Majeure**

(a) A party affected by a Force Majeure Event will not have any liability under, or be deemed to be in breach of, the Agreement for any delays or failures in performance of the Agreement which result from that Force Majeure Event, provided that the party affected by that Force Majeure Event promptly notifies the other party in writing:

(1) when such circumstances cause a delay or failure in performance; and

(2) when they cease to do so.

(b) If a Force Majeure Event causes a delay or failure in performance of the Agreement by a party for a continuous period of more than 30 days, either party may terminate the Agreement by written notice to the other party.

(c) Client is not obliged to pay for any amounts related to any Services not received during a Force Majeure Event.

(d) Without limiting Client's rights to procure the Services from another person during any period in which Supplier is not supplying Services because of a claimed Force Majeure Event, Client may (but need not) make alternative arrangements for the supply of those Services, whether by another person or otherwise, without incurring any

liability to Supplier.

(e) If a Force Majeure Event causes Supplier to allocate limited resources between or among its other customers, Supplier must not place Client lower in priority to any other similarly affected customer of Supplier.

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## **22 Notices**

(a) Notices, demands, certificates, consents, approvals, waivers and other communications in connection with the Agreement (**Notices**) must be in writing and signed by the sender, which shall be deemed to include email. They must be delivered by hand or sent to the address of the party referred to in the Agreement and marked for the attention of their Nominated Representative (or to the changed contact details notified from time to time).

(b) All Notices delivered or sent under the Agreement take effect from the time they are received or are deemed received:

- (1) at the time of delivery, if delivered by hand;
- (2) 3 days after posting, if sent by post; or
- (3) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed, whichever happens first.

(c) If a communication is given:

- (1) after 5.00 pm in the place of receipt; or
- (2) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

(d) Any process or other document relating to litigation, administrative or arbitral proceedings relating to the Agreement may be served by any method contemplated by this clause 26 or in accordance with any applicable laws.

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## **23 General**

### **23.1 Announcements**

(a) Subject to clause 23.1(b), party may not issue or make any public announcement or disclosure regarding the Agreement or the Services unless, before that public announcement or disclosure, it:

- (1) gives the other party a copy of the proposed announcement or disclosure; and
- (2) obtains the other party's written approval to the proposed announcement or disclosure.

(b) No party is prohibited from issuing or making any such public announcement or disclosure if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

### **23.2 Costs**

Except as expressly stated otherwise in the Agreement, the parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of the Agreement and other

related documentation, except for stamp duty (if applicable) which will be paid by Supplier.

### **23.3 Amendment**

(a) Subject to clause 23.3(b) the Agreement may only be varied or replaced by a document executed by both parties.

(b) Client may, by providing 30 days prior written notification to Supplier, unilaterally amend the list of Child Care Centres in the Agreement, if applicable, by:

- (1) adding a centre, or multiple centres as the case may be, as a result of an acquisition, merger or other such means;
- (2) removing a centre, or multiple centres as the case may be, as a result of a divestment, closure or other such means;
- (3) removing a centre, or multiple centres as the case may be, because it no longer requires the Services; and
- (4) reducing the frequency of the Service.

### **23.4 Waiver**

(a) No failure or delay by a party in exercising any right, power or privilege under the Agreement will impair the same or operate as a waiver of the same.

(b) No single or partial exercise of any right, power or privilege precludes any further exercise of the same or the exercise of any other right, power or privilege.

### **23.5 Exercising rights**

(a) The rights and remedies of a party under the Agreement are cumulative and are in addition to any other rights and remedies of that party provided by law independently of the Agreement.

(b) If a party does not exercise a right or remedy fully or at a given time, then the party may still exercise it later.

(c) Unless the Agreement expressly states otherwise, party may exercise a right or remedy, elect different courses of action, or give or refuse its consent in any way it considers appropriate (including by imposing conditions).

(d) By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

### **23.6 Further assurance**

Supplier must, at the request and expense of Client, execute and do any actions and other things reasonably necessary to give full effect to the provisions of the Agreement.

### **23.7 Governing law and jurisdiction**

(a) The Agreement is governed by and construed in accordance with the laws of Queensland.

(b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Brisbane courts and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

### **23.8 Consumer Law**

(a) Nothing in the Agreement is intended to have the effect of contracting out of any applicable provisions of the Consumer Law except to the extent permitted by legislation, where applicable.

(b) Where Client buys goods, materials and services, or undertakes works as a consumer, the relevant terms of supply shall be subject to the Consumers Laws.

(c) Supplier acknowledges and agrees that Client's rights under the Agreement will only be exercised to the extent reasonably necessary to protect Client's legitimate business interests and not for a purpose ulterior to which the right is conferred by the relevant provision of the Agreement.

### **23.9 Assignment**

(a) Subject to clause 23.9(b) a party will not assign, transfer, novate, encumber or otherwise deal with all or part of its rights or obligations under the Agreement without the other party's prior written consent.

(b) Supplier consents to Client assigning, transferring or novating its rights and obligations under the Agreement by notice to Supplier without any further consent being required from Supplier and Supplier must sign any documents (such as a deed of novation) and do all things as may be necessary to give effect to the assignment, transfer or novation.

(c) Any purported assignment, transfer, novation or other dealing with the rights under the Agreement that does not comply with this clause 23.9 is void and has no effect and is a material breach of the Agreement.

### **23.10 No liability for loss**

(a) An obligation of two or more persons binds them jointly and severally, unless the Agreement expressly provides otherwise.

(b) A party is not liable for loss caused by exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under the Agreement.

### **23.11 Counterparts**

(a) The Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

(b) A party may execute the Agreement or any counterpart and exchange it by fax or as an electronic copy by email.

### **23.12 Signing in more than one capacity**

If a party to the Agreement is a party in more than one capacity, the proper execution of this document once binds that party in each of its capacities.

### **23.13 Entire understanding**

(a) The Agreement contains the entire understanding between the parties as to the subject matter of the Agreement.

(b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of the Agreement are superseded by the Agreement and are of no effect. No party is liable to any other party in respect of those matters.

(c) No oral explanation or information provided by any party to another:

- (1) affects the meaning or interpretation of the Agreement; or
- (2) constitutes any collateral Agreement, warranty or understanding between the parties.

### **23.14 Survival**

(a) Each indemnity in the Agreement is a continuing obligation which survives termination of the Agreement and is separate and independent from the other obligations of the parties.

(b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Agreement.

(c) Supplier's obligations which by their nature are intended to survive termination or expiry of the Agreement, survive termination or expiry of the Agreement.

### **23.15 Continuing rights and obligations**

All rights and obligations of a party which have not been exercised or performed at termination of the Agreement are not extinguished or affected by termination, unless those rights or obligations are specifically waived or released in writing by a document signed by all parties.

### **23.16 Prompt performance**

If the Agreement specifies when the party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

### **23.17 Severability**

If the whole or any part of a provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceability or unreasonable in a jurisdiction, it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable for that jurisdiction and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect. This clause 23.17 has no effect if the severance alters the basic nature of the Agreement.

### **23.18 No relationship between the parties**

(a) Nothing contained or implied in the Agreement makes a party the partner, agent, employee or legal representative of another party for any purpose or creates any partnership, joint venture, agency or trust.

(b) Unless authorised in writing by Client, Supplier is an independent contractor and must not and does not have authority to, and must ensure that none of its Personnel at any time:

- (1) hold themselves out as having authority to bind Client or as being an agent, employee, partner or legal representative of Client; and
- (2) in any way pledge or purport to pledge the credit of Client, incur any liability on behalf of Client or accept any offer or make any contract purporting to bind Client.

(c) All actions and responsibilities undertaken by Supplier under the Agreement shall be undertaken in the name of Supplier and not in the name of Client.

### **23.19 Electronic execution**

The Agreement may be executed by any and all parties by way of electronic signature, and if so, must be considered an original. The Agreement may be executed by email and the parties agree that such scanned execution and email delivery must have the same force and effect as delivery of an original document with original signatures, and

that each party may use such scanned signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent that an original signature could be used.

### **23.20 Termination for Convenience**

Notwithstanding any other provision of the Agreement, Client may terminate the Agreement at any time by providing at least 30 days' prior written notice to the Supplier, provided that Client must pay to Supplier any Fees due and payable by Client in respect of any period prior to termination.

### **23.21 Attorneys**

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any factor circumstance that might affect his or her authority to do so under that power of attorney.