

## Do not delete pages 4 to 9

### 1. Access to the School

**1.1 Performance** The Contractor will carry out the Services at the School according to this Agreement (and any schedules to this Agreement). The Contractor must provide the Services:

- in accordance with all applicable laws and regulatory requirements, relevant Australian industry standards, best practice and guidelines and all licences and consents;
- with due care, skill and diligence and in a proper and professional manner.

**1.2 Induction** The Contractor must not provide any Services until the Contractor and its personnel have completed an induction program. The School will notify the Contractor of details of the induction program.

**1.3 Child protection training** The Contractor must not provide any Services until the Contractor and its personnel have completed the Department's Mandatory Child Protection Training online, or a suitable alternative training program delivered by the Contractor for its staff (*see Attachment A*).

**1.4 Health-related training** Where required by the Department or the School, the Contractor and its personnel are to complete relevant health care training specific to a student's health care needs, including the ASCIA Schools and Childcare Anaphylaxis e-training (*see Attachment A*). Evidence of this training must be provided to the School prior to providing any Services at the School.

**1.5 Provider attendance costs** The Department or the School will not be liable

for provider costs associated with meetings to discuss service delivery arrangements and School induction.

**1.6 Duration and ending** This Agreement commences on the date that it is signed by both parties and continues for the duration set out on the cover page, unless ended earlier or extended.

**1.7 Obligations on School site** While on the School site, the Contractor will:

- 1.7.1 not bring upon the School site or permit to be done any act, matter or thing which may be a nuisance or inconvenience or cause damage or annoyance at the School;
- 1.7.2 not bring upon the School site or permit to be done any act, matter or thing which may breach any law or requirement of any competent authority for the time being in force with regard to the conduct of the Services from the Premises;
- 1.7.3 ensure that no part of the School is damaged or services interrupted because of their acts or omissions including in their conduct of the Services, and rectify (at their expense) any such damage;
- 1.7.4 ensure it does not leave any rubbish at the School that is not properly disposed;
- 1.7.5 take reasonable steps to report any unruly behaviour by any person which may cause damage to any person or property, provided in its reasonable opinion it is safe to do so;
- 1.7.6 ensure that they do not access parts of the School except for the

areas necessary to carry out the Services and as agreed with the School;

- 1.7.7 park any motor vehicle at the School entirely at its own risk and only with the prior permission of the School Principal;
- 1.7.8 not attend the School on a scheduled day if the School, in its discretion, advises that its attendance on that day is dangerous or not in the best interests of the School;
- 1.7.9 not attend the School on any day that the School is closed for any reason; and
- 1.7.10 comply with any reasonable Departmental and School direction including those in relation to Health and Safety and COVID-19.

## **2. Fee, use of facilities and costs**

### **2.1 Fee and use of facilities**

In consideration of this Agreement, the Contractor shall pay the Department the fee set out in the table on the first page of this Agreement. The School will not charge for the use of the School's facilities, unless otherwise agreed in writing.

### **2.2 Cost recovery for extraordinary costs**

If circumstances arise that generate costs that the Department or School reasonably believe were not contemplated, then the School will provide the Contractor with written notice of such costs. The parties will then, in good faith, meet to determine the allocation of these costs between the parties.

## **3. Conflict**

The Contractor warrants that to the best of its knowledge, information and belief, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

If an actual, perceived or potential conflict arises, the Contractor will immediately notify the School Principal, in writing, fully detailing the conflict. The School will then determine how to deal with the conflict.

## **4. Child protection**

The Contractor acknowledges that it (and its personnel) are aware of the requirements of the *Child Protection (Working with Children) Act 2012* (NSW) and all related laws concerning child protection (**Child Protection Laws**). The Contractor will ensure that it (and its personnel) comply with the requirements of the Child Protection Laws and policies of the Department relating to child protection as notified to the Contractor from time to time.

The Contractor must, at the Contractor's expense, certify that the Contractor and the Contractor's personnel are not a prohibited person under any Child Protection Laws and undergo any other screening, such as the 'Working with Children Check', as required under Child Protection Laws or by the School or Department. Any of the Contractor's personnel that is a disqualified person under any Child Protection Laws must not be engaged in child-related work.

The Contractor is to immediately advise the Department if it becomes aware that it (or its personnel) are the subject of a reportable allegation involving children.

## **5. Sharing of information**

The Contractor (and its personnel) must immediately notify the School of any matters it becomes aware of which may impact the welfare or safety of a student. Such notification must be given to a person at the School in a position to take appropriate action, such as the Principal. The Contractor must then take reasonable steps to follow up and ensure that appropriate action is being considered or taken by the School.

The Contractor must also immediately notify the Department's Probity Unit via email at [NTBE@det.nsw.edu.au](mailto:NTBE@det.nsw.edu.au) if they receive advice from the Office of the Children's Guardian that a person in their employ has had their Working With Children Check (WWCC) clearance CLOSED, CANCELLED or BARRED.

In making the above notifications, the Contractor (and its personnel) must comply with the requirements of a 'prescribed body' as set out in chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* and its regulations.

The Contractor (and its personnel) must provide to the School information relating to, or to assist with, investigations into alleged breaches of the Code of Conduct or reportable conduct allegations.

## **6. Important notifications concerning serious criminal offences**

The Contractor must immediately notify the School and the Department's Probity Unit ([NTBE@det.nsw.edu.au](mailto:NTBE@det.nsw.edu.au)) of any charges or allegations including pending court proceedings related to sexual offences and serious criminal offences in Australia or overseas as listed in Schedule

2 of the *Child Protection (Working with Children) Act 2012* concerning the Contractor or personnel.

A 'serious criminal offence' means any offence punishable by imprisonment of more than 6 months.

## **7. Ending**

**7.1 School's default** The Contractor may end this Agreement if the Department breaches any of its obligations under this Agreement. If the breach is capable of remedy the Contractor must first give the Department 30 days to remedy the breach after it asks it to do so.

**7.2 Department may end on notice for any or no reason** The Department may end or suspend, in whole or in part, this Agreement at any time for any or no reason by notice in writing to the Contractor. If the School exercises its right under this clause, the Contractor is entitled to a total amount of compensation in the amount of \$1 (one dollar) if demanded, as a result of or in relation to such termination or suspension.

## **8. Indemnity**

8.1 The Contractor indemnifies the Minister for Education and Early Learning and the State of New South Wales (including their officers and employees) against all claims, losses, liabilities, damages, costs and expenses of any kind suffered or incurred relating to:

- personal injury or death or property loss or damage arising out of or in connection with the Services; and
- personal injury or death or property loss or damage within or outside the School occasioned or contributed to by

- an act or omission by the Contractor;
- and
- o the Contractor's (including its officers, employees, contractors and agents) negligent, unlawful or wilful act or omission.

The Contractor's liability under this indemnity will be reduced to the extent the Department contributed to the claims, losses, liabilities, damages, costs and expenses.

## 9. Insurances

9.1 The Contractor will take out and maintain for the duration of this Agreement:

1. **workers compensation insurance or equivalent:** workers compensation insurance as required under laws or, in the event the Contractor is an individual or sole trader, personal accident or such other similar insurance that will provide adequate cover in the event they are injured when providing the service;
2. **public liability insurance:** a public liability insurance policy providing cover for not less than \$20 million for any one occurrence; and
3. **professional indemnity insurance:** a professional indemnity insurance policy for not less than \$2 million.

9.2 The Contractor will provide to the School or Department, where appropriate, evidence of currency of all insurances. Despite any review or acceptance by the Department of a certificate of currency or other document purporting to evidence the terms or currency of an insurance policy required by this Agreement, the Contractor remains at all times responsible for

complying, and must comply strictly, with the insurance provisions of this Agreement.

## 10. Student and School information

The Contractor (and its personnel) may receive, in connection with this Agreement, confidential and sensitive information relating to students (and their families) and the School. The Contractor must keep such information confidential and not disclose it to anyone else without the School's written approval.

The Contractor must:

1. put together and maintain effective security measures to keep the information secure; and
2. tell the School immediately on finding out about any suspected or actual unauthorised use or disclosure of such information.

## 11. Policies

The Contractor must ensure that it and its personnel comply with all of the Department's and School's policies that are given or referred to the Contractor by the School from time to time. This will include policies relating to conduct (including the Code of Conduct), security and safety, including those policies, procedures and guidelines referred to in Attachment A.

## 12. Record keeping

The Contractor must, including as required by laws and regulatory requirements, keep detailed service records and other information relevant to the services. The Contractor must keep such records until 6 years from ending of this Agreement.

The Contractor must provide to the School copies of all records relating to the

Services as and when requested by the School.

### **13. Privacy**

The Contractor (and its personnel) may receive Personal Information (as defined in the *Privacy Act 1988 (Cth)*) and the *Privacy and Personal Information Protection Act 1998 (NSW)* from the School. The Contractor must comply, in respect of such Personal Information, with the:

1. Australian Privacy Principles under the *Privacy Act 1988 (Cth)*; and
2. principles under the *Privacy and Personal Information Protection Act 1998 (NSW)* – as if it is a ‘public sector agency’.

### **14. Publicity and use of name**

The Contractor must not disclose, distribute or otherwise communicate any media release, promotional material, advertising or publicity relating to this Agreement, their relationship or otherwise refer to the Department including the School (including use of any logos) without the School’s written approval.

### **15. Contractor is a government entity**

If the Contractor is a NSW government department or agency or entity, then the following clauses will not apply:

- clause [8](#) (Indemnity)
- clause [9](#) (Insurance); and
- clause [17](#) (Disputes).

### **16. Subcontracting**

The Contractor must not subcontract any work under this Agreement in whole or part without the School’s written consent.

## **17. Complaints, grievances and dispute resolution**

**17.1 Notification of complaints** The Contractor must, in the first instance, inform the School principal on becoming aware of any issue, complaint, conflict or grievance about the Contractor, the School (including its staff and students) or any school operational matters or in connection with the Contractor’s services.

The Contractor must work with the School principal to understand the School’s and the Department’s procedures for managing such incidents.

**17.2 Department procedures** Such issues, complaints, conflicts or grievances will be dealt with by the School principal, in consultation with the Contractor, in line with the Department’s complaints policy/procedures. To be clear, the Contractor must consult with the School principal and comply with the School principal’s reasonable directions before any issue, complaint, conflict or grievance is referred to anyone else.

**17.3 Child protection related complaints** Such complaints will be dealt with in line with the Department’s ‘Responding to Allegations Against Employees in the Area of Child Protection Policy’.

**17.4 Disputes** The parties must settle any dispute arising out of this Agreement, except where urgent relief is required, as follows:

1. a party claiming that a dispute has arisen must give a written notice to each other party giving details of the dispute;

2. after a written dispute notice has been sent the matter will be referred to each party's senior officers who will attempt to resolve the dispute in good faith.

## **18. General**

**18.1 Additional Terms** The main terms and conditions of this Agreement will take priority to the extent of any inconsistency with the Additional Terms.

**18.2 Notices** A notice or communication has no effect unless it is in writing and sent by email, post or delivered to the addressee.

Each party's address and email details are on page 2. A party can change its details by giving notice of it to the other party.

A notice is received: if sent by email at the time the email is sent if there is no delivery failure report; if sent by post 3 business days after posting; or if delivered when it is left at the address.

**18.3 Approvals** A party may give or not give an approval or consent in its absolute discretion (without reasons), unless stated otherwise.

**18.4 Entire understanding** This Agreement is the entire Agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior Agreement or understanding.

**18.5 Survival** Clauses, [2](#), [5](#), [8](#), [10](#), [12](#), [13](#), [14](#), [17](#), [18](#) and [19](#) survive the end of this Agreement.

**18.6 Severable** If any clause of this Agreement is illegal or unenforceable it is to be severed. The rest of this Agreement will not be affected.

**18.7 Waiver** If a party has a right arising from the other's failure, the delay in exercising that right does not waive any rights.

**18.8 Change** Any change to this Agreement is only effective if in writing.

**18.9 Assignment** The Contractor must not assign any of its rights or obligations without the School's written consent which may be given or withheld at its absolute discretion.

**18.10 Governing Law and Jurisdiction** The law of NSW Australia governs this Agreement. The parties submit to the exclusive jurisdiction of its courts.

**18.11 Exclusion of statutes** The covenants implied into licences by legislation are excluded.

**18.12 Electronic execution** Both parties agree that this Agreement may be electronically executed via a suitable application, and that any electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

## **19. Interpretation**

In this Agreement, unless the contrary intention appears:

1. the words include, including, for example or such as when introducing an example, do not limit the meaning of the words to which the example relates to the example or examples of a similar kind;
2. a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for drafting it or this Agreement.

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## ATTACHMENT A

# DEPARTMENT OF EDUCATION POLICIES, GUIDELINES AND TRAINING REQUIREMENTS

### 3. Laws, regulations and policies

#### *Applicable policies and guidelines*

The Contractor and its personnel must comply with all laws, regulations and any Department policies, access requirements and restrictions, and guidelines (that the School makes it aware of) including the following policies and guidelines:

- [Code of Conduct Policy and Procedures](#)
- [Working with Children Check Policy](#)
- [Child Protection Policy: Responding to and reporting students at risk of harm](#)
- [Child Protection: Allegations against Employees](#)
- [Responding to Allegations against Employees in the Area of Child Protection](#)
- [Complaints Handling Guidelines](#)
- [Controversial Issues in Schools Policy and Procedures](#)
- [Externally funded service providers delivering health, disability and wellbeing services to students: Information for providers and provider checklist](#)
- [Restrictive Practices Reduction and Elimination Policy – under review, subject to change](#)

#### *Restrictive practices in NSW public schools and government preschools*

The department introduced a restrictive practice reduction and elimination policy in January 2023 for staged implementation. The policy applies to all department staff, including all contractors, consultants, volunteers and visitors working with the department, including in government preschools. In April 2023, the Secretary announced an extension to the implementation timeframe, policy on the use of Restrictive Practices will now become in force from Day 1, Term 1, 2025.

The Department has adapted the definitions of “restrictive practice” that apply to registered providers under the National Disability Insurance Scheme (NDIS), so they make sense in a school context and provide clear guidance to school-based staff on the requirements for planning and using these practices safely in schools.

This means that in a school context, there are some practices that the Department has categorised as a restrictive practice, when other settings do not. This is about protecting students and staff so that these types of practices are used safely and effectively, and as

they have been recommended or prescribed. Contractors must understand the Department's definitions of restrictive practice so they can support students and school-based staff as needed, in line with the requirements set out in the policy.

## 2. Training

### *Child Protection Training*

The Contractor and its personnel must complete, on an annual basis, the Department's [Mandatory Child Protection Training](#) online (via MyPL), or a suitable alternative child protection training program delivered by the Contractor for its staff. Prior to the commencement of any services at the school, the Contractor's personnel who are engaged to provide services at the school will be required to provide the school with a copy of the certificate that is awarded upon completion of the Department's Mandatory Child Protection Training.

Where the Contractor delivers its own child protection training, the Contractor warrants, by signing this Agreement, that this training covers the following content:

- child protection mandatory reporting and professional conduct legal responsibilities
- recognising child abuse and neglect indicators
- understanding reporting processes for suspected risk of significant harm
- acceptable and unacceptable practice in:
  - care and discipline of children
  - provider – child relationships
  - interactions with children with identified needs.

A Contractor approved to deliver services under the [Specialist Allied Health Service Provider Scheme](#) (the Scheme), will have met the child protection training requirement as part of the Contractor's qualification to the Scheme. The school is not required to obtain evidence of this training for a Contractor approved under the Scheme.

### *Health Care Related Training*

Where required by the school, the Contractor and its personnel may need to complete the [ASCIA Schools and Childcare Anaphylaxis e-training](#) or any other relevant health care related training specific to a student's health care needs, and reflecting the nature of the service being provided and the degree of supervision of the provider's activities at the school.