

**LICENCE AND SERVICES AGREEMENT**

**BETWEEN**

**MINISTER FOR EDUCATION AND CHILD DEVELOPMENT**

**AND**

**[RELEVANT SCHOOL] GOVERNING COUNCIL**

**AND**

**INSERT OSHC PROVIDER'S NAME**

**ACN/ABN [INSERT NUMBER]**

This agreement is a DRAFT provided only for the purposes of furthering negotiations between the parties. The Crown in right of the State of South Australia will not be legally bound unless and until an agreement is formally executed by the parties. Any actions taken in anticipation of such formal execution is at the risk of the person taking them.

## TABLE OF CONTENTS

1.	ACCURACY OF BACKGROUND .....	1
2.	DEFINITIONS AND INTERPRETATION.....	2
3.	ADMINISTRATION OF AGREEMENT.....	5
4.	TERM.....	5
5.	CESSATION OF OSHC SERVICE .....	5
6.	LICENCE .....	5
7.	LICENCE FEE .....	6
8.	NATURE OF RIGHTS GRANTED .....	6
9.	PERMITTED PURPOSE.....	6
10.	MINISTER'S OBLIGATIONS .....	6
11.	SCHOOL GOVERNING COUNCIL'S OBLIGATIONS.....	7
12.	OBLIGATIONS OF OSHC PROVIDER.....	7
13.	VARIATION TO THE OSHC SERVICE.....	17
14.	FURNITURE AND FITTINGS AND ASSETS.....	17
15.	RECURRENT UTILITY COSTS.....	18
16.	RENT.....	18
17.	REPAIRS AND MAINTENANCE.....	18
18.	DAMAGE TO PREMISES.....	19
19.	ADVISORY COMMITTEE .....	19
20.	REVIEW .....	20
21.	RELEASE .....	20
22.	INDEMNITY .....	20
23.	INSURANCE .....	20
24.	CONFIDENTIALITY .....	21
25.	CONTRACTING AND OFFICIAL RECORDS STANDARD AND PERSONAL INFORMATION.....	22
26.	DISPUTES.....	22
27.	TERMINATION.....	22
28.	GENERAL .....	23
29.	WORK HEALTH AND SAFETY .....	25
30.	ACTING ETHICALLY.....	26
31.	TRANSITION.....	26
32.	EXEMPTION FROM RETAIL AND COMMERCIAL LEASES ACT.....	26
	SCHEDULE 1 .....	28
	SCHEDULE 2 OSHC ADVISORY TERMS OF REFERENCE.....	29
	SCHEDULE 3 FEES.....	30
	SCHEDULE 4 SERVICES SPECIFICATIONS.....	31
	SCHEDULE 5 REPORTING REQUIREMENTS.....	32
	SCHEDULE 6 RECORDS.....	34
	ANNEXURE 1 THE PLAN.....	35
	ANNEXURE 2 EXEMPTION .....	35
	ANNEXURE 3 KEY PERFORMANCE INDICATORS.....	36

**AGREEMENT dated**

**201x**

**BETWEEN**

**MINISTER FOR EDUCATION AND CHILD DEVELOPMENT** a body corporate by virtue of the *Education Act 1972* and the operation of the *Administrative Arrangements Act 1994* of Level 9 Education Centre 31 Flinders Street Adelaide South Australia 5000 (**Minister**)

**AND**

**RELEVANT SCHOOL GOVERNING COUNCIL** of [insert address] South Australia

**AND**

**OSHC PROVIDER'S NAME, ACN/ABN AND ADDRESS (OSHC Provider)**

## **BACKGROUND**

- A. By an expression of interest dated [insert date] the Minister approached the market to seek expressions of interest from third party providers of OSHC services so that the Minister could establish a panel of OSHC providers to assist school governing councils of DECD schools to choose appropriate providers of OSHC services to conduct an OSHC service at their DECD School. The OSHC Provider responded to that expression of interest and has been appointed to the Minister's panel of approved OSHC providers.
- B. The Minister is the registered proprietor of an estate in fee simple in the whole of the Land on which the Minister has established the school.
- C. The school governing council wishes to engage an organisation to provide an OSHC Service for the School community at the DECD site and has selected the OSHC Provider from the Minister's panel of approved OSHC providers.
- D. The OSHC Provider has agreed to provide the OSHC service on the terms and conditions set out in this Licence and Services Agreement.

## **THE PARTIES AGREE:**

### **1. ACCURACY OF BACKGROUND**

The parties agree that the matters referred to in the Background to this Agreement are true and correct in every particular and that they form part of this Agreement.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Agreement, unless the context otherwise requires:

- 2.1.1 **Agreement** means this licence and services agreement and any schedules, annexures or attachments attached to it and the terms and conditions of the Deed of Agreement are, where relevant, incorporated as part of this licence and services agreement;
- 2.1.2 **Background Check** means obtaining and checking information in relation to a particular person including:
- 2.1.2.1 previous employment and relevant experience;
  - 2.1.2.2 verification of qualifications and professional registration; and
  - 2.1.2.3 reference checks and work history reports, preferably including the particular person's immediate past employer;
- 2.1.3 **Cartel Conduct** means conduct by two or more parties who are competitors (or would be but for the conduct) who enter into a contract, arrangement or understanding that involves price fixing, output restrictions, allocating customers, suppliers or territories, or bid-rigging, as defined in s44AARD of the *Competition and Consumer Act 2010*;
- 2.1.4 **Confidential Information** means information which is identified either as confidential information (if disclosed by the Minister) or proprietary information (if disclosed by the OSHC Provider), but does not include this Agreement;
- 2.1.5 **Commencement Date** means the date specified in Schedule 1;
- 2.1.6 **Committee** means the advisory committee established under clause 19;
- 2.1.7 **Common Areas** mean the areas on the Plan delineated in green;
- 2.1.8 **Contracting and Official Records Standard** means the standard relating to record management amended by the Manager (Director), State Records pursuant to section 14(1) of the *State Records Act 1997* and which can be found at <http://www.archives.sa.gov.au>;
- 2.1.9 **DECD** means the Department for Education and Child Development, an administrative unit of the South Australian public sector;
- 2.1.10 **Declaration in Relation to Unlawful Collusion** means a declaration in relation to unlawful collusion submitted by the OSHC Provider to the Minister in the procurement process;
- 2.1.11 **Deed of Agreement** means the panel deed of agreement for the provision of out of school hours care services entered into between the Minister and the OSHC Provider dated [insert date];
- 2.1.12 **Expiry Date** means the date specified in Schedule 1;
- 2.1.13 **Information Privacy Principles** means the Cabinet Administrative Instruction No 1 of 1989 which can be found at <http://www.archives.sa.gov.au>;

- 2.1.14 **Insolvency Administration** if the OSHC Provider is a company means:
- 2.1.14.1 an administrator is appointed to the OSHC Provider or action is taken to make such an appointment;
  - 2.1.14.2 the OSHC Provider resolves to be wound up;
  - 2.1.14.3 an application is made to a court for an order or an order is made that the OSHC Provider be wound up (whether on grounds of insolvency or otherwise);
  - 2.1.14.4 the OSHC Provider ceases to carry on business;
  - 2.1.14.5 a receiver or a receiver and manager of property of the OSHC Provider is appointed whether by a court or otherwise;
  - 2.1.14.6 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the OSHC Provider or one of them is appointed, whether or not under an order;
  - 2.1.14.7 the OSHC Provider enters into a compromise or arrangement with its creditors or a class of them; or
  - 2.1.14.8 the OSHC Provider is or states that it is unable to pay its debts when they fall due.
- 2.1.15 **Insolvency Administration** if the OSHC Provider is an association means:
- 2.1.15.1 the OSHC Provider has proposed a compromise or arrangement with its creditors;
  - 2.1.15.2 an administrator is appointed to the OSHC Provider;
  - 2.1.15.3 the OSHC Provider resolves to be wound up voluntarily;
  - 2.1.15.4 the OSHC Provider appoints a liquidator to wind up its affairs;
  - 2.1.15.5 the OSHC Provider is wound up by the Supreme Court, voluntarily or under the *Associations Incorporation Act 1985 (SA)* or the *Corporations Act 2001 (Cth)*;
  - 2.1.15.6 the OSHC Provider ceases to carry on business; or
  - 2.1.15.7 the OSHC Provider is unable to pay its debts;
- 2.1.16 **ISG** means the Government of South Australia's *Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and their Families 2008* strategy endorsed by Cabinet in October 2008 for implementation across South Australia as amended from time to time, a copy of which can be found at <http://www.decd.sa.gov.au/speced2/pages/childprotection/36801/>;
- 2.1.17 **Key Performance Indicators** mean those indicators specified in Annexure 3;
- 2.1.18 **Land** means the land referred to in Schedule 1;
- 2.1.19 **Licence** means the licence of the Premises and Common Areas referred to in clause 6 of this Agreement;

- 2.1.20 **Minister's Representative** means the person so specified in Schedule 1;
- 2.1.21 **OSHC** means out of school hours care;
- 2.1.22 **OSHC Provider Personnel** means any person employed or engaged by the OSHC Provider to be involved in the provision of the OSHC Service and includes volunteers;
- 2.1.23 **OSHC Provider's Representative** means the person so specified in Schedule 1;
- 2.1.24 **OSHC service** means the out of school hours care program conducted in accordance with this Agreement and as more fully described in the Services Specification;
- 2.1.25 **Parties** means the Minister, the school governing council and the OSHC Provider;
- 2.1.26 **Plan** means the plan annexed to this Agreement as Annexure 1;
- 2.1.27 **Permitted Purpose** means the purpose of operating the OSHC service;
- 2.1.28 **Principal** means the Principal of the School or the Deputy Principal or any other person acting from time to time as and with the authority of the Principal;
- 2.1.29 **Premises** means those areas delineated in pink on the Plan;
- 2.1.30 **School** means the DECD school or other DECD site specified in Schedule 1;
- 2.1.31 **School governing council** means the School governing council specified in Schedule 1;
- 2.1.32 **School governing council's representative** means the person so specified in Schedule 1;
- 2.1.33 **School Term** means the period as determined by the Minister of a duration between eight and twelve weeks where it intends to hold classes for the purpose of educating its students;
- 2.1.34 **Services Specification** means the description of the OSHC service in Schedule 4;
- 2.1.35 **Site** means a school, kindergarten, preschool or other premises on land owned by the Minister;
- 2.1.36 **Term** means the term specified in clause 4 and includes any extension granted pursuant to that clause;

## 2.2 Interpretation

- 2.2.1 In this Agreement, unless the context otherwise requires:
- 2.2.1.1 any word importing the plural includes the singular and vice versa;
- 2.2.1.2 any word importing a gender includes all other genders;
- 2.2.1.3 a reference to a body corporate includes a natural person and vice versa;
- 2.2.1.4 a reference to a recital, party, clause or schedule is a reference to a recital, party, clause or schedule of this Agreement;

- 2.2.1.5 a reference to a statute includes all statutes amending, consolidating or replacing the statute referred to.
- 2.2.2 All words and phrases having a defined meaning in the Deed of Agreement have the same meaning in this Agreement.
- 2.2.3 In resolving inconsistencies in this Agreement, this Agreement will be construed by reference to the following order of priority:
  - 2.2.3.1 this Agreement (excluding the schedules, annexures and attachments);
  - 2.2.3.2 the schedules, annexures and attachments; and
  - 2.2.3.3 the relevant clauses of the Deed of Agreement.

### **3. ADMINISTRATION OF AGREEMENT**

- 3.1 The parties appoint the persons named in Schedule 1 as their respective representatives. Each representative has authority to:
  - 3.1.1 exercise all of the powers and functions of his or her party under this Agreement other than the power to amend this Agreement; and
  - 3.1.2 bind his or her party in relation to any matter arising out of or in connection with this Agreement.
- 3.2 A notice served on a representative is taken to be notice to that representative's party.

### **4. TERM**

- 4.1 This Agreement will commence on the Commencement Date and expire on the Expiry Date (**initial term**).
- 4.2 If the OSHC Provider is not in breach of this Agreement, three months prior to the expiration of the initial term, the Minister and the school governing council may offer to extend the term of this agreement for a further two year period on the same terms and conditions of this Agreement, with the exception of this clause 4.2.

### **5. CESSATION OF OSHC SERVICE**

If the OSHC Provider intends to cease providing the OSHC service for any reason, it must give the Minister and the school governing council at least six months written notice.

### **6. LICENCE**

- 6.1 The Minister grants a Licence to the OSHC Provider subject to and upon the terms and conditions of this Agreement.
- 6.2 Subject to clause 6.3, the Minister grants an exclusive licence to the OSHC Provider to use the Premises for the Permitted Purpose between the hours specified in Schedule 4 on each day the School is operating during a School Term and during the hours specified in Schedule 4 at times outside of a School Term, excluding Saturdays, Sundays and public holidays.

- 6.3 The Minister, the Minister's agent, or the Principal or his or her delegate, may enter the Premises during the Term for the purposes of inspection and/or in relation to School business.
- 6.4 The Minister grants a non-exclusive licence to the OSHC Provider to use the Common Areas during the times specified in Schedule 4 for purposes connected with the operation of the OSHC service.
- 6.5 The Minister grants a non-exclusive licence to access ways and entrances to the OSHC Provider and to all persons lawfully authorised by the OSHC Provider to use the Premises at all times during the Term, in common with the Minister, for the sole purpose of ingress to and egress from the Premises.

## **7. LICENCE FEE**

- 7.1 The OSHC Provider will pay the sum of \$1.10 per annum upon demand to the Minister.
- 7.2 If the OSHC Provider observes and performs all of the OSHC Provider's obligations set out in this Agreement, the OSHC Provider may peaceably possess and enjoy the Premises and Common Areas without interruption or disturbance from the Minister or the Governing Council or from any person claiming under or from the Minister or the school governing council, except for any interruption or disturbance which may be permitted by the terms of this Agreement.

## **8. NATURE OF RIGHTS GRANTED**

The rights conferred by this Agreement rest in contract only and will not create in or confer or grant upon or in the OSHC Provider or any other person (either jointly or severally) any tenancy or any estate or interest for a term of years or otherwise whatsoever in the Premises, Common Areas or Land.

## **9. PERMITTED PURPOSE**

The OSHC Provider may only use the Premises and the Common Areas for the permitted purpose.

## **10. MINISTER'S OBLIGATIONS**

The Minister will:

- 10.1 leave the Common Areas in a clean and tidy state after use by the School at the end of each school day;
- 10.2 be responsible for fire extinguishers on the Premises, except where they have been wilfully discharged, which cost for refill will be the responsibility of the OSHC Provider;
- 10.3 be responsible for compliance of Premises in accordance with the Education and Early Childhood Services (Registration and Standards) Regulations 2011;
- 10.4 pay all statutory rates, taxes, charges and levies (if any) payable, charged, assessed or levied in respect of the Common Areas as and when they fall due for payment; and
- 10.5 through the Principal, promote the OSHC service within the School community.



## 11. SCHOOL GOVERNING COUNCIL'S OBLIGATIONS

The school governing council will:

- 11.1 monitor the OSHC Service,
- 11.2 provide representatives on the Committee, and
- 11.3 meet with the OSHC Provider on reasonable request.

## 12. OBLIGATIONS OF OSHC PROVIDER

### 12.1 Operation of the OSHC service

The OSHC Provider must, during the Term:

- 12.1.1 maintain its status as an Approved Provider of OSHC under the *Education and Early Childhood Services (Registration and Standards) Act 2011*;
- 12.1.2 operate the OSHC service with capacity for the number of Child Care Benefit places approved by the Australian Government for before school, after school and vacation care periods;
- 12.1.3 ensure that the OSHC service is delivered as a secular program and that all persons engaged by the OSHC Provider in regard to the OSHC service will refrain from proselytising at all times whilst providing the OSHC Service;
- 12.1.4 apply to the Education and Early Childhood Services Regulation and Standards Board of South Australia for service approval;
- 12.1.5 be responsible for compliance with operational standards under the *Education and Early Childhood Services (Registration and Standards) Act 2011* including Education and Early Childhood Services (Registration and Standards) Regulations 2011 and the National Quality Standard for Early Childhood Education and Care and School Age Care;
- 12.1.6 be the legal sponsor of the Australian Government Childcare Benefit places and be responsible for the financial operation of the OSHC service which includes managing the payment of user fees, maintaining Child Care Benefit Records and payments and budgeting for the ongoing operation of the OSHC service;
- 12.1.7 be subject to Australian Government requirements relating to priority of access and only exclude a child who is a student at the School from the OSHC service after consultation with the Principal;
- 12.1.8 ensure that its operational policies and procedures comply with the Education and Early Childhood Services (Registration and Standards) Regulations 2011 and DECD policies;
- 12.1.9 comply with the provisions of the *Children's Protection Act 1993* (SA);
- 12.1.10 provide evidence that it has lodged a Child Safe Environments Compliance Statement with the Department for Communities and Social Inclusion in compliance with the *Children's Protection Act 1993*;

- 
- 12.1.11 before providing services on-site, all OSHC Provider Personnel must have participated in full day 'Responding to Abuse and Neglect-Education and Care' (RAN-EC) training delivered by a DECD approved provider;
  - 12.1.12 liaising with a DECD school leader to facilitate the RAN-EC induction training for any volunteer;
  - 12.1.13 ensure that RAN-EC training is updated for all OSHC Provider Personnel every three years or as otherwise required;
  - 12.1.14 be the employer of, pay and manage all staff and volunteers who work or volunteer in the OSHC service and be responsible to monitor the quality of their work;
  - 12.1.15 ensure that the number of staff complies with the Education and Early Childhood Services (Registration and Standards) Regulations 2011, taking into account the numbers and needs of children with disabilities and health care needs;
  - 12.1.16 ensure staff are paid in accordance with the Children's Services Award 2010 or an Enterprise Agreement registered with the Fair Work Commission;
  - 12.1.17 undertake personal Background Checks on all persons to be employed or engaged by the OSHC Provider in the delivery of the OSHC service;
  - 12.1.18 be responsible for ensuring that the OSHC service is compliant with the National Quality Standard;
  - 12.1.19 meet with the Principal acting on behalf of the Minister and the school governing council on a regular basis to discuss the operation of the OSHC service and use of the School facilities;
  - 12.1.20 meet with the Committee as required;
  - 12.1.21 hold a meeting for parents interested in the OSHC service at least once per year at the School and issue newsletters to or otherwise consult with and inform parents of the issues relating to the management and operation of the OSHC service.
- 12.2 Subject to any approved variation to fees, the fees charged by the OSHC Provider to parents or guardians using the OSHC service (**Users**) must be in accordance with the fees specified in Schedule 3.
- 12.3 The OSHC Provider must, in operating the OSHC service on the Premises, permit Users to pay OSHC service fees the methods specified in Schedule 3.
- 12.4 **Suitability of Persons**
- 12.4.1 **Fundamental Term**  
Despite any other clause, the parties acknowledge that the rights and obligations under this clause are fundamental to this Agreement.
  - 12.4.2 **Definition of Minister's Sites**  
In this clause **Minister's Sites** means any site of the Minister at which children are or may be present.

### 12.4.3 Definition of Relevant Activity

In this clause **Relevant Activity** means the provision of the services or other activities by the OSHC Provider or its Relevant Personnel at or in relation to the Minister's sites.

### 12.4.4 Definition of Relevant History Information

In this clause **Relevant History Information** means:

- 12.4.4.1 an assessment of a person's history within the meaning of section 8B of the *Children's Protection Act 1993* by the authorised screening unit established under the *Children's Protection Regulations 2010* or a screening unit otherwise prescribed by regulations made under the *Children's Protection Act 1993* or such other screening unit as the Minister directs;
- 12.4.4.2 consent from the Relevant Personnel to use that assessment for the purposes of this clause; and
- 12.4.4.3 any other information reasonably required by the Minister to enable it to establish whether the Relevant Personnel is a suitable person to be involved in the Relevant Activity.

### 12.4.5 Definition of Relevant Personnel

In this clause **Relevant Personnel** means in relation to the OSHC Provider the following persons insofar as they are involved in the Relevant Activity:

- 12.4.5.1 itself (where it is an individual);
- 12.4.5.2 all its directors, officers, employees, agents, volunteers and invitees;
- 12.4.5.3 all its contractors (where they are individuals); and
- 12.4.5.4 all directors, officers, employees, agents, volunteers and invitees of its contractors.

### 12.4.6 Definition of Unsuitable Persons

In this clause **Unsuitable Person** means a person who is the subject of any allegation, arrest, charge or conviction for a sexual offence or an offence of indecency.

### 12.4.7 Relevant History Information

- 12.4.7.1 The OSHC Provider must:
  - (a) prior to its first use of a Minister's site; and
  - (b) at such other times as either or both the OSHC Provider and the Minister determine are necessary or desirable for the purpose of establishing or maintaining child safe environments,provide complete and current Relevant History Information to the Minister in relation to:

- (c) all of its Relevant Personnel appointed to or engaged to act in prescribed positions within the meaning of section 8B of the *Children's Protection Act 1993* where the Relevant Activity is provided wholly or partly for children; and
- (d) any of its Relevant Personnel as required by the Minister.

12.4.7.2 The Minister may (but need not) conduct any investigations it considers necessary in respect of any matter contained in Relevant History Information and the OSHC Provider must ensure that it and its Relevant Personnel cooperate fully with any such investigation.

#### 12.4.8 No Unsuitable Persons

The OSHC Provider must not permit or allow, and must procure that its contractors do not permit or allow, an Unsuitable Person who is a Relevant Personnel to:

- 12.4.8.1 be involved in the Relevant Activity; or
- 12.4.8.2 otherwise be present at any of the Minister's Sites.

#### 12.4.9 Steps Required where Unsuitable Person

Without limiting anything else in this clause, if the OSHC Provider is or becomes aware that it or any Relevant Personnel is an Unsuitable Person, it must:

- 12.4.9.1 procure the immediate removal (where relevant) and ongoing exclusion of the Unsuitable Person from the Minister's sites;
- 12.4.9.2 procure the immediate and ongoing exclusion of the Unsuitable Person from involvement in the Relevant Activity;
- 12.4.9.3 take all immediate and ongoing steps necessary to protect any children on, or who have been on, the Minister's sites from harm as a consequence of the presence, removal or ongoing exclusion of the Unsuitable Person, including without limitation:
  - (a) notifying South Australia Police about the Unsuitable Person as necessary;
  - (b) making a notification of abuse or neglect in accordance with the *Children's Protection Act 1993* as necessary including by means of the Child Abuse Report Line maintained by Families SA (131 478) or such other report line as the Minister or South Australian Government publicly notifies;
  - (c) providing support to children and families as necessary;
  - (d) providing supervision of any children for which the OSHC Provider provides the Relevant Activity on the Minister's sites;

- (e) all other steps otherwise required under this clause; and
  - (f) any other protective action as necessary;
- 12.4.9.4 immediately notify the Minister in writing of all known facts about the circumstances in which the Unsuitable Person has been in any way involved in the Minister's sites;
- 12.4.9.5 provide on an ongoing basis full details to the Minister of the circumstances relating to the Unsuitable Person as and when those details become known to the OSHC Provider; and
- 12.4.9.6 comply with any reasonable direction of the Minister with respect to the Unsuitable Person.

#### 12.4.10 **Imposing Obligations on Relevant Personnel**

The OSHC Provider must ensure that:

- 12.4.10.1 all Relevant Personnel are aware of and act in a manner consistent with the provisions of this clause at all times; and
- 12.4.10.2 all Relevant Personnel (not being the OSHC Provider) immediately inform the OSHC Provider if the Relevant Personnel is subject of any allegation, arrest, charge or conviction for a sexual offence or an offence of indecency.

#### 12.4.11 **Child Safe Environments**

In addition to all other obligations under this Agreement, where the OSHC Provider is an organisation to which section 8C of the *Children's Protection Act 1993* applies, the OSHC Provider must:

- 12.4.11.1 have in place appropriate policies and procedures to ensure that, as required by the *Children's Protection Act 1993*:
- (a) child safe environments are established and maintained; and
  - (b) appropriate reports of child abuse and neglect are made;
- 12.4.11.2 lodge the statement required by the *Children's Protection Act 1993* about the OSHC Provider's child safe policies and procedures with Families SA, or such other government agency as the Minister or South Australian Government publicly notifies (**Successor Children's Protection Agency**), within 10 business days after putting in place those policies and procedures;
- 12.4.11.3 respond, as soon as reasonably practicable (and in any case within 10 business days), to any written request by Families SA, Successor Children's Protection Agency or the Minister for information relating to the OSHC Provider's compliance with the requirements of this clause; and

12.4.11.4 execute and provide to the Minister prior to the OSHC Provider's first use of a Minister's Site a truthful declaration in the following terms:

*"I/We declare that the OSHC Provider:*

- *has appropriate policies and procedures in place to:*
  - *ensure that child safe environments are established and maintained as required by the Children's Protection Act 1993; and*
  - *ensure that appropriate reports of child abuse and neglect are made as required by the Children's Protection Act 1993;*
- *has obtained and provided to the Minister Relevant History Information in relation to:*
  - *all Relevant Personnel appointed to or engaged to act in prescribed positions within the meaning of section 8B of the Children's Protection Act 1993 where the Relevant Activity is provided wholly or partly for children; and*
  - *any of its Relevant Personnel as required by the Minister;*
- *has lodged a statement setting out its child safe policies and procedures with Families SA or Successor Children's Protection Agency; and*
- *will notify the Minister of any change in the Relevant History Information in relation to any Relevant Personnel or suitability of any Relevant Personnel.*

*In this declaration capitalised terms have the meaning given in the contract under which this declaration is required.*

*I/We declare that I/we have full authority to execute this declaration for and on behalf of the OSHC Provider*

.....(signature)

.....(name and title)

.....(date)"

#### **12.4.12 Effect of Non-Compliance**

12.4.12.1 If:

- (a) the OSHC Provider is an Unsuitable Person; or
- (b) any Relevant Personnel (not being the OSHC Provider) is an Unsuitable Person and the OSHC Provider does not strictly, fully and immediately comply with any or all of its obligations under this clause,

then the Minister may in its absolute discretion, without limiting any other remedy, suspend or terminate this Agreement and following such suspension or termination the OSHC Provider must for so long as the Minister directs:

- (c) provide on an ongoing basis full details to the Minister of the circumstances relating to the Unsuitable Person as and when those details become known to the OSHC Provider; and
- (d) comply with any reasonable direction of the Minister with respect to the Unsuitable Person.

12.4.12.2 Any exercise by the Minister of its rights under this clause:

- (a) does not limit the Minister's right to pursue any claim against the OSHC Provider arising in respect of a breach by the OSHC Provider of its obligations under this Agreement; and
- (b) will not give rise to any liability owing to the OSHC Provider or the Relevant Personnel.

#### 12.4.13 **Compliance with Security Practices and Procedures**

The Minister may inform the OSHC Provider of any security practices and procedures in relation to child safe environments implemented by the Minister or the South Australian Government and the OSHC Provider must comply with those procedures at all times.

#### 12.4.14 **References to Legislation**

A reference to any legislation or to any provision of any legislation includes:

- 12.4.14.1 all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and
- 12.4.14.2 any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision.

#### 12.4.15 **No Derogation**

Nothing in this clause relieves the OSHC Provider of any obligation under this Agreement.

#### 12.4.16 **Priority**

To the extent of any inconsistency between the rights and obligations under this clause and under the provisions of any other clause in this Agreement, including any provisions relating to termination or remedies, this clause prevails.

### 12.5 **Suitability of Persons (Other Offences)**

#### 12.5.1 **Other Offences**

In addition to any other rights of the Minister and obligations of the OSHC Provider under this Agreement, if any Relevant Personnel as defined in this Agreement is the subject of an allegation, arrest, charge or conviction for:

- 12.5.1.1 any offence of violence or deprivation of liberty (whether indictable or not) or other indictable offence; or

12.5.1.2 any other offence that the Minister notifies the OSHC Provider in writing the Minister considers renders the Relevant Personnel unsuitable to be involved in the services,

(**Other Offences**) that Relevant Personnel will be an Unsuitable Person for the purposes of this Agreement and the OSHC Provider must treat that Relevant Personnel as an Unsuitable Person, subject to clause 12.5.2.

#### 12.5.2 **Additional Matters**

The OSHC Provider's obligations under clause 12.4.10.2 are extended to apply in relation to Relevant Personnel who are subject of any allegation, arrest, charge or conviction for an Other Offence.

### 12.6 **Cleaning, Repairs and Security**

During the Term the OSHC Provider must:

- 12.6.1 ensure that the Premises and Common Areas are left in a clean and tidy state at the end of each OSHC session;
- 12.6.2 store its cleaning equipment, soap, chemicals and other toxic items in an appropriate locked storage space;
- 12.6.3 at the expense of the OSHC Provider, clean the Premises in such manner and at such times as designated by the Principal;
- 12.6.4 make good any damage caused to the Premises, Common Areas or the school's fixtures, fittings, furniture, equipment or assets during any period of use by OSHC Provider;
- 12.6.5 in the event that the OSHC Provider either fails to leave the Premises and Common Areas as required by subclause 12.6.1, or in the event that the OSHC Provider fails to make good any damage caused during its use, repay to the Minister any cost incurred by the Minister for cleaning or effecting any necessary repairs as the case may require;
- 12.6.6 ensure rubbish is removed and deposited in bins designated by the Principal in accordance with standard site/school practice as advised by the Principal at the end of an OSHC session;
- 12.6.7 switch off air conditioners, fans and lights when leaving the premises, or as negotiated by the parties;
- 12.6.8 be responsible for OSHC Provider's first aid kit;
- 12.6.9 be responsible for arming and disarming the security system at the beginning and end of each OSHC session and closing all school gates and carrying out all School security procedures as required. The Principal will arrange training for designated OSHC Provider Personnel.

### 12.7 **No Smoking**

The OSHC Provider must not permit smoking in the Premises, in the Common Areas or on the school grounds.

### 12.8 **No Nuisance**

The OSHC Provider must not do or permit to be done or carry on or permit to be carried on in or on or about the Premises and the Common Areas:



12.8.1 anything which in the reasonable opinion of the Minister may be or be likely to become a nuisance to any other land adjoining or in the vicinity of the Land; or

12.8.2 any offensive trade or business.

## 12.9 **Signs**

The OSHC Provider must obtain the Minister's consent before erecting any signs on the Land except for signage required to comply with the Education and Early Childhood Services (Registration and Standards) Regulations 2011 and National Quality Standards.

## 12.10 **Compliance with Statutes**

The OSHC Provider must at all times during the Term promptly comply with:

12.10.1 all statutes, regulations, by-laws, ordinances, rules and other forms of statutory instruments or delegated legislation applicable to the Land, or to the use of the Land by the OSHC Provider; and

12.10.2 all notices, orders or requirements lawfully given or made by an authority or any other person in respect of the Land,

provided always that nothing in this clause will oblige or be construed as obliging the OSHC Provider to effect any structural alterations or additions unless such structural alterations or additions are required as a direct result of the OSHC Provider's use and occupation of the Premises or Common Areas.

## 12.11 **Reports**

In addition to the reporting requirements specified in Schedule 5, the OSHC Provider must promptly provide to the Minister any information reasonably required by the Minister.

## 12.12 **Records**

12.12.1 The OSHC Provider agrees that it will maintain and supply all records specified in Schedule 6 and other information in accordance with this Agreement.

12.12.2 The OSHC Provider will maintain all records and other information referred to in clause 12.12.1 at its own cost and provide copies to the Minister on request from the Minister.

12.12.3 All records and other documentation required to be kept by the OSHC Provider under this Agreement or under any other legislation or statutory instrument must be available for inspection by the Minister in Adelaide during normal business hours (9 am to 5 pm) on reasonable notice first being given to the OSHC Provider and provided to the Minister when reasonably required by the Minister, at a reasonable cost to the Minister.

12.12.4 The OSHC Provider must adhere to the incident reporting process for third-party providers, as published on the DECD website [www.decd.sa.gov.au/oshc/pages/thirdparty/incidents-safety/](http://www.decd.sa.gov.au/oshc/pages/thirdparty/incidents-safety/)

12.12.5 The OSHC Provider must record accidents, security incidents, critical incidents and injuries occurring at the Site on the relevant DECD form and provide it to the Principal in order for it to be placed on the Incident Response Management System (IRMS) within 12 hours.

12.12.6 The OSHC Provider must complete the ED155 Injury Report Form for accidents/injuries to persons which result in hospitalisation/medical/dental treatment, where complications may result or where there is a possibility that legal action may be taken against DECD and/or the user group.

12.12.7 The OSHC Provider must provide to the Principal within 24 hours of receipt:

12.12.7.1 notifications made to the Education and Early Childhood Services Registration and Standard Board of South Australia as required under the Education and Early Childhood Services (Registration and Standards) Regulations 2011;

12.12.7.2 waivers relating to facilities and staffing; any Compliance Caution Letter, ratings or notifications of non-compliance issued under the Education and Early Childhood Services (Registration and Standards) Regulations 2011 by the Education and Early Childhood Services Registration and Standard Board of South Australia.

### 12.13 **Obligations at the end of the Agreement**

12.13.1 Subject to clause 12.12.2, on the expiration or earlier termination of this Agreement, the OSHC Provider must vacate the Premises and the Common Areas and remove all of its equipment, fixtures, fittings and any of its assets from the Premises and the Common Areas and deliver up possession of the Premises and Common Areas in the condition required by clauses 12.6.1 and 12.6.4.

12.13.2 The OSHC Provider may remove any of its equipment, fixtures or fittings, but must make good any damage and reinstate the Premises and Common Areas to the condition they were in before the equipment, fixtures or fittings were installed in the Premises.

### 12.14 **Assignment**

The OSHC Provider must not assign, transfer, sub-let, mortgage, charge or otherwise part with possession of the Premises or the Common Areas without the prior written consent of the Minister (which consent may be given or withheld in the Minister's absolute discretion).

### 12.15 **Minister's Inspection**

12.15.1 The OSHC Provider must permit the Minister or any officer, employee, agent or contractor of the Minister to enter the Premises and the Common Areas to examine and view the state and condition of cleanliness and repair of the Premises and Common Areas at all reasonable times upon reasonable notice being given to the OSHC Provider.

12.15.2 The Minister may serve written notice on the OSHC Provider requiring the OSHC Provider within a reasonable time specified in the notice to clean or repair the Premises or Common Areas or otherwise comply with any of the OSHC Provider's obligations set out in this Agreement.

12.15.3 If the OSHC Provider does not comply with the notice given under subclause 12.15.2, the Minister may carry out the required cleaning, repair or other of the OSHC Provider's obligations at the OSHC Provider's expense who must, upon demand being made for it, pay to the Minister all moneys expended by the Minister in carrying out all such cleaning, repairs and other of the OSHC Provider's obligations.

#### 12.16 Information Sharing

12.16.1 To the full extent permitted by law, the OSHC Provider agrees to share information in accordance with the ISG.

12.16.2 If requested by the Minister, the OSHC Provider will provide written information detailing the OSHC Provider's compliance with the ISG.

12.16.3 The parties acknowledge that this Agreement constitutes a 'State contract' for the purpose of the *Privacy Act 1998* (Cth).

### 13. VARIATION TO THE OSHC SERVICE

13.1 If the OSHC Provider reasonably believes that any change made to the OSHC service will impact on the fees charged to Users, it must submit a proposal to the school governing council outlining the proposed change and the impact it will have on the fees charged to Users.

13.2 The school governing council must consider the OSHC Provider's proposal and, if necessary, meet with the OSHC Provider to discuss the proposed change.

13.3 The school governing council will provide a response to the OSHC Provider within three weeks of receipt of the proposed change.

13.4 If the parties cannot agree on the proposed change, the dispute resolution process set out in clause 26 may be invoked.

13.5 Fees charged by the OSHC Provider to Users must not be changed unless the school governing council has approved the change or the issue has been resolved by the dispute resolution process.

### 14. FURNITURE AND FITTINGS AND ASSETS

14.1 The Principal, the OSHC Provider and the Committee will determine which of the School's fixtures, fittings, furniture, equipment and other assets may be used by the OSHC Provider for the OSHC service. The Principal will keep and maintain a register of the School's assets.

14.2 The OSHC Provider in consultation with the Committee will determine what, if any, new fixtures, fittings, furniture and any other assets should be purchased by the OSHC Provider for the OSHC service.

14.3 Subject to clauses 14.1 and 14.2, the OSHC Provider will purchase at its own cost all equipment, assets and consumables required to operate the OSHC Service in accordance with the *Education and Early Childhood Services (Registration and Standards) Act 2011* including the Education and Early Childhood Services (Registration and Standards) Regulations 2011 and the National Quality Standard for Early Childhood Education and Care and School Age Care.

- 14.4 The OSHC Provider will keep a register of all new fixtures, fittings, furniture, equipment and any other assets purchased by the OSHC Provider and will provide a copy of such register to the Committee on a regular basis.

## **15. RECURRENT UTILITY COSTS**

- 15.1 The OSHC Provider must pay to the Principal such sum as may be determined by the Governing Council for the use of utilities, including electricity and gas, in connection with the OSHC service. The sum to be paid will be calculated in proportion to the use of those utilities by the OSHC Provider, and must be paid annually by the OSHC Provider.
- 15.2 The OSHC Provider will pay all call out security costs related to the OSHC service.
- 15.3 The OSHC Provider will pay all costs in regard to the OSHC Provider's telephone line rental and calls.
- 15.4 If the Minister supplies a key or keys to the Premises and/or the Land to the OSHC Provider, the OSHC Provider must ensure that such key or all such keys remain at all times in the custody of a responsible officer or employee of the OSHC Provider approved by the Minister. The OSHC Provider must not, without the prior approval of the Minister, make, duplicate or copy any key or keys or permit any key or keys to be made, duplicated or copied and if any key or keys supplied by the Minister is lost, the OSHC Provider must immediately report such loss to the Minister. Lost keys will be replaced at the OSHC Provider's cost.

## **16. RENT**

- 16.1 The OSHC Provider agrees to pay rent to the Minister in the amount, at the times and in the manner specified in Schedule 3.
- 16.2 The rent must be paid at the School office or at such other place as the Principal may advise from time to time.
- 16.3 The OSHC Provider will pay the rent to the Minister free of all deductions whatsoever and without any demand being made for it.

## **17. REPAIRS AND MAINTENANCE**

- 17.1 The Minister, after consultation with the Committee, will undertake and effect all emergency repairs and all maintenance to the Premises and Common Areas which may from time to time be required and will, as and when reasonably required by the Committee, undertake and effect all structural repairs, including such mechanical and other services as will be reasonably required by the OSHC Provider for the operation of the OSHC Service from time to time.
- 17.2 The Minister will maintain the Premises and Common Areas, including its fixtures, fittings and furniture, in good repair and condition according to standards for government schools imposed by the Minister from time to time.
- 17.3 The OSHC Provider must not make any alterations to the Premises or Common Areas without the Minister's prior written permission. Any alteration or any other work approved by the Minister is subject to the following conditions. The alteration or work must be carried out:
- 17.3.1 by a contractor approved by the Minister;

- 17.3.2 to a standard in conformity with the Premises;
  - 17.3.3 in accordance with the requirements of all relevant public authorities;
  - 17.3.4 in accordance with the plans and specifications approved by the Minister;
  - 17.3.5 in accordance with the Minister's reasonable directions;
  - 17.3.6 to the satisfaction of the Minister's consultants;
  - 17.3.7 at the OSHC Provider's cost and risk; and
  - 17.3.8 in accordance with any other conditions imposed by the Minister.
- 17.4 If the work is abandoned, cancelled, altered, damaged or otherwise unfinished for any reason, the OSHC Provider must restore and reinstate the Premises to the Minister's reasonable satisfaction.
- 17.5 All alterations, improvements or works in the nature of a fixture built on the Premises by either party become the property of the Minister.
- 17.6 The OSHC Provider will be responsible for any damage to the Premises and Common Areas caused or contributed to by the OSHC Provider, its contractors, employees and invitees during the operation of the OSHC service.

## **18. DAMAGE TO PREMISES**

In the event of the Premises being damaged from any cause whatsoever so as not to be fit for use by the OSHC Provider, the Minister may, at the Minister's option, and notwithstanding any other provision of this Agreement, terminate this Agreement on giving to the OSHC Provider four weeks written notice and there will be no other obligation on the Minister to repair or reinstate the Premises in the event of such damage.

## **19. ADVISORY COMMITTEE**

- 19.1 The parties must establish an advisory committee to oversee the OSHC Service and use of the Premises and Common Areas during the operation of the OSHC service.
- 19.2 The Committee will consist of:
- 19.2.1 the Principal,
  - 19.2.2 the Director of the OSHC Service,
  - 19.2.3 the Nominated Supervisor of the OSHC Service,
  - 19.2.4 two elected parent representatives from the Governing Council;
  - 19.2.5 two parents whose children attend the OSHC Service;
  - 19.2.6 management representative from the OSHC Provider; and
  - 19.2.7 the School Finance Officer.
- 19.3 The Committee will have the powers and functions and will be constituted as set out in Schedule 2, which Schedule or any clause of it may be varied by written agreement between the parties at any time.

## **20. REVIEW**

- 20.1 The Minister will review the performance of the OSHC Provider on a regular basis to monitor adherence to the Key Performance Indicators specified in Annexure 3 and the terms and conditions of this Agreement.
- 20.2 The Key Performance Indicators may be amended from time to time by the Committee.

## **21. RELEASE**

The OSHC Provider will occupy and use the Premises and Common Areas at the risk in all things of the OSHC Provider and the OSHC Provider hereby releases the Minister and the school governing council and their officers, agents, contractors and servants in the absence of any default or neglect on their part, to the full extent permitted by law, from all claims and demands of every kind resulting from any accident, damage or injury to persons or property occurring in the Premises and Common Areas.

## **22. INDEMNITY**

The OSHC Provider will indemnify and keep indemnified the Minister and the school governing council and their officers, contractors, servants, agents or any of them from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgements, orders, decrees, damages, costs, charges, losses and expenses of any nature whatsoever which the Minister or the school governing council may suffer or incur in connection with loss of life, personal injury and/or damage to property caused or suffered in or about the Premises and Common Areas whilst the same or any part of them are being used by the OSHC Provider or its users under the Licence granted in this Agreement.

## **23. INSURANCE**

- 23.1 The OSHC Provider will at its expense during the entire term of this Agreement effect and maintain:
- 23.1.1 a policy of public risk insurance with respect to the operation of the OSHC service and in which the limit of public risk must be not less than \$20,000,000 as the amount which may be paid arising out of any one single accident or event, or such further amount as the Minister may from time to time reasonably require. The policy must name the OSHC Provider as insured and be endorsed with the interest of the Minister and contain a clause that the insurer will not cancel or change the insurance without first giving the Minister ten days prior notice;
  - 23.1.2 a policy of insurance for all of the OSHC Provider's fixtures, fittings, furniture, equipment and any other assets referred to in clause 14.3;
  - 23.1.3 workers' compensation insurance in respect of all OSHC Provider Personnel for the purposes of any applicable legislation;
  - 23.1.4 any other policies of insurance required for the purposes of the OSHC service.
- 23.2 In the case of any loss or damage arising from any cause covered by the OSHC Provider's insurances, the OSHC Provider must immediately expend the moneys received by virtue of such insurances in restoring and/or reinstating and/or making good such loss or damage and in case such

moneys will be insufficient for that purpose, the OSHC Provider will personally make good the deficiency out of its own resources.

- 23.3 The Minister warrants that the Minister is entitled to the benefit of the South Australian Government Insurance and Risk Management arrangements administered by the South Australian Government Financing Authority trading as SAICORP in respect of the operations under this Agreement.
- 23.4 The OSHC Provider must, prior to the Commencement Date and on each policy renewal, provide the Minister with copies of certificates of currency of the insurance policies referred to in clause 23.1.

## 24. CONFIDENTIALITY

- 24.1 If the Minister or school governing council discloses Confidential Information to the OSHC Provider, the following conditions apply:
- 24.1.1 the OSHC Provider must not disclose Confidential Information to any person without first obtaining the written consent of the Minister or the relevant school governing council (as the case may be);
- 24.1.2 the OSHC Provider must only use Confidential Information for the purpose of conducting the OSHC service and in accordance with any conditions of use notified to the OSHC Provider in writing by the Minister or a school governing council;
- 24.1.3 the OSHC Provider may disclose Confidential Information to OSHC Provider Personnel:
- 24.1.3.1 only to the extent that, and for so long as, it is necessary for the purpose of conducting the OSHC service; and
- 24.1.3.2 if the OSHC Provider has informed its staff of the confidential nature of the Confidential Information and has required OSHC Provider Personnel to treat it confidentially.
- 24.1.4 the Minister may at any time deny access to the OSHC Provider or require the OSHC Provider to deny access to Confidential Information to any OSHC Provider Personnel and to retrieve from that person Confidential Information; and
- 24.1.5 the OSHC Provider must take all reasonable steps to ensure that the confidentiality of Confidential Information is preserved.
- 24.2 There will be no breach of the obligations of the OSHC Provider under this Agreement or a Licence and Services Agreement if Confidential Information is legally required to be disclosed or permitted to be disclosed by this Agreement.
- 24.3 The OSHC Provider must notify the Minister or the relevant school governing council (as the case may be) immediately it becomes aware of any unauthorised disclosure of any Confidential Information.
- 24.4 The Minister and school governing council must not disclose Confidential Information which has been entrusted to them by the OSHC Provider without the written consent of the OSHC Provider unless it is a disclosure:
- 24.4.1 to Parliament, the Governor, Cabinet, any Minister of the Crown or Parliamentary or Cabinet committee or sub-committee having a proper interest in this Agreement or a Licence and Services Agreement;

- 24.4.2 the law requires them to make;
- 24.4.3 to the Australian Competition and Consumer Commission (**ACCC**) if the Minister reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of Services under this Agreement; or
- 24.4.4 for the purposes of prosecuting or defending any legal proceedings.

## **25. CONTRACTING AND OFFICIAL RECORDS STANDARD AND PERSONAL INFORMATION**

- 25.1 The OSHC Provider agrees that in performing its obligations under this Agreement it will act in a manner that ensures that the Minister is able to comply with the Contracting and Official Records Standard.
- 25.2 The OSHC Provider acknowledges that the Information Privacy Principles as they relate to the collection, storage, access to, correction, use and disclosure, of personal information, apply to the Minister and the Governing Council. The OSHC Provider agrees that in performing its obligations under this Agreement it will act in a manner that ensures that the Minister and the school governing council are able to comply with the Information Privacy Principles. The OSHC Provider must only collect, use and disclose Personal Information for the purpose of fulfilling its obligations under this Agreement unless otherwise permitted under this Agreement or the Information Privacy Principles.

## **26. DISPUTES**

- 26.1 The parties must attempt to resolve any disputes between them by discussion. If disputes cannot be resolved, they will be referred to the Committee for resolution. Each party must provide the Committee with a written notice of the dispute and that party's position on the issues specified in the notice.
- 26.2 In the event of a dispute arising which the Committee has been unable to resolve within 14 days, the dispute will be referred by the Committee to the relevant DECD Regional Director (or his or her nominee), the Chairperson of the school governing council and the Children's Services Manager of the OSHC Provider for resolution.
- 26.3 If the dispute is not resolved within 28 days (or shorter time if the circumstances require) then the dispute may be referred to an independent mediator mutually agreed by the parties or, failing agreement, to an independent mediator nominated by the President or Acting President of the Law Society of South Australia.

## **27. TERMINATION**

- 27.1 If the OSHC Provider breaches any of the terms and conditions of this Agreement, the Minister may give written notice to the OSHC Provider requiring it to rectify such breach within seven days of the date of such notice (or earlier if the circumstances of the case so require), and if the OSHC Provider fails to rectify such breach, or make diligent progress towards rectifying any such breach which is capable of rectification within the time so specified, then, and in any of those cases, the Minister may at any time thereafter terminate this Agreement by written notice given to the



OSHC Provider without prejudice to the rights of the Minister in respect of any antecedent breach.

- 27.2 The Minister may terminate this Agreement immediately on giving written notice to the OSHC Provider if the OSHC Provider has submitted a Declaration in Relation to Unlawful Collusion which is found to be false in any particular.
- 27.3 Under the National Quality Standard Framework (**NQS**), the OSHC Provider must receive either a 'Not Yet Assessed' rating or a minimum 'Meeting Quality Standard' assessment rating. The Minister may terminate this Agreement on 90 days notice to the OSHC Provider if:
- 27.3.1 the OSHC Provider receives a Significant Improvement Required NQS service rating; or
- 27.3.2 the OSHC Provider receives two consecutive Working Towards NQS service ratings.
- 27.4 Notwithstanding any other provision of this Agreement, this Agreement will terminate upon:
- 27.4.1 six months notice to the OSHC Provider if the Minister ceases to operate the School as a Government School; or
- 27.4.2 the Minister giving the OSHC Provider four weeks written notice pursuant to clause 18; or
- 27.4.3 the OSHC Provider enters into any form of Insolvency Administration.

## 28. GENERAL

### 28.1 Notices

- 28.1.1 Any notice to be given or made pursuant to the provisions of this Agreement must be in writing and may be signed by the authorised agent of the party giving the notice.
- 28.1.2 Notices may be served by delivery, by pre-paid mail or by facsimile to the following addresses:
- |                                                                                                                   |                                                      |
|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| <p><b>To the Minister:</b><br/>Level 9, 31 Flinders Street<br/>ADELAIDE SA 5000<br/>Facsimile: (08) 8226 1556</p> | <p><b>To OSHC Provider:</b><br/>[insert details]</p> |
|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
- To the school governing council**  
Chairperson of the school governing council  
c/o [insert name] School  
[insert address]  
Facsimile: (08) [insert number]
- 28.1.3 All such notices and communications will be effective and be deemed to have been received in the following circumstances:
- 28.1.3.1 if delivered, upon delivery;
- 28.1.3.2 if sending by pre-paid mail, upon posting; or
- 28.1.3.3 if sent by facsimile, upon the sender's facsimile machine producing a transmission report that the notice was sent in its entirety to the addressee's facsimile number specified in this clause.

28.1.4 A party may vary its address or facsimile number from time to time by giving written notice to the other party.

**28.2 Auditor-General**

Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

**28.3 Assignment**

The OSHC Provider must not assign or encumber any of its rights under this Agreement without the prior written consent of the Minister.

**28.4 Nature of Relationship**

Nothing in this Agreement constitutes a partnership, joint venture or association of any kind between the Minister, the school governing council and the OSHC Provider or renders any party liable for the debts or liabilities incurred by any other party.

**28.5 Compliance with Laws and Policies**

The OSHC Provider must comply with the laws in force in South Australia in performing its obligations under this Agreement. The OSHC Provider undertakes to comply with all South Australian Government policies of which the Minister informs the OSHC Provider which relate to the performance of the OSHC Provider's obligations under this Agreement.

**28.6 Modification**

Subject to clause 13, any modification to this agreement must be in writing and be signed by each party.

**28.7 Severance**

28.7.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.

28.7.2 If a court determines that a part of this Agreement is unenforceable, invalid, illegal, void or voidable that part may be severed.

28.7.3 Severance of a part of this Agreement will not affect any other part of it.

**28.8 Reading Down**

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

**28.9 Entire Agreement**

This Agreement and the schedules and plans annexed to it, contain the entire agreement between the parties in respect of its subject matter and the parties agree that this Agreement supersedes and extinguishes any prior agreement or understanding between the parties in respect of this subject matter (if any).

**28.10 Goods and Services Tax**

28.10.1 The Parties acknowledge that:

28.10.1.1 under this Agreement each party may make a Taxable Supply;

- 28.10.1.2 it is at the time of this Agreement uncertain whether a supply made by either party will be a Taxable Supply, what value will be attributed to any such supply if it is a Taxable Supply, and whether the Taxable Supply will be treated as a periodic or progressive supply for the purposes of attributing it to a tax period.
- 28.10.2 The Parties agree to:
- 28.10.2.1 obtain such professional advice as is necessary to ascertain whether any supply under this Agreement is a Taxable Supply;
- 28.10.2.2 if so advised, jointly seek a ruling from the Australian Taxation Office in respect of their respective GST liabilities (if any) under the operations of this Agreement; and
- 28.10.2.3 jointly and equally share the costs of and associated with the matters referred to in this subclause.
- 28.10.3 If a Party is liable for GST in respect of a Taxable Supply made under this Agreement the other Party must make a payment equivalent to the amount of GST liability with the intent that after each Party has been paid or credited with Input Tax Credits the Parties will be in a position equivalent to the position that would have applied had there been no Taxable Supplies under this Agreement.
- 28.10.4 If any supply under this Agreement is a Taxable Supply, then
- 28.10.4.1 a Party which makes a Taxable Supply (**Supplier**) must provide to the other party (**Recipient**) a Tax Invoice before the end of the Tax Period to which the Taxable Supply is attributed; and
- 28.10.4.2 a Party is not required to make any payment under this Agreement in respect of a supply by the other Party unless the other Party has provided a Tax Invoice in respect of that payment.
- 28.10.5 In the provisions of this Agreement dealing with GST:
- 28.10.5.1 **ANTS GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*;
- 28.10.5.2 **GST** means the tax imposed by the ANTS GST Act;
- 28.10.5.3 **Taxable Supply** has the meaning attributed in the ANTS GST Act, and also means any component of a Taxable Supply that is treated as a separate supply under the ANTS GST Act.

## 29. WORK HEALTH AND SAFETY

- 29.1 If requested by the Minister, the OSHC Provider must:
- 29.1.1 provide evidence satisfactory to the Minister of its capacity to comply with the *Work Health and Safety Act 2012 (SA)*;
- 29.1.2 provide evidence that its employees, agents and subcontractors have received appropriate training in and are aware of their legal obligations and responsibilities in relation to work health and safety; and

- 29.1.3 provide the OSHC Provider's WorkCover Registration Number.
- 29.2 The OSHC Provider must permit the Minister to carry out any inspections the Minister deems necessary to ensure that the OSHC Provider is complying with the work health and safety practices referred to in this Agreement.
- 29.3 If all or part of the work under this Agreement is to be provided on the Minister's premises and under the Minister's direction, the OSHC Provider must comply with the Minister's work health and safety policies, procedures and instructions. If the OSHC Provider becomes aware of any potentially hazardous situation on the Minister's premises, the OSHC Provider must immediately bring it to the Minister's attention.
- 29.4 If the Minister has additional requirements regarding the preparation and implementation of work health and safety systems and plans, these will be detailed in the description of services in the Schedule.
- 29.5 The OSHC Provider must comply with the *Work Health and Safety Act 2012* (SA) at all times, regardless of whether the Minister issues direction in that regard or not.

### **30. ACTING ETHICALLY**

In delivering the OSHC Service the OSHC Provider must conduct itself in a manner that does not invite, directly or indirectly, the Minister's or the school governing council's officers, employees or agents or any public sector employee (as defined in the *Public Sector Act 2009*) to behave unethically, to prefer private interests over the Ministers' or the school governing council's interests or to otherwise contravene the *Code of Ethics for the South Australian Public Sector* or the *Governing Council's Code of Conduct*.

### **31. TRANSITION**

Upon the expiration or earlier termination of this Agreement, if required by the Minister, the OSHC Provider must cooperate with the Minister and do all things necessary, and provide all relevant information and records, for the effective, smooth and efficient handover of the OSHC service to the Minister or any incoming service provider to ensure that the standard and delivery of the OSHC Service does not suffer.

### **32. EXEMPTION FROM RETAIL AND COMMERCIAL LEASES ACT**

The OSHC Provider acknowledges that the Minister for Small Business has granted an exemption from the *Retail and Commercial Leases Act 1995* in relation to the operation of out of school hours care on the Premises as set out in Annexure 2 to this Agreement.

**Executed as an agreement**

**THE COMMON SEAL** of the **MINISTER FOR** )  
**EDUCATION AND CHILD DEVELOPMENT** )  
was affixed to this Agreement with the )  
authority of the Minister by a person duly )  
authorised to do so: )

.....  
*Authorised Officer*  
[Print name: .....]

**THE COMMON SEAL** of the **[School]** )  
**GOVERNING COUNCIL** was affixed to this )  
Agreement in accordance with its )  
Constitution in the presence of: )

.....  
*Chairperson* *Treasurer*  
Print name: ..... Print name: .....

**Insert appropriate execution clause for the OSHC Provider**

---

## SCHEDULE 1

**Commencement Date**

[insert date]

**Expiry Date**

[insert date], unless extended in accordance with clause 4.2

**School governing council**

[insert name of School governing council]

[ABN: XX XXX XXX XXX]

**School governing council's Representative**

School governing council Chair, [insert school name]

**Land**

The land comprised and described in Certificate of Title Register Book Volume [insert number] Folio [insert number]

**Minister's Representative**

Principal, [insert school name]

**OSHC Provider's Representative**

Name:

Position:

Telephone:

Email:

**School**

[insert name and address of School]

## SCHEDULE 2

### OSHC ADVISORY TERMS OF REFERENCE

1. The parties must establish an advisory committee (**Committee**) in accordance with clause 19 to:
  - (a) provide input into the operation of the OSHC service,
  - (b) monitor the fee structure and any increase in fees;
  - (c) participate in the selection, appointment and continued engagement of persons employed or engaged in the OSHC service in a leadership position such as the OSHC Director or Assistant OSHC Director;
  - (d) monitor the use of resources and finances;
  - (e) monitor enrolments and the needs of the OSHC service;
  - (f) resolve issues of dispute between the parties,
  - (g) undertake an annual review of the OSHC Provider's compliance with the KPIs,
  - (h) undertake an annual survey to assess student, parent and the school governing council's satisfaction of the OSHC service, and
  - (i) carry out all such further matters as may be referred to it by the parties.
2. The members of the Committee will each be appointed or elected for a term of one year. If a casual vacancy occurs the party responsible for appointing the person to the position which has become vacant must promptly appoint another person to fill the vacancy. The Principal will be the Chairperson of the Committee.
3. The quorum for all meetings of the Committee will be four members, but must include the representative of the OSHC Provider. If the Chairperson of the Committee is not present at a meeting then the members of the Committee present at that meeting will appoint a chairperson for that meeting from any of the members present.
4. The Committee will appoint a person to act as secretary to carry out the secretarial requirements of the Committee.
5. Any determination, approval, recommendation, request, requirement or consent made by or given by the Committee must be pursuant to a resolution made by the Committee at a meeting when a majority of the members present vote in favour of the resolution.
6. In the event a majority vote is not reached in accordance with Item 5, the Minister will have the casting vote.
7. The Committee must have regular meetings (at least twice per School Term or more regularly as agreed) to ensure that the operation of the OSHC service is meeting the needs of the school community and that any issues that arise are addressed to the satisfaction of all parties.
8. Committee meetings will be held as determined by the Committee preceding school governing council meetings.

### SCHEDULE 3

#### FEES

##### Fees

	Before School Care	After School Care	Vacation Care	Pupil Free Days	Early School Finish
Service Fee (per session)	Permanent \$x.xx	Permanent \$x.xx	Permanent \$x.xx	Permanent \$x.xx	Permanent \$x.xx
	Casual \$x.xx	Casual \$x.xx	Casual \$x.xx	Casual \$x.xx	Casual \$x.xx

##### Other Charges

- [to be completed]

##### Discounts

- [to be completed]

##### Payment Method

- [to be completed]

##### Value Added Services

In addition to being responsible for the overall management and administration of the OSHC service, the OSHC Provider will:

- [to be completed]

##### Rent

[as determined by school governing council]



**SCHEDULE 4**  
**SERVICES SPECIFICATIONS**

---

## SCHEDULE 5

### REPORTING REQUIREMENTS

The OSHC Provider must:

1. at least five working days prior to the commencement of the OSHC service, provide a written report to the Minister's Representative containing the following information:
  - qualifications of all educators and staff involved in the delivery of the OSHC service
  - copies of certificates confirming completion of Responding to Abuse and Neglect training and Relevant History Information; and
  - names of educators who will undertake the following roles and responsibilities for the OSHC service:
    - Nominated Supervisor
    - Educational Leader, and
    - Responsible Person on site.
2. provide the information listed above to the Minister's Representative at least five working days prior each new OSHC Provider Personnel commencing in the OSHC service.
3. provide evidence to the Minister's Representative of all OSHC staff having undertaken SMART (Strategies for Managing Abuse Related Trauma) training as required when children under the Guardianship of the Minister are enrolled. The SMART program is a free online learning course that focuses on supporting children and young people in a range of educational and other settings. The program can be found at [www.childhood.org.au/for-professionals/smart-online-training](http://www.childhood.org.au/for-professionals/smart-online-training).
4. provide the principal with details of applicants nominated to work on site, such as name, address and date of birth, to work on site, to enable the principal to clear nominated applicants through the DECD HR flagging system. These 'flags' indicate that previous adverse employment history information is available which must be used when considering an applicant for employment or a volunteer role. Where the recommended person has a flag the DECD Manager Recruitment and Compliance will review the information and contact the panel as a matter of urgency.
5. within three working days prior to an Advisory Committee meeting, provide a written report to the Principal detailing the following:
  - utilisation
  - details of children enrolled in the service including their attendance, this could be a report generated through CCMS
  - copy of educator rosters
  - all complaints received in the reporting period, action taken to resolve complaints and the timeframe for resolution
  - incidents, injuries or issues that have impacted on the health, safety or wellbeing of any child at the OSHC Service
  - child, parent and staff feedback

- issues or concerns relating to the provision of the OSHC service
- occupational health and safety matters,
- matters relating to the OSHC Service compliance with the Education and Early Childhood Services (Registration and Standards) Regulations 2011.

---

## SCHEDULE 6

### RECORDS

The OSHC Provider must provide to the Minister's Representative:

1. At least five working days prior to the commencement of the OSHC service, a written report containing the name, date of birth, address and contact details of all educators and/or personnel involved in the delivery of the OSHC service.
2. Within 24 hours of receipt of such information:
  - 2.1 notifications made to the Education and Early Childhood Services Registration and Standard Board of South Australia as required under the Education and Early Childhood Services (Registration and Standards) Regulations 2011;
  - 2.2 waivers relating to facilities and staffing; Compliance Caution Letters, notifications of non-compliance or ratings issued under the Education and Early Childhood Services (Registration and Standards) Regulations 2011 by the Education and Early Childhood Services Registration and Standard Board of South Australia.
3. On an annual basis:
  - 3.1 Relevant History Information for all OSHC Provider Relevant Personnel;
  - 3.2 Certificates confirming completion of 'Responding to Abuse and Neglect – Education and Care' training for all OSHC Provider Personnel employed at the OSHC service;
  - 3.3 an Annual Quality Improvement Plan as confirmation of compliance with the *Education and Early Childhood Services (Registration and Standards) Act 2011*;
  - 3.4 a copy of its Provider Approval Certificate; and
  - 3.5 a copy of its Service Approval Certificate.
4. Evidence that selection panels have cleared nominated applicants through the DECD Human Recourse Management (HRM) flagging system as per OSHC Procedure when requested.
5. A copy of the termination letter when an OSHC service employee is terminated in order for the principal to lodge a report on the Incident Response Management System (IRMS) and advise an officer in HR Policy and Specialist Services who will notify the Manager Recruitment and Compliance and raise a flag in the HRM system.

**ANNEXURE 1****THE PLAN****ANNEXURE 2****EXEMPTION**

*RETAIL AND COMMERCIAL LEASES ACT 1995*

EXEMPTION PURSUANT TO SECTION 77(1)(b)

## ANNEXURE 3

### KEY PERFORMANCE INDICATORS

The Key Performance Indicators are:

1. **Customer Satisfaction**  
Parent, children and school governing council satisfaction with the OSHC service.  
*Measured by:* Annual survey undertaken by the Advisory Committee.  
*Target:* 80% of respondents overall satisfaction.
2. **Complaints**  
Complaints and concerns must be resolved within 15 working days.  
*Measured by:* Action taken documented.  
*Target:* Complaints addressed outside of the timeframe should be less than 5% of the total number of complaints lodged.
3. **Reporting**  
Reports must be completed, submitted within the agreed timeframes and contain all required details.  
*Measured by:* Percentage of all reports not provided within required timeframe.  
*Target:* All required reports to be provided within the obligatory timeframe.
4. **Records**  
All records must be provided within the timeframes specified in the Agreement.  
*Measured by:* Percentage of all records not provided within required timeframe.  
*Target:* All required records to be provided within the required timeframe.
5. **Compliance**  
Compliance with this Agreement.  
*Measured by:* Provider responsiveness to satisfactorily address compliance breaches.  
*Target:* 90% compliance concerns identified are rectified within the stipulated timeframe.
6. **Fees**  
Fees charged to users are in accordance with Schedule 3.  
*Measured by:* The session fees charged to users.  
*Target:* School governing council overall satisfaction that the fee charged is in accordance with Schedule 3 or approved fee variation.
7. **Payments of Rent / Outgoings**  
All rent and outgoings payments are to be made within the timeframe specified on the invoice.  
*Measured by:* The number of payments made outside the specified timeframe.  
*Target:* All payments are to be made within the timeframe specified on the invoice.
8. **Meet the *Education and Care Services National Law 2010* including the Education and Early Childhood Services (Registration and Standards) Regulations 2011 and the National Quality Standard for Early Childhood Education and Care and School Age Care.**  
*Measured by:* The Service Final National Quality Standard Assessment Rating. Any compliance issues raised by the Education and Early Childhood Services Registration and Standards Board of SA.  
*Target:* Meeting National Quality Standard. If this is not achieved the Service should not receive more than two consecutive Working Towards National Quality Standard Final Rating.
9. Any other matters as notified to the OSHC Provider by the Committee.