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# Externally Funded Service Providers

## Guidance to Schools and Contractors

*Guidance for using the Agreement (“Agreement”) between the Department and the Contractor to enable the Contractor to provide services to students at School.*

### Insurances

1. The required insurances must be in the name of the Contractor (the Department will not accept insurance policies in the name of the individuals engaged by the Contractor).
2. Workers compensation insurance or equivalent to the extent required by law. If workers compensation insurance is not required under law (e.g., the Contractor is a sole trader), then no equivalent insurance is necessary.
3. Public liability insurance policy for at least \$20 million for any single occurrence and in the aggregate, and professional indemnity insurance for at least \$2 million for any single occurrence and in the aggregate.
4. A Contractor approved to deliver services under the [Specialist Allied Health Service Provider Scheme](#) (the Scheme), will have met the insurance requirements as part of the Contractor’s qualification to the Scheme. The School is not required to obtain evidence of these insurances for a Contractor approved under the Scheme.

### Subcontracting arrangements

Please note that subcontracting arrangements are not permitted under this Agreement.

### Execution (signing) of the Agreement

1. Ensure that the correct Contractor is named in the Agreement. This means that the correct legal name of the Contractor must be inserted, as well as the corresponding ABN (the ABN can be looked up at: <https://abr.business.gov.au/>).
2. The Agreement must be signed by the Principal on behalf of the Department.
3. The person(s) signing on behalf of the Contractor must have authority to bind the Contractor.
4. If the Agreement is being signed electronically, this must be done by Adobe or some other software designed for electronic execution. If this cannot be done, then there needs to be a wet-ink signature.

# Externally Funded Service Providers

Engagement Agreement for providers engaged by parents/carers to provide services to students at school

Agreement between the Department and the Contractor to enable the Contractor to provide services ("Services") to students at School	
<b>[Insert Provider / Company name]</b> ("Contractor")	The Crown in right of the State of New South Wales acting through the Department of Education (" <b>Department</b> ")
<b>A.B.N:</b> [Insert Contractor's ABN]	<b>School:</b> [Insert School name] (" <b>School</b> ")
<b>Address</b> [Insert]	<b>Principal:</b>
<b>Email</b> [Insert]	<b>Address</b> [Insert]
<b>Phone</b> [Insert]	<b>Email</b> [Insert]
	<b>Phone</b> [Insert]
<b>End Date:</b> [Insert]	
<b>Fee payable:</b> \$1 per annum, if demanded	
<p><b>Additional terms</b></p> <p><i>For providers delivering services through online mode:</i></p> <ol style="list-style-type: none"> <li>The School and the Provider agree that, as at the date of this Agreement, the Services will not be able to be delivered at the School and will be delivered fully online.</li> <li>If during the term of this Agreement delivery of the Services at the School becomes permissible, the School may require the Provider to deliver the Services at the School by not less than 10 Business Days written notice.</li> <li>The terms and conditions in this Agreement apply to provision of the Services irrespective of the delivery method.</li> </ol> <p>(refer to additional pages if required)</p> <p><b>[Drafting Note: This section is used to include any separately negotiated terms that are unique to the particular arrangement. For example, if the Contractor will be charged a</b></p>	



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## Do not delete pages 4 to 10

### 1. Access to the School

- (a) 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.
- (b) 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.
- (c) 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).
- (d) 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.
- (e) The Department or the School will not be liable for provider costs associated with meetings to discuss Service delivery arrangements and School induction.
- (f) 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.
- (g) While on the School site, the Contractor will:
  - 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;
  - 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;
  - 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;
  - ensure it does not leave any rubbish at the School that is not properly disposed;
  - 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;

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- 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;
  - park any motor vehicle at the School entirely at its own risk and only with the prior permission of the School Principal;
  - 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;
  - not attend the School on any day that the School is closed for any reason; and
  - 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**

- (a) 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.
- (b) 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**

- (a) 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.
- (b) 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**

- (a) The Contractor acknowledges that it is, 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.
- (b) 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.
- (c) 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.

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- (d) 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.
- (e) 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.
- (f) 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 (NSW)* and its regulations.
- (g) 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.

## 5. Important notifications concerning serious criminal offences

- (a) 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 (NSW)* concerning the Contractor or personnel.
- (b) A 'serious criminal offence' for the purpose of clause 5(a) means any offence punishable by imprisonment of more than 6 months.

## 6. Termination

- (a) The Contractor may terminate 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.
- (b) The Department may terminate 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.

## 7. Indemnity

- (a) 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

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

## **8. Insurances**

- (a) The Contractor will take out and maintain for the duration of this Agreement:
- workers compensation insurance: workers compensation or equivalent insurance as required under laws;
  - public liability insurance: a public liability insurance policy providing cover for not less than \$20 million for any one occurrence; and
  - professional indemnity insurance: a professional indemnity insurance policy for not less than \$2 million.
- (b) The Contractor will provide to the School or Department, where appropriate, evidence of currency of all insurances. Despite any receipt by the Department of, or failure by the Department to request 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 with the insurance provisions of this Agreement.

## **9. Student and School information, including disclosing information**

- (a) 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. Subject to this clause 9, the Contractor must keep such information confidential and not disclose it to other third parties without the School's written approval or unless required by law.
- (b) The Contractor must:
- put together and maintain effective security measures to keep the information secure; and
  - tell the School immediately on finding out about any suspected or actual unauthorised use or disclosure of such information.
- (c) The Contractor must seek written consent from the parent or carer of the student named in the Service Schedule to allow the Contractor to provide the School with an update following each therapy session in the Therapy Update Form, a template of which is attached as Form 2 of Attachment B of this Agreement. When requesting such consent, the Contractor must inform parents that:

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- the purpose for disclosing such information is for the School to ensure that strategies and supports provided by staff at School are aligned with the Services delivered to the student by the Contractor; and
  - a copy of the written consent will be provided to the School by the Contractor.
- (d) The Contractor must provide a copy of the written consent referred to in clause 9(c) to the School before commencing the Services. A template of written consent form is at Form 1 of Attachment B of this agreement.
- (e) Once parental consent referred to in clause 9(c) is obtained, the Contractor agrees to:
- Complete a Therapy Update Form (included as Form 2 of Attachment B of this Agreement); and
  - Provide the completed form to the School Principal within two (2) weeks of each session provided to the student.

## 10. 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.

## 11. Record keeping

- (a) 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.
- (b) The Contractor must provide to the School copies of all records relating to the Services as and when requested by the School.

## 12. 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 may also receive health information from the School, as defined in the *Health Records and Information Privacy Act 2002* (NSW). The Contractor must comply, in respect of such Personal Information and health information, with the:

- Australian Privacy Principles under the *Privacy Act 1988* (Cth); and
- Information Privacy Principles under the *Privacy and Personal Information Protection Act 1998* (NSW)
- Health Privacy Principles under the *Health Records and Information Privacy Act 2002* (NSW) as if it is a 'public sector agency.'



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### **13. 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.

### **14. 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 7 (Indemnity)
- clause 8 (Insurance); and
- clause 16 (Disputes).

### **15. Subcontracting**

The Contractor must not subcontract any work under this Agreement in whole or part.

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

- a) 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.
- (b) 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.
- (c) Child protection related complaints will be dealt with in line with the Department's 'Responding to Allegations Against Employees in the Area of Child Protection Policy'.
- (d) The parties must settle any dispute arising out of this Agreement, except where urgent relief is required, as follows:
  - a party claiming that a dispute has arisen must give a written notice to each other party giving details of the dispute;
  - 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.

### **17. General**

- (a) The main terms and conditions of this Agreement will take priority to the extent of any inconsistency with the Additional Terms.

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- (b) 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.
- (c) A party may give or not give an approval or consent in its absolute discretion (without reasons), unless stated otherwise.
- (d) 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.
- (e) Clauses 2, 5, 7, 9, 11, 12, 13, 16, and 17 survive the end of this Agreement.
- (f) If any clause of this Agreement is illegal or unenforceable it is to be severed. The rest of this Agreement will not be affected.
- (g) If a party has a right arising from the other's failure, the delay in exercising that right does not waive any rights.
- (h) Any change to this Agreement is only effective if in writing.
- (i) 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.
- (j) The law of NSW Australia governs this Agreement. The parties submit to the exclusive jurisdiction of its courts.
- (k) The covenants implied into licences by legislation are excluded.
- (l) 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.
- (m) 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

### 1. 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](#)
- [Employment Screening 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

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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 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.

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## ATTACHMENT B:

# CONSENT FORMS RELATING TO SHARING INFORMATION

## 1. Form #1 for Contractor to send

[contractor letterhead]

Dear Parent

[summary of service] ('Service')

### Privacy Notice

We are committed to protecting the privacy of your personal information and health information in accordance with the *Privacy and Personal Information Protection Act 1998* (PIIP Act) and *Health Records and Information Privacy Act 2002* (HRIP Act).

We collect personal and health information to [describe the purpose of the collection]. Such information may include:

- Name, age, gender;
- Whether your child has any health issues, medical issues or disability;
- Other related information received in the course of providing the Services; and
- [insert other information].

We will not disclose your child's personal and health information to third parties unless authorised by law or by consent. The below is a consent form to allow relevant information to be shared with [school name] ('School'), NSW Department of Education ('Department'), to arrange appropriate supports for your child whilst at School or engaged in school related activities.

### Consent form

I understand:

- The [contractor] may collect the information described above, which includes information about the nature and implications of my child's medical condition;
- this information may be disclosed to School;

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- the purpose of the information being disclosed is for the School to consider and arrange supports that are relevant for the child during school hours and school-related activities;
  - the information given may be discussed by the principal of the School with other members of the Department with relevant expertise, as is necessary, enabling to care for the child;
  - the School will not disclose this information to third parties other than in accordance with the School's legal obligations or permitted by law;
  - as a parent/carer, I may contact the [contractor] or School to seek the information provided by the [contractor];
  - the information will be held by the [contractor] and the School in accordance with their respective guidelines and legal obligations for the holding of information.

**Student's name** \_\_\_\_\_

**Parent's name** \_\_\_\_\_

**Parent's signature** \_\_\_\_\_

**Date** \_\_\_\_\_

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## 2. Form #2 Therapy Update form – for disclosure of information between contractor and school

This form is to be completed by the Contractor to share information between the Contractor and [school name].

This form must be completed following every session and provided to the School within two weeks of providing the service.

<b>Contractor name</b>	
<b>School name</b>	
<b>Student's name</b>	
<b>Type of service provided</b>	
<b>Date of service provided</b>	
<b>Update – include relevant medical information, or supports the child requires</b>	
<b>Other</b>	
<b>Contractor signature</b>	
<b>Date</b>	