

Queensland Kindergarten Funding Scheme Terms and Conditions for Long Day Care Services

Version 1.3 – dated 2021

Please note:

The Agreement comprises three parts:

- QGrants Application, Claim and Declaration
- Queensland Kindergarten Funding Scheme Funding Category Guidelines (**'Funding Category Guidelines'**)
- Queensland Kindergarten Funding Scheme Terms and Conditions



Terms and Conditions

1. Terminology

- 1.1 Except where specifically defined in these Terms and Conditions, capitalised terms correspond to items in the Funding Category Guidelines.
- 1.2 References to:
- (a) **Business Day** means a day excluding a Saturday, Sunday or a public holiday in Brisbane, Queensland;
 - (b) **Deliverables** means delivery of an Approved Kindergarten Program that complies with the Funding Category Guidelines;
 - (c) **Funded Purpose** means that the Funding is for the purposes of providing the Deliverables;
 - (d) **Funding** means the Funding that is declared under the Governing Act by the *Department of Education Funding Declaration (No. 1) 2018* (Qld) and is provided in funding cycles via a quarterly Claim as outlined in the Funding Category Guidelines;
 - (e) **Quality Standards** means meeting the National and Queensland Eligibility Requirements, maintaining a rating of not less than "Working Towards National Quality Standard", compliance with the National Quality Framework and any other standards or frameworks that may be released by the Regulatory Authority in Queensland or ACECQA from time to time;
 - (f) **Service Users** means eligible children, being children who turn four years of age by 30 June in the enrolment year who are enrolled in an Approved Kindergarten Program or who are accessing delayed entry to, or delayed exit from, an Approved Kindergarten Program;
 - (g) **We**, **Us** or **Our** mean the State of Queensland acting through the Department or other body, agency or person giving the Funding (including its Chief Executive), as specified in the Agreement or any other department or agency of the Queensland Government responsible for the administration of the Agreement; and
 - (h) **You** and related parts of speech mean the entity, being the Approved Provider, entering into the Agreement with the State of Queensland acting through the Department and any entity or service in receipt of the Funding.

2. Agreement

- 2.1 An Agreement (**'Agreement'**) will come into existence between You and Us, comprised of the QGrants Application, Claim and Declaration, the Funding Category Guidelines and these Terms and Conditions, the earlier of:
- (a) You accepting the Funding provided by Us; or
 - (b) You completing the QGrants Application or Claim, including the relevant Declaration.
- 2.2 In the event and to the extent of any inconsistency between the documents which comprise the Agreement, the order of hierarchy in descending order will prevail:
- (a) the Funding Category Guidelines;
 - (b) the Queensland Kindergarten Funding Scheme Terms and Conditions; and
 - (c) the QGrants Application, Claim and Declaration.
- 2.3 This Agreement requires You to comply with, meet or have regard to the Funding Category Guidelines and any document, specification, guideline, policy, standard, framework or scheme issued, and:



- (a) We may, from time to time, issue or approve a new version of it;
- (b) We will notify You about any new version and the date that it is to take effect from;
- (c) the new version will apply for the purposes of the Agreement from that date, provided that this will not limit or affect any right of action or remedy that has accrued as at that date.

3. Funding

- 3.1 We will provide the Funding to You in the instalments and/or funding cycles specified in the Funding Category Guidelines.
- 3.2 The Funding is subject to the terms of the *Community Services Act 2007* (Qld) ('**Governing Act**'), including any regulation made under the Governing Act.
- 3.3 We may withhold the Funding until You:
 - (a) submit any outstanding reports or provide any outstanding information required under the Reporting Requirements; and
 - (b) perform any obligations due to be performed before the payment is to be made.
- 3.4 You must use the Funding only for the Funded Purpose, unless otherwise approved by Us in writing.
- 3.5 We may, at Our discretion, increase the Funding from time to time without a variation to the Agreement, provided that a variation to the Agreement will be required where the Funding is provided for a new or expanded Funded Purpose.
- 3.6 The agreement expiry date is the earlier of:
 - (a) the following quarter after funding is received; or
 - (b) if We, by notice, elect to terminate the Agreement because You breach any term of the Agreement and/or the Funding Category Guidelines and/or QGrants Application, Claim and Declaration; or
 - (c) if You make a Claim for Funding and have not provided an Approved Kindergarten Program or met the Eligibility Requirements for the quarter prior to entering into the Agreement; or
 - (d) if We, by notice, elect to terminate the Agreement because You cease to be eligible for Funding; or
 - (e) if We, by notice, elect to terminate the Agreement because an unacceptable actual or potential conflict of interest arises in relation to You, Your use of the Funding or Your undertaking of the Funded Purpose; or
 - (f) if You become Insolvent; or
 - (g) You do not apply for Funding in a funding cycle; or
 - (h) if We terminate the Agreement immediately in accordance with these Terms and Conditions; or
 - (i) the **Agreement Expiry Date**.
- 3.7 Our obligation to provide the Funding to You will stop at the Agreement Expiry Date or earlier termination of the Agreement.
- 3.8 If, at the Agreement Expiry Date or earlier termination of the Agreement, there is any unspent Funding, We may:
 - (a) authorise You in writing to retain the unspent Funding and, if We so authorise, to expend



some or all of that Funding for an approved purpose; or

- (b) require You to refund the unspent Funding, which will constitute a debt due and owing to Us in accordance with clause 11.

3.9 You must ensure that the Funding is acknowledged in Your annual report (if You produce an annual report) and promotional materials relating to the Funded Purpose. Any acknowledgement in promotional material about the Funded Purpose must use an acknowledgement logo which You must obtain from Us.

4. Funded Purpose

4.1 As the Funded Purpose includes delivery of services, You must:

- (a) have delivered the services in the quarter prior to lodging a Claim and retain evidence that the services have been delivered in accordance with the Eligibility Requirements and Reporting Requirements;
- (b) comply with the Service Delivery Requirements by meeting the criteria established in the Funding Category Guidelines;
- (c) deliver or achieve the Deliverables;
- (d) ensure that the services are delivered in accordance with the Quality Standards; and
- (e) achieve and maintain any certification required for lawful and best practice operation.

4.2 If the Funded Purpose is, or includes, purchasing assets, You must:

- (a) purchase the specified assets;
- (b) be the legal owner of those assets at all times;
- (c) keep and, if requested by Us, provide evidence of the purchase, including receipts; and
- (d) without limiting clause 7.1, effect and maintain insurance covering the asset for its full replacement value.

4.3 As the Approved Provider or legal entity who holds approval for a service, being an Approved KPP, You must ensure that Funding is provided for the specific use of the Approved KPP subject to a Claim for Funding.

4.4 You must not use the Funds for the benefit of another service or Approved KPP which you hold approval for. Use of the Funds for the benefit of another service or Approved KPP will be a material breach of the Agreement.

4.5 We may exercise our discretion, acting reasonably, to determine whether the purpose for which the Funds were used are for a Funded Purpose consistent with the Funding Category Guidelines. Use of Funds for a purpose that is not consistent with the Funding Category Guidelines will be a material breach of the Agreement.

4.6 In undertaking the Funded Purpose, You must comply with all relevant:

- (a) laws and regulations, including the Governing Act; and
- (b) any policies or guidelines, as notified by Us to You from time to time.



5. Reporting

- 5.1 You must comply with all reporting requirements, which requires you to:
- (a) comply with the Reporting Requirements, including providing all requested information if We commence an Assurance Review; and
 - (b) comply with the relevant recordkeeping obligations.
- 5.2 We may request information from You at any time during the term of or after expiry of the Agreement in connection with the receipt and/or use of Funding, including for the purposes of an Assurance Review.
- 5.3 It will be a material breach of the Agreement if We conduct an Assurance Review and You have not complied with, or cannot show evidence of compliance with, the Funding Category Guidelines.
- 5.4 A failure to provide the information requested within 30 Business Days, or a failure to comply with the Reporting Requirements (or both), is a material breach of the Agreement.
- 5.5 You must keep proper records and provide such records, reports or other information to the Us in compliance with the Reporting Requirements as requested by Us. You must:
- (a) make available to, or provide Us with access to, copies of any records or other information relating to the Agreement, Funding or the Reporting Requirements which may be required by Us within a reasonable time of any request; and
 - (b) participate promptly and cooperatively in any external or internal review or audits conducted or instigated by Us, a Queensland government department or agency, the Queensland parliament or any other review or audits conducted or instigated by any other government.
- 5.6 You warrant that to the best of Your knowledge, information and belief, no conflict of interest exists or is likely to arise in the performance of Your obligations under the Agreement. If an actual, perceived or potential conflict arises, You will immediately notify Us, in writing, fully detailing the conflict and must immediately resolve the conflict of interest to Our reasonable satisfaction. We will then determine how to deal with the conflict.

6. Intellectual property

- 6.1 All intellectual property rights of the parties existing before the date of the Agreement will be retained by the relevant party.
- 6.2 Intellectual property rights in material that You create in undertaking the Funded Purpose ('**New Material**') will vest in You, but You grant Us a perpetual, irrevocable, royalty-free, world-wide and non-exclusive licence, including a right to sub-licence to use, communicate, reproduce, publish, adapt and modify:
- (a) the New Material; and
 - (b) Your existing material, but only as part of the New Material and any future use or development of the New Material.

7. Insurance and indemnity

- 7.1 You must effect and maintain:
- (a) public liability insurance for a sum of not less than \$10 million for any one event in respect of accidental death or of accidental bodily injury to persons, or accidental damage to property, arising out of, or in the course of, undertaking the Funded Purpose; and
 - (b) any other insurance, including current workers' compensation insurance.



- 7.2 You release, discharge, indemnify and keep indemnified Us, Our officers, employees and agents from and against any claim, action, proceeding, demand, liability, obligation, cost, loss, damage or expense that may be made or brought by any person against Us in connection with:
- (a) You breaching any term of the Agreement; or
 - (b) any negligent or unlawful act or omission of You, Your officers, employees, volunteer workers or subcontractors.

8. GST

- 8.1 The Funding is exclusive of GST. If the supply by You under the Agreement is a taxable supply and You are registered for GST, We will pay You the GST on the taxable supply at the same time as We pay the Funding.
- 8.2 You agree that:
- (a) We may issue You with a Recipient Created Tax Invoice ('**RCTI**') in respect of GST applicable to any payments of the Funding;
 - (b) You will not issue tax invoices in respect of the taxable supplies for which We issue RCTIs;
 - (c) You acknowledge that you are registered for GST when you enter into the Agreement. You will notify Us immediately if You cease to be registered for GST or if You cease to satisfy any of the requirements relating to RCTIs; and
 - (d) We acknowledge that We are registered for GST. We must notify You if We cease to be registered for GST.
- 8.3 You must remit any GST amount(s) that We pay to You to the Australian Taxation Office as required by the GST legislation.
- 8.4 If You are not registered for GST, We will issue You with an advice for payment for each payment of the Funding.
- 8.5 For clauses 8.1 to 8.4, '**GST**' has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

9. Privacy and confidentiality

- 9.1 If You collect or have access to 'personal information', as defined in the *Information Privacy Act 2009*, for the purposes of the Agreement, You must comply with Parts 1 and 3 as if You were Us.
- 9.2 You must notify Us immediately in the event that You become aware that disclosure of personal information, in relation to any child subject to the *Child Protection Act 1999* or the *Youth Justice Act 1992*, is made or may be required by law.
- 9.3 You must not disclose confidential information belonging to Us except where You have obtained Our prior written approval (which may be subject to conditions) or where required by law.

10. Suspending or stopping Funding

- 10.1 We can, by giving You notice, suspend the Funding or terminate the Agreement, if:
- (a) You breach any term of the Agreement;



- (b) You cease to be eligible for the Funding;
- (c) You become Insolvent; or
- (d) an unacceptable actual or potential conflict of interest arises in relation to You, Your use of the Funding or Your undertaking of the Funded Purpose.

We will only suspend the Funding or terminate the Agreement under this clause 10.1 after following a show cause process substantially the same as that described in clause 14 of Our '*Service Agreement – Standard Terms*', available at the website at [Department of Housing and Public Works | Standard suite of contracts for social services](#) or such other website as We may from time to time notify You ('**Show Cause Process**').

- 10.2 We can, by giving You notice, immediately suspend the Funding or terminate the Agreement without following the Show Cause Process if:
- (a) We have terminated any other service agreement with You because of an event or occurrence of the same type as specified in clause 10.1; or
 - (b) any steps or proceedings are commenced (and not withdrawn or dismissed within 5 business days) or order made in relation to Your winding up, voluntarily or involuntarily.
- 10.3 We can take action under clauses 10.1 or 10.2 without having to give a compliance notice or take any other compliance or enforcement action under a Governing Act, except if expressly required by a Governing Act.
- 10.4 We are entitled and authorised to deduct or set-off from any payment or future Funding due to You and pay a reduced amount in respect of any Claim under the Agreement or any amount owed to Us by You including for unspent funds or money owing pursuant to this Agreement;
- 10.5 We can reduce the Funding or terminate the Agreement, without following the Show Cause Process but only by giving You at least 6 months' notice, if We determine that:
- (a) changes to the State budget or any guidelines or policies of the State or Commonwealth government adversely impact on the continued provision of the Funding to You or recipients of similar funding generally;
 - (b) the needs of any Service Users no longer justify the Funding or other persons are in greater need than the Service Users; or
 - (c) where the Funded Purpose is, or includes, provision of services, it is appropriate for Us to re- test the market for the provision of those services.
- 10.6 If, We:
- (a) reduce the Funding under clause 10.4, Our notice will also specify the changed scope of the Funded Purpose (if any) and the Agreement will be deemed to be varied in accordance with the notice; and
 - (b) reduce the Funding or terminate the Agreement under clause 10.4, We will consider paying You reasonable costs, including transitional arrangement costs for any affected Service Users, that You incur as a direct result of Funding being reduced or stopped, subject to You providing Us with written evidence of the costs claimed and Us approving those costs.
- 10.7 Our rights under clauses 10.1 to 10.4 are in addition to any other rights or remedies available to Us, including under any Governing Act.
- 10.8 You can terminate the Agreement by giving Us at least 3 months' notice.



11. Recovery of Funding

11.1 If:

- (a) You commit any breach of the Agreement; or
- (b) there is unspent Funding at the earlier of the Agreement Expiry Date or termination; or
- (c) You use the funding for a purpose other than the Funded Purpose under the Agreement; or
- (d) Funding is otherwise terminated or suspended with notice in accordance with clause 10,

we can elect by written notice to:

- (e) terminate the Agreement and recover the Funding amount paid to You as a debt due and immediately payable to Us; or
- (f) affirm the Agreement (with or without additional monitoring or compliance actions) and recover the Funding amount paid to You, partially or in full, as a debt due and immediately payable to Us; or
- (g) set off such amount against future Funding in accordance with Our rights under clause 10.4 of this Agreement.

11.2 We will issue You with written notice of Our intention to recover the Funding as a debt due and immediately payable.

11.3 Where You delay payment of a debt due and immediately payable under the Agreement to Us, You may be liable to pay Us interest on the debt at the interest rate as calculated in accordance with this clause.

11.4 We may, at any time whilst the debt is outstanding, write and advise You that we have elected to exercise Our rights to claim interest on the debt pursuant to clause 11.3.

11.5 The interest rate payable under this clause:

- (a) is calculated as 2% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the Commonwealth Bank of Australia;
- (b) accrues from day to day from and including the date that the Agreement is terminated up to the actual date of payment of the debt, as an additional and independent obligation;
- (c) may be accrued at monthly intervals; and
- (d) becomes payable on us making written demand to that effect.

11.6 The right to recover Funding as a debt or the right to charge interest on the debt does not affect or prejudice any other rights or remedies that We may have in relation to a default by You, including our right to terminate the Agreement or seek damages at common law or statute.

11.7 We can exercise our discretion to enter into a payment plan, of which we will determine the terms, with You for Funding to be repaid to Us pursuant to this clause. It is at our discretion whether we enter into a payment plan with You.

12. Publication of information

12.1 We can publish or require You to publish any or all of the following details:

- (a) Your name and address, including Your head office, service outlets and other business premises;
- (b) a description of the Funded Purpose under the Agreement;
- (c) the commencement of the Agreement or the Agreement Expiry Date;



- (d) the amount of the Funding; and
- (e) the procurement method used to award the Funding to You.

13. Notices

- 13.1 Any notice to be given to You under the Agreement must be in writing and addressed and forwarded to the relevant address set out in the QGrants Application, or as otherwise expressly notified by a party to the other.
- 13.2 A notice to You may be delivered by hand, sent by post or electronic mail to the address of the party to which it is sent.
- 13.3 Any notice to be given to Us under the Agreement must be in writing and addressed and forwarded via email to QKFS.LDC@qed.qld.gov.au.
- 13.4 A notice will be deemed to be received:
 - (a) if delivered by hand, on the date of delivery;
 - (b) if sent by post within Australia, six business days after the date on which it was sent; and
 - (c) if transmitted by electronic mail, upon receipt by the sender of an acknowledgment that the notice has been properly transmitted to the recipient.

14. General

- 14.1 Nothing in the Agreement limits Our rights or Your obligations under the Governing Act or otherwise at law.
- 14.2 The Agreement can only be varied by an agreement in writing signed by both You and Us.
- 14.3 You must not assign any of Your rights or obligations under the Agreement without Our prior written consent.
- 14.4 You must not subcontract any part of Your obligations under the Agreement without Our prior written consent and You will remain responsible to Us for the acts and omissions of any subcontractors.
- 14.5 You acknowledge that We are subject to the *Right to Information Act 2009* and any documents held by Us may be subject to disclosure under that Act.
- 14.6 Clauses 3.6, 3.7, 3.8, 6, 7.2, 9, 10, 11 and 14.6 will survive expiration or termination of the Agreement.
- 14.7 If any part of the Agreement is determined to be invalid, unlawful or unenforceable, then, to the extent permitted by law, that part will be severed and the remaining terms will continue to be valid and enforceable.
- 14.8 A failure by Us to exercise, or a delay by Us in exercising, any right, power or remedy will not operate as a waiver.
- 14.9 Both parties will bear their own costs arising out of the preparation of the Agreement.
- 14.10 The Agreement will be governed by the laws of Queensland and the parties submit to the jurisdiction of the courts of Queensland.

