

Early Childhood Outcomes

Early Childhood Outcomes Programs

Funding Agreement

Terms and Conditions

1 January 2025 to 31 December 2025

Parties

The Crown in right of the State of New South Wales acting through the Department of Education (Early Childhood Outcomes) (ABN 40 300 173 822) at 105 Phillip Street, Parramatta NSW 2150 (**Department**); and the Approved Funded Provider (**AFP**).

Background

The Department provides funding for the provision of education and care services.
The Department has offered funding to the AFP in accordance with the Funding Agreement.

Terms and Conditions

1. **Scope of this Funding Agreement, Acceptance and Term (1 January 2025 to 31 December 2025)**

- (a) The Funding Agreement consists of the following parts (in order of precedence):
 - (i) These Terms and Conditions;
 - (ii) Guidelines that apply to the Funding, including those contained at Schedule A;
 - (iii) Any Schedules associated with the Funding Agreement;
 - (iv) Any Funding Specification; and
 - (v) Any other policies, documents, conditions and instructions that the Department may provide to the AFP in connection with the Funding from time to time.
- (b) If there is any inconsistency between these parts, unless expressly stated otherwise, it will be resolved by applying the above order of precedence, with (i) taking the highest priority.
- (c) The Funding Agreement (including these Terms and Conditions) will be effective on and from 1 January 2025 or, if the AFP has not agreed to these Terms and Conditions by 1 January 2025, the date determined by the Department and continues until **31 December 2025**. Unless otherwise agreed, such agreement will be provided by the AFP using the Contract Management System. The AFP agrees to comply with any rules related to the use of the Contract Management System, as notified by the department from time to time. Following termination or expiry of the Funding Agreement on 31 December 2025, some obligations continue to survive as specified in clause 21.9. If the department agrees to allow expenditure by the AFP after 31 December 2025, it will be on terms as determined by the Department.
- (d) If an AFP does not agree to these Terms and Conditions within the timeframe notified by the Department or outlined in the Guidelines, then the Department:
 - (i) May terminate any funding agreement with and funding provided to the AFP under any funding program administered by the Department's Early Childhood Outcomes Division with effect on and from 31 December 2024; and
 - (ii) Has no obligation to provide the Funding and the Funding Agreement will be of no force and effect.

2. **Provision of Funding**

- (a) (**Funding Specifications**) The Department will provide the Funding to the AFP in accordance with the Funding Agreement and any applicable Funding Specifications. Funding Specifications may vary for each Program, and calculation of funding will be set out in the Guidelines.

- (b) (**Payment details**) The Funding will be paid in accordance with the timeframe set out in the Funding Agreement. Funding will be paid by electronic funds transfer into a bank account nominated by the AFP, which must be an account with an Australian branch of an established bank, building society or credit union, and solely controlled by the AFP. The Department will use all care to ensure Funds are paid in a timely manner but is not liable for late payments. Payment of any amount of Funding is not an admission by the Department that the AFP has met its obligations under the Funding Agreement to the Department's reasonable satisfaction.
- (c) (**Funding is conditional**) The Department's obligation to provide the Funding is conditional on receiving an appropriate annual allocation from Parliament. If there is no appropriate annual allocation, then there will be reduced or no Funding provided to the AFP.
- (d) (**No future promises**) By entering into the Funding Agreement, the Department does not promise that the AFP will receive any additional or future funding, in connection with the Program(s) or otherwise. There is also no promise as to what terms would apply to any additional or future funding.
- (e) (**Withhold Funding**) The Department may, by notice, withhold payment of any amount of the Funding if and for so long as it reasonably believes that:
- (i) The AFP has not complied with the Funding Agreement;
 - (ii) The AFP is unlikely to conduct the activity or administer the Funding in accordance with the Funding Agreement;
 - (iii) The AFP's actions will cause damage to the reputation of the Department or one of its Funding Programs.
- (f) (**Deduction and repayment**) If the amount of the Funding:
- (i) Has been incorrectly claimed or overpaid;
 - (ii) Has not been spent in accordance with the Funding Agreement;
 - (iii) Is surplus to the requirements of the Funding; or
 - (iv) Is unspent upon termination or expiry of the Funding Agreement,
- Then the Department may, by notice:
- (v) Deduct that amount from any future payments of Funding, or other Funding, payable by the Department to the AFP; or
 - (vi) Require repayment in the circumstances referred to in clause 8.3.
- (g) (**Debt**) If the AFP does not make any required repayment of Funding under the Funding Agreement by the due date for payment, the Department may recover the amount as a debt due to the Department, without the need for further proof.
- (h) (**Spending rules**) The Department may set out any spending rules in respect of the Funding for a Program in the applicable Guidelines, which the AFP must follow.
- (i) Any interest earned on the Funding for a Program must be spent in line with the spending rules for that Program and in accordance with the Funding Agreement, as if it was part of the initial Funding amount, unless otherwise approved.

3. Funding amounts may be adjusted or varied

- (a) **(Adjustment)** The final amount of Funding for a particular Program may be adjusted over the relevant funding period due to numerous factors including as set out in the applicable Guidelines. If the determination of the final amount of Funding requires the AFP to provide information to the Department, it must do so within two (2) Business Days of receiving a request or as advised by the Department.
- (b) **(Variation to Funding)** Without limiting clause (c), the Department may from time to time:
 - (i) **(increase)** Increase the amount of Funding. An increase will be taken to be accepted unless the AFP notifies the Department in writing within five (5) Business Days of the Department's notice that it does not accept the increase; and
 - (ii) **(decrease)** Decrease the amount of Funding. The Department will use reasonable efforts to provide thirty (30) days' notice of a decrease – however a decrease may occur immediately (see clause (a)).

4. Performance of obligations under the Programs

- (a) **(High quality)** In consideration of the Funding being provided to the AFP, the AFP will ensure that it performs its obligations under the Program(s) by providing reasonably high-quality services to all clients receiving services from the AFP (e.g. including children, parents or legal guardians).
- (b) **(Performance)** The AFP must perform its obligations under the Program(s) and use the Funding:
 - (i) **(funding agreement)** In accordance with the Funding Agreement;
 - (ii) **(policies)** In accordance with any Department policies and other guidelines, as amended from time to time, that are published online on the Department's website or which the Department otherwise makes the AFP aware of;
 - (iii) **(professional manner)** With due care, skill and diligence and in a proper and professional manner (including in a timely manner) and ensure that the AFP's Personnel do likewise and are appropriately qualified, trained and experienced and hold any required clearances; and
 - (iv) **(laws)** In accordance with all applicable laws and regulatory requirements, relevant Australian industry standards, best practice and guidelines and all authorisations, approvals, licences and consents.
- (c) **(Guidelines)** The AFP must, at all times, comply with all applicable Guidelines and all reasonable directions of the Department in connection with the Funding Agreement (including the Guidelines). The AFP acknowledges and agrees that Guidelines may be added, amended or replaced by the Department from time to time. The most up-to-date Guidelines for a Program may be accessed at the Department's website or as otherwise notified by the Department from time to time. The AFP will put in place processes so that it is reliably and promptly kept up to date of any changes to applicable Guidelines.
- (d) **(Data collection)** If requested, the AFP must provide input to the Department's or the Commonwealth government's Early Childhood Education planning processes, including providing any requested data (with the requested data to be provided by the AFP or through a Software Provider at the AFP's direction). The AFP must

comply with clause 13 in providing any data. All data created or collected in connection with the Program(s) will be Project Material (see clause 19.3).

- (e) **(Inclusion and accessibility)** The AFP must ensure that the AFP, the AFP Personnel and all AFP premises comply with relevant State and Commonwealth disability legislation, including the *Disability (Access to Premises – Buildings) Standards 2010* (Cth) and the *Disability Discrimination Act 1992* (Cth).
- (f) **(Interrupted access)** The AFP must immediately notify the Department in writing upon becoming aware that any AFP premises may not be accessible by clients for five (5) consecutive Business Days or more during which a Program would normally be provided. The AFP must, at its own cost, take all reasonable and necessary action to bring about access to any AFP premises where access has been interrupted or provide alternative AFP premises.
- (g) **(Notifying problems)** The AFP must immediately notify the Department in writing if it:
 - (i) Believes that the activities relevant to a Program will not commence within twenty-eight (28) Business Days from the commencement date of the Funding Agreement or, where the Program is provided only during NSW public school terms, the next NSW public school term commencing immediately after the commencement date of the Funding Agreement;
 - (ii) Has not provided any part of a Program for a period of five (5) consecutive Business Days or more or, where the Program is to be provided only during specific times of the year (e.g. NSW public school terms), for a period of five (5) consecutive Business Days or more during those times ; or
 - (iii) Has ceased, for any reason, to provide some or all of a Program or if the nature or location or other relevant details for a Program has changed.
- (h) **(Vaccination information for parents and carers)** If the AFP is an ‘approved education and care service’ (see clause (i)), the AFP must ensure that information regarding vaccinations, including the childhood vaccines of the ‘NSW Immunisation Schedule’, is made available to parents, legal guardians and carers receiving its services. This information must be obtained from the NSW Ministry of Health, medical professionals or other Commonwealth or State government departments. This information may be made available by the AFP via email, brochures or posters at the AFP premises, or other modes of communication. The information must be up to date and easily accessible.
- (i) **(Population health initiatives)** From time to time the AFP may be requested to make available information relating to population health initiatives. This information must be obtained from the NSW Ministry of Health, medical professionals or other Commonwealth or State government departments, as directed by the Department. This information may be made available by the AFP via email, brochures or posters at the AFP premises, or other modes of communication. The information must be up to date and easily accessible.
- (j) **(Perform in accordance with the Funding Agreement)** The AFP must perform the Program(s) in accordance with the Funding Agreement. Where the Department considers the AFP has breached a term of the Funding Agreement, it will be deemed to be an Event of Default for the purposes of clause 12.

5. Warranties by AFP

5.1 Warranties by AFP

The AFP warrants on each day during the term of the Funding Agreement that:

- (a) **(Laws)** It complies with all applicable laws;
- (b) **(Power to enter)** It has the legal right and power to enter into the Funding Agreement and to perform its obligations;
- (c) **(All corporate actions)** The execution, delivery and performance of the Funding Agreement by it has been validly authorised;
- (d) **(Authorisations)** Each authorisation, approval, license or consent necessary to enable it to unconditionally deliver and comply with its obligations under the Funding Agreement, and to carry on its principal business, has been obtained, effected and complied with;
- (e) **(Expertise)** It has the expertise, skills, qualifications and resources required to perform its obligations under the Funding Agreement;
- (f) **(No adverse proceedings)** It is not aware of any circumstances, including any financial circumstances or litigation or other proceedings that are taking place, pending or threatened, which might affect the AFP's ability to perform the Funding Agreement;
- (g) **(Correct information)** The information provided by the AFP as to structure, viability, reliability, insurance cover, capacity, experience and expertise and its Personnel is correct and complete;
- (h) **(Not trading insolvent)** It is not trading insolvent, has sufficient cash flow to sustain its operations and perform its obligations under the Funding Agreement, and is able to pay its debts as and when they fall due;
- (i) **(Approved education and care service)** If, for eligibility under a Program's Guidelines, it is required to be an 'approved education and care service' under either the *Children (Education and Care Services) National Law Act 2010* (NSW) or the *Children (Education and Care Services) Supplementary Provisions Act 2011* (NSW) (National Law) and related regulations then the AFP:
 - (i) Is an education and care service under the National Law; and
 - (ii) Is operated by a person or entity holding a provider approval issued under the National Law; and
- (j) **(Compliance)** It will give written notice to the Department, by 5pm on the next Business Day, after becoming aware that the AFP no longer complies with the requirements of this clause.

5.2 Trustee provisions

- (a) This clause 5.2 applies if the AFP enters into the Funding Agreement as trustee of a trust (Trust).
- (b) The AFP agrees that the assets of the Trust will be available to satisfy the AFP's obligations under the Funding Agreement.
- (c) The AFP warrants on each day during the term of the Funding Agreement that:

- (i) The Trust is validly constituted and has not been terminated;
 - (ii) The AFP is permitted under the terms of the trust deed for the Trust (Trust Deed) to enter into and perform its obligations under the Funding Agreement and executing the Funding Agreement is not a breach of Trust on the AFP's part;
 - (iii) The AFP is not in default under the Trust Deed and no action has been taken or proposed to terminate the Trust;
 - (iv) The AFP has complied with the AFP's Trust obligations;
 - (v) The AFP has taken every necessary action under the Trust Deed to authorise the AFP to execute the Funding Agreement and perform the AFP's obligations under the Funding Agreement; and
 - (vi) The Department's rights under the Funding Agreement have priority over the interest of the beneficiaries of the Trust.
- (d) The AFP must not:
- (i) Do anything to retire or be removed or replaced as trustee of the Trust or allow any additional trustees of the Trust to be appointed; or
 - (ii) Vary the terms of the Trust Deed or terminate the Trust,
- without the Department's prior consent.

6. Conflict

- (a) The AFP must establish and maintain measures to manage conflicts of interest in connection with the Funding Agreement. An example of this could include maintaining a risk register or other mechanism that provides for the appropriate management and documentation of conflicts of interest.
- (b) The AFP warrants that no conflict of interest exists or is likely to arise in connection with the Funding Agreement.
- (c) If an actual, perceived or potential conflict of interest arises, or is likely to, the AFP must immediately notify the Department in writing, fully detailing it. The Department will then determine how to deal with the conflict.
- (d) A conflict of interest means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with:
 - (i) The AFP's ability to perform its obligations under the Funding Agreement; or
 - (ii) The Department's broader interests.

7. Child protection

7.1 Child Protection Laws

- (a) The AFP acknowledges that it is aware of and must comply with the requirements of the *Child Protection (Working with Children) Act 2012* (NSW), *Child Protection (Working with Children) Regulation 2013* (NSW), the National Law, the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and all related laws

concerning child protection (**Child Protection Laws**).

- (b) The AFP must ensure that it complies with:
 - (i) The requirements of the Child Protection Laws; and
 - (ii) Policies of the Department relating to child protection that are published online on the Department's website or that are notified to the AFP from time to time.
- (c) The AFP must, at its cost, certify that the AFP and its Personnel are not a 'prohibited person' under any Child Protection Laws and undergo any screening, such as 'Working with Children Checks', as required by laws or the Department. To be clear, any of the AFP's Personnel who are a 'prohibited person' must not provide any services in connection with a Program.

7.2 Information sharing

- (a) The AFP must immediately notify the Department of any matters it becomes aware of which may impact the welfare or safety of a child, including any compliance action against the AFP and confirmation it has followed any mandatory reporting requirements under Child Protection Laws.
- (b) The AFP must immediately notify the Department of any charges or allegations related to 'serious criminal offences' concerning the AFP or any AFP Personnel. A 'serious criminal offence' means any offence punishable by imprisonment of 12 months or more.

8. Accountability including reporting and performance review

8.1 Submission of reports for financial and performance matters

- (a) The AFP must comply with the '**Financial Accountability Return Guide**' including supporting documents such as the 'Financial Accountability – Information for Services', available on the Department's website and any other reporting requirements as outlined in the Funding Agreement or advised by the Department.
- (b) A failure to provide on time, accurate and complete documentation under this clause 8.1 will be considered to be non-compliance with the Funding Agreement and an Event of Default in accordance with clause 12, and may allow the Department to require repayment of some or all of the Funds or withhold any funding.
- (c) If the Department does not accept a report or required documentation provided by the AFP as satisfactory, the AFP must submit a revised report or revised documentation within ten (10) Business Days of the Department's direction to do so.

8.2 Financial accounting

The AFP must ensure that the receipt and expenditure of the Funding is recorded in a manner that readily and accurately identifies funds received and spent in connection with each Program. This may include having a costing structure (e.g. separate bank accounts, classes, tracking categories, project codes and cost centres etc.) within the financial software or accounts.

8.3 Repayment of Funds

- (a) Notwithstanding anything else in the Funding Agreement, the Department may, in its absolute discretion, require the AFP to repay some or all of the Funds in the circumstances and to the extent specified below:
- (i) **(Misused Funds)** The amount of any Funds which, in the Department's opinion, has been spent or Legally Committed for any purpose that is not in accordance with the Funding Agreement;
 - (ii) **(Unexpended Funds)** The amount of any Funds which have been paid to the AFP but which the AFP has not spent or Legally Committed by the date the AFP was required to have spent or Legally Committed the Funds under the Program and Guidelines to which the particular Funding relates in accordance with the AFP's obligations under the Funding Agreement;
 - (iii) **(Termination)** The amount of any Funds as set out in clause (e);
 - (iv) **(Service changes)** The amount of Funds that relate to a specific period which have been paid to the AFP, and the AFP is transferring the services to which the specific Funding relates to another Approved Provider (Receiving Approved Provider) and the Receiving Approved Provider is not eligible under the applicable Guidelines to receive the specific Funding.
 - (v) **(Failure to submit reports that are accurate and complete)** The amount of any Funds which, in the Department's reasonable opinion, the AFP has not accounted for in accordance with clause 8.1.
- (b) For the purposes of clause (a)(ii), the AFP must:
- (i) Give written notice to the Department of any Unexpended Funds that the AFP holds at the end of the relevant Program period for which the Unexpended Funds were provided;
 - (ii) Return Unexpended Funds in accordance with the Department's requirements (including as to the timing of repayment); and
 - (iii) Not use any Unexpended Funds without written agreement from the Department, including offsetting some or all of the Unexpended Funds against any future payment from the Department under the Funding Agreement or any other agreement it has with the Department.
- (c) If the Department provides the AFP with a written request for the repayment of Funds under this clause (c), the AFP must repay the Department the requested amount within twenty (20) Business Days of receiving the written request.

8.4 Retention of Records

- (a) The AFP must keep current, complete and accurate Records in connection with the Funding Agreement including use of Funding.
- (b) On request, the AFP must allow the Department's representative access to all Records, including but not limited to administrative, enrolment, accounting and financial records.
- (c) The AFP must retain all Records for 7 years after the end or termination of the Funding Agreement. If the AFP ceases to operate then the AFP must ensure that all Records remain accessible to the Department for the entire 7-year period.
- (d) Additional Program specific Record requirements are contained in the Guidelines.

- (e) The Department will retain records collected under the Funding Agreement and maintain the records in accordance with NSW Government and the Department's policies and procedures.

8.5 Performance Monitoring

- (a) **(Performance Monitoring)** The Department may at any time conduct a review, evaluation or monitoring of the AFP's compliance with the Funding Agreement including with applicable laws and the Guidelines (referred to as **Performance Monitoring**).
- (b) **(Purpose)** The Performance Monitoring will be for the following purposes, but not limited to:
 - (i) Monitoring the AFP's performance of its obligations under the Funding Agreement;
 - (ii) Tracking the AFP's progress with the activities that are supported by the Funding;
 - (iii) Establishing whether the Funds have been dispersed correctly and used for the intended purposes; and
 - (iv) Evaluating the outcomes and benefits to children, families and the community provided through the Funding to inform the future design and implementation of the applicable Programs.
- (c) **(Carrying out monitoring)** The Department will carry out Performance Monitoring by any means and at any time. Performance Monitoring may be carried out by Department Personnel or any person nominated by the Department to carry out the Performance Monitoring (**Department Representative**).
- (d) **(Assistance)** The AFP must provide all assistance, information or access required by the Department to enable the Performance Monitoring to be carried out within the requested timeframe. As part of its assistance provided, the AFP must, on reasonable notice, make appropriate personnel available to meet with, and/or discuss, the implementation of the Funding Agreement with a Department Representative.
- (e) **(Premises)** A Department Representative, on 48 hours' notice, may visit any premises of the AFP and inspect records relating to any Program or any Funding.
- (f) **(Access)** The AFP must:
 - (i) On five (5) Business Days' notice from the Department, make all records, in relation to any Program or Funding, available for inspection by a Department Representative; and
 - (ii) Permit and assist the Department Representative to make such copies of records as the Department Representative considers appropriate at the AFP's cost.
- (g) **(Non-compliance)** Any non-compliance with this clause 8.5 is an Event of Default (see clause 12) and may result in the Department exercising its rights including to suspend or terminate the Funding Agreement, or withhold or require repayment of Funding.

8.6 Optional process for review by Department of possible breaches

- (a) If the Department determines that there is a potential breach of the AFP's compliance with the Funding Agreement, the Department can request further information in writing from the AFP. In this written notice, the Department may include:
- (i) Details of the potential breach of the Funding Agreement;
 - (ii) A request for evidence to demonstrate that the AFP complies with its obligations under the Funding Agreement;
 - (iii) A deadline for the AFP to respond within ten (10) Business Days; and
 - (iv) The potential consequences to the AFP if it provides an incomplete or nil response (including the suspension or termination of the Funding Agreement under clause 12, or the Department withholding or requiring repayment of Funding).
- (b) If the AFP's response to any Department requests made under clause (a) is not to the Department's satisfaction, the AFP will be considered to be non-compliant with the Funding Agreement under clause (b)(iv)(A).

8.7 Survival of clause 8

This clause 8, including the AFP's obligations regarding submitting reports, financial accounting, retention of records and performance monitoring, continues to apply after termination or expiry of the Funding Agreement.

9. Financial viability

If the Department determines that the AFP's financial position has or may adversely affect the AFP's performance of its obligations under a Program, the Department may (subject to applicable laws) exercise any rights as detailed in clause 12(a). This clause does not limit the Department's other rights under the Funding Agreement.

10. GST and Recipient Created Tax Invoice (RCTI)

- (a) **(GST)** The Department will calculate the GST payable on the supplies by the AFP and forward this with any Funding payments. It is then the responsibility of the AFP to remit GST received to the Australian Taxation Office (ATO).
- (b) **(RCTI or 'statement of payments')** In applying for Funding the AFP gave the Department details about the AFP's GST status on the register. The following applies (as the case may be):

AFP registered for GST	<p>The Department will create a RCTI along with a Remittance Advice. The AFP acknowledges that it is registered for GST and will notify the Department immediately if it ceases to be.</p> <p>The AFP will not issue tax invoices in respect of the supplies made in accordance with the Funding Agreement and detailed in the RCTI.</p> <p>The AFP agrees to provide to the Department any other relevant information from time to time as required to assist the Department to issue an RCTI.</p>
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AFP not registered for GST	<p>If the AFP is not registered or required to be registered for GST, the Department will create a Remittance Advice. No RCTI will be created.</p> <p>The AFP will notify the Department immediately if the AFP becomes registered or is required to be registered for GST and may be required to complete supporting documentation as required by the Department. If the AFP later becomes registered or is required to be registered for GST, then the AFP must comply with the above terms.</p>
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11. Insurance

- (a) The AFP must take out and maintain all insurances required by applicable laws.
- (b) The AFP must take out and maintain, during the entire term of the Funding Agreement:
 - (i) A public liability insurance policy providing cover for not less than \$20 million for any one occurrence; and
 - (ii) Workers' compensation in accordance with applicable legislation in respect of all employees of the AFP.
- (c) The AFP must, if requested by the Department, provide certificates of currency or other evidence satisfactory to the Department for all insurances held and maintained, within one (1) Business Day of such request.

12. Termination and other rights if default

- (a) **(Termination early)** The Department may immediately terminate the Funding Agreement, in whole or in relation to only some of the Programs, for any or no reason by written notice to the AFP. If the Department exercises this right, the AFP is not entitled to any compensation. If the Funding Agreement is ended in relation to only one or some of the Programs, then the Funds will be reduced proportionately. If Funding is reduced proportionately, the Department will provide written notice of the reduction in Funds and the AFP must return to the Department an amount equal to any excess Funding received by it that it is no longer entitled to because of a reduction in the Programs. The Department may exercise its discretion to withhold future funds if the AFP does not return funds owed to the Department.
- (b) **(Process if an Event of Default occurs)**
 - (i) **(AFP to prevent defaults)** The AFP must not allow an Event of Default to occur. An Event of Default is defined in clause (b)(iv).
 - (ii) **(AFP to give notice of a default)** If an Event of Default occurs, the AFP will immediately notify the Department in writing and provide sufficient detail to allow the Department to assess the significance and impact of the event.
 - (iii) **(Department's rights if a default occurs)** If an Event of Default occurs, then the Department may, by notice to the AFP, immediately:
 - (A) Suspend all or part of the AFP's rights;
 - (B) Withhold in whole or in part any Funding;

- (C) Require repayment of any Funding already paid to the AFP in accordance with clause 0;
 - (D) Vary the Funding arrangements (this could include, for example, varying the level of Funding or the process for how and when any future Funding is to be paid such as requiring additional information or acquittals);
 - (E) Require the AFP to remedy the Event of Default at its cost and within the timeframe specified by the Department;
 - (F) Exercise any other rights under the Funding Agreement; and
 - (G) Terminate the Funding Agreement in whole or in relation to only one or some of the Programs.
- (iv) **(Definition of Event of Default)** Unless expressly stated elsewhere in the Funding Agreement, an Event of Default means any of the following (whether or not caused by anything outside the control of the AFP):
- (A) **Breach capable of remedy:** the AFP breaches a provision of the Funding Agreement and fails to remedy the breach within twenty (20) Business Days following receipt of a notice by the Department requiring the AFP to do so (or such longer period as determined by the Department);
 - (B) **Non-compliance:** the AFP has not complied with any reasonable direction of the Department or any provision of the Funding Agreement or any other funding agreement for a funding program administered by the Department's Early Childhood Outcomes Division. This includes any provision of any applicable Guidelines;
 - (C) **Statements:** any statement made by the AFP was misleading, incorrect or incomplete in a way which would have affected the decision of the Department to enter the Funding Agreement;
 - (D) **Untrue matter:** a representation, warranty or statement made by the AFP is untrue or misleading or a reply by the AFP to a question made by, or on behalf of, the Department, is untrue or misleading;
 - (E) **Compliance unlawful:** it is unlawful for the AFP to comply with any of its obligations under the Funding Agreement or it is claimed to be so by the AFP;
 - (F) **Change in control:** there is a change in control of the AFP that, in the Department's reasonable opinion, renders the AFP no longer eligible to receive the Funding;
 - (G) **Ceases to operate:** the AFP shuts down, closes or ceases to operate or trade in the relevant business or activities it ran as at the time of entering into the Funding Agreement;
 - (H) **Insolvency:** an Insolvency Event occurs;
 - (I) **Authorisation ceasing:** an authorisation, approval, licence or consent necessary to allow the AFP to comply with its obligations under the Funding Agreement is withheld or ceases to be in full force and effect; and
 - (J) **Reputational damage:** the AFP engages in conduct that might

cause reputational damage to the Department or NSW Government.

- (c) **(Effect of suspension)** If there is a whole or part suspension, then:
 - (i) The AFP will (at its cost) do anything that the Department reasonably requests, including comply with any condition that the Department imposes; and
 - (ii) The Department may withhold all or part of the Funding.
- (d) **(Rights)** Termination of the Funding Agreement in whole or in relation to only one or some of the Programs will be without prejudice to the rights of either party that arose before that termination.
- (e) **(On termination)** On termination of the Funding Agreement in whole or in relation to only one or some of the Programs, the AFP must:
 - (i) Pay to the Department:
 - (A) Any Unexpended Funds as set out in clause (a)(ii); and
 - (B) Any Funds which the Department determines have not been properly expended by the AFP as set out in clause (a)(i);
 - (ii) Take all available steps to minimise any loss resulting from termination;
 - (iii) Immediately stop carrying out its obligations under the Funding Agreement or, if termination occurs in relation to only one or some of the Programs, its obligations relating to that Program or those Programs;
 - (iv) Provide all assistance requested by the Department to facilitate the smooth transition of any relevant information or knowledge from AFP to the Department (or a third party) including, if requested by the Department the development of and compliance with a transition plan;
 - (v) Immediately deliver to the Department all financial reporting and other documentation due or otherwise requested by the Department; and
 - (vi) Comply with any reasonable direction given by the Department.
- (f) The Funds referred to in clause (e)(i) must be paid within twenty (20) Business Days of a request from the Department.

13. Information management

13.1 AFP Information

- (a) The Department may collect from the AFP or any other source (including a Software Provider as set out in clause (d)), use and disclose information about the AFP that relates to the AFP's performance under the Funding Agreement and the provision of Funding to the AFP (**AFP Information**). The AFP Information may be collected, used and disclosed for the following purposes:
 - (i) Consideration of funding applications;
 - (ii) Assessment and calculation of Funding to be provided to the AFP;
 - (iii) The Department's planning and management of workforce initiatives;
 - (iv) Acquittal of Funding provided to the AFP; and

- (v) Informing policy decisions and reporting obligations of the Department including on child outcomes.
- (b) The AFP Information may include:
- (i) Any information held by the AFP or a Software Provider that the Department is authorised by law to collect, use, hold and disclose;
 - (ii) Any information that the AFP provides to the Department including under any application and any feedback the Department obtains from third parties regarding the AFP;
 - (iii) General information at the service level;
 - (iv) Personal Information and Health Information (see clause 13.2) about the AFP's Personnel; or
 - (v) Personal Information and Health Information about children (and their parents or legal guardians) that use a Program.

13.2 Privacy

- (a) **(Personal Information)** Personal Information has the same meaning as in the Privacy Laws. It may include sensitive information such as health information.
- (b) **(Health Information)** Health Information has the same meaning as in the Privacy Laws.
- (c) **(Comply with laws)** The AFP must comply with, including when dealing with the Personal Information, all applicable privacy laws including:
 - (i) The *Privacy Act 1988* (Cth);
 - (ii) The *Privacy and Personal Information Protection Act 1998* (NSW) – as if it is a 'public sector agency'; and
 - (iii) The *Health Records and Information Privacy Act 2002* (NSW).
 (These are the **Privacy Laws**.)
- (d) When requested by the Department in writing, the AFP must correct any Personal Information or Health Information that the AFP holds about an individual who has provided their consent for the AFP to collect that information on the Department's behalf in accordance with clauses **Error! Reference source not found.** or **Error! Reference source not found.**. For the avoidance of doubt, the individuals whose Personal Information or Health Information may require correction under this clause **Error! Reference source not found.** includes any child to whom a Program is provided along with their parent or legal guardian, and the AFP's Personnel.

13.3 Privacy and consent forms

- (a) **(Consents)** In order for the Department to monitor and report on Programs and the AFP's performance (including for any development or support programs or additional funding offered by the Department), the AFP will be required to provide the Department with Personal Information about the children to whom a Program is provided, parents or legal guardians of those children, and the AFP's Personnel. If the AFP is required to provide Personal Information about children, a parent or legal guardian, or Personnel (e.g. name, date of birth, address), as part of the early childhood education annual preschool census each year or Fee Relief Data

Submission or some other Department data or information collection exercise, then the AFP must first obtain an authorisation for the child and parent or legal guardian, or AFP Personnel, as detailed below. The Department may share this information in a de-identified form with the Commonwealth, States and Territories.

- (b) **(Child and parent/guardian information)** The AFP must obtain an authorisation from a parent or legal guardian to allow the Department to collect, use and disclose Personal Information in relation to their child and the parent or legal guardian. The Department will not collect Personal information directly from the individual.
- (c) **(AFP's Personnel information)** For the AFP's Personnel, the AFP must obtain their authorisation for the Department to collect their Personal Information from the AFP. The Department will not collect Personal Information directly from the individual.
- (d) **(Obtaining the authorisations)** In obtaining any authorisation, the AFP must use a document substantially in the form of the applicable template authorisation set out on the Department's website. The template authorisations on the Department's website may be changed from time to time and only the most recent template authorisations should be used. Generally, the AFP may use its own standard documents which must use the same wording as set out in the applicable template authorisation. For certain programs, such authorisations will be a condition of any Funding in connection with the program which is made for the relevant child. This requirement will be stipulated in the Guidelines (if applicable). The Department's '2025 Fee relief declaration form' or '2025 Fee Relief Declaration and consent form' must be used as prescribed by the Department and AFPs cannot use their own standard document for this form.
- (e) **(Fee relief)** The individual Guidelines in respect of a Program may specify where consent forms are required for fee relief.

13.4 Obligations under laws

The AFP acknowledges that it may have other obligations under the Privacy Laws to obtain or provide additional notifications, disclosures, consents or records which are not set out in this clause 13.

13.5 Government and other entities

Without restricting the entities to whom the Department may make disclosure, the Department may disclose AFP Information or other information or data to:

- (a) Any government agency, including Commonwealth, State and Territory, who may use AFP Information for any purpose connected to the exercise of their statutory functions;
- (b) The Department's Personnel (this includes the Department's contractors) to allow the Department's Personnel to engage with or offer assistance to the AFP in relation to a Program; and/or
- (c) Any third party contractor procured by the Department to support and assist with educational outcomes in connection with a Program.

13.6 Additional research, evaluation and data collection

- (a) The AFP will comply with the research, evaluation and data collection requirements of the Department, as notified to the AFP when required. This will include collecting and providing statistical and services information.
- (b) The AFP cannot, without the Department's prior written consent, allow any third

party to conduct research or evaluation relating to the Funding Agreement including the use of Funding and the assessment of Program implementation, Program outcomes and the performance of a Program.

- (c) If the Department has provided its written consent, in accordance with clause (b), the AFP must ensure that any such research complies with the Department's guidelines for external researchers. These are available on the Department's website at: <https://education.nsw.gov.au/about-us/educational-data/cese/researching-in-our-schools>.

13.7 Notify of breach

The AFP must immediately notify the Department if the AFP becomes aware of a breach or possible breach of any of the obligations in connection with this clause 13, whether by the AFP or anyone else. The Department may exercise its discretion to request the AFP take certain steps to remedy any breach or possible breach.

13.8 Continuation of obligations during suspension

For the avoidance of doubt, the obligations of the AFP and Software Provider under this clause 13 continues to apply if all or part of the Funding is suspended by the Department in accordance with clause 12.

14. GIPA Act

- (a) The Department may disclose certain information in relation to the Funding Agreement in accordance with its obligations under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**). This includes making certain information about the Funding Agreement publicly available in any register of contracts which the Department is required to maintain under the GIPA Act.
- (b) To allow the Department to comply with the GIPA Act, the AFP must, within seven (7) Business Days of receiving a written request, provide the Department with immediate access to the following information contained in records held by the AFP:
 - (i) Information that relates directly to the performance of a Program;
 - (ii) Information collected by the AFP from its clients (e.g. children or parents/guardians) to whom the AFP provides the Program (provided that the AFP must comply with clauses 13.2 and 13.3 in providing this information); and
 - (iii) Information received by the AFP from the Department to enable the AFP to provide the Program.
- (c) "Information" does not include:
 - (i) Information that discloses or would tend to disclose the AFP's financing arrangements, financial modelling, cost structure or profit margins;
 - (ii) Information that the AFP is prohibited from disclosing to the Department by provision made by or under any Act of any State or Territory, or of the Commonwealth; or
 - (iii) Information that, if disclosed to the Department, could reasonably be expected to place the AFP at a substantial commercial disadvantage in relation to the Department whether at present or in the future.

- (d) The AFP must provide copies of any of the information requested by the Department at the AFP's own cost.

15. Indemnity

- (a) The AFP indemnifies the Department (including its Personnel) from any and all loss, liability, damages, expenses, costs, charges (including legal fees on a solicitor/client basis) which the Department (including its Personnel) pays, suffers, incurs or is liable for in respect of any act or omission by the AFP or its Personnel in connection with or arising out of the Funding Agreement.
- (b) The AFP's liability under this indemnity will be reduced to the extent that any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment was caused or contributed to by the Department's or its Personnel's negligent or unlawful acts or omissions.
- (c) The AFP's liability to indemnify the Department and its Personnel does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of the Funding Agreement.
- (d) Each indemnity in the Funding Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Funding Agreement.

16. Exclusion of liability

The Department will not be liable to the AFP for any loss or damage suffered or incurred by the AFP that:

- (a) Does not arise naturally or in the ordinary course of things from that breach; or
- (b) Is a loss of goodwill, income, revenue, profit or savings or business, loss of bargain, loss or denial of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of production, loss of data, loss of reputation or publicity, loss of use, loss of interest, damage to credit rating or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise in connection with the Funding Agreement.

16.1 Limitation of liability

The Department's liability under the Funding Agreement is limited to the amount of the Funding provided to the AFP as at the date the liability arises (to be determined by the Department).

17. Publicity and reputation

- (a) **(Publicity)** The AFP will acknowledge the financial support received from the Department in its annual report (if any) and in any publications or materials produced in connection with any Program. The Department may, from time to time, provide suggested or required wording for such acknowledgement.
- (b) **(Promotional material)** The AFP must:
 - (i) Notify the Department before making any press or other announcements, publications or releases relating to the Funding Agreement;
 - (ii) Use best efforts to ensure the Department and its Minister are given a reasonable opportunity to participate in media coverage or other promotion

of the AFP's activity;

- (iii) Not use Department or NSW Government branding or logos except with the Department's prior consent and in accordance with the [NSW Government Brand Framework](#); and
 - (iv) If requested by the Department, promptly remove its acknowledgement of the Funding and any Department or NSW Government logo from any material relating to the AFP's activity.
- (c) (**Award of Funding**) The AFP acknowledges that the Department or the NSW Government may publicise the awarding of the Funding at any time after the Funding is awarded, including:
- (i) The AFP's name;
 - (ii) The amount of Funding provided;
 - (iii) The title and brief description of the services and the relevant Program; and
 - (iv) Any results or outcomes arising out of the Funding.
- (d) (**Reputation**) The AFP and its Personnel must maintain the Department's good name and reputation. This obligation includes ensuring that the AFP performs its obligations under the Program(s) in a manner that is competent, courteous, safe, reliable and to 'best practice' standards.

18. Confidential Information

- (a) Unless expressly stated otherwise, a party must not:
- (i) Disclose the other party's Confidential Information to a third party; or
 - (ii) Use the other party's Confidential Information other than for the purpose of performing the Funding Agreement.
- (b) A party may disclose the other party's Confidential Information:
- (i) In accordance with clauses (d), 13 and 14;
 - (ii) With the other party's consent;
 - (iii) To a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
 - (iv) To any of its representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
 - (v) To comply with its obligations, or to exercise its rights, under the Funding Agreement;
 - (vi) To comply with the law, or a requirement of a regulatory body (including any relevant securities exchange);
 - (vii) To the extent necessary to enforce its rights or defend a claim or action under the Funding Agreement;
 - (viii) Where the party is the Department, it may disclose Confidential Information:
 - (A) To the Responsible Minister administering the Department and their

personal and departmental advisers;

- (B) In response to a request by the Parliament or a Committee of the Parliament of the State of NSW; and
- (C) Where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

(c) **Confidential Information** means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

- (i) Is by its nature confidential;
- (ii) Has been designated as confidential by a party;
- (iii) Is capable of protection at common law or equity as confidential information; or
- (iv) Is derived or produced partly from the information in paragraphs (i), (ii) or (iii) above;

but does not include information that:

- (v) Is in the public domain; or
- (vi) Is independently known or developed by the party receiving the information,

other than as a result of a breach of the Funding Agreement or any other obligation of confidentiality owed by or to any other person.

19. Intellectual Property

19.1 Definition

- (a) For the purpose of the Funding Agreement, **Intellectual Property** means:
 - (i) All rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
 - (ii) All other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how.

19.2 Background IP

- (a) Nothing in the Funding Agreement affects ownership of Background IP.
- (b) **Background IP** means Intellectual Property which is made available by a party for the purpose of carrying out the Funding Agreement and that is:
 - (i) In existence at the commencement date; or
 - (ii) Brought into existence after the commencement date other than as a result of the performance of the Funding Agreement.

19.3 Project Material

- (a) Intellectual Property in all Project Material vests in the Department.

- (b) **Project Material** means material created by the Department as part of or in performance of a Program including any material incorporating any documents, reports or data provided by the AFP.

19.4 Licence to use

- (a) The AFP grants the Department a non-exclusive, perpetual, royalty free licence to use, communicate and reproduce its Background IP and Intellectual property as reasonably required by the Department.
- (b) The Department grants the AFP a non-exclusive, royalty-free licence to use, communicate and reproduce Background IP and Intellectual Property of the Department solely for the purpose of carrying out its obligations under the Funding Agreement.

20. Dispute resolution

- (a) Both parties agree to act in good faith in carrying out their obligations under the Funding Agreement and to attempt to resolve any dispute in good faith.
- (b) Within five (5) Business Days of a dispute arising under the Funding Agreement (a **Dispute**), the party claiming that a Dispute has arisen must notify the other party in writing giving details of the Dispute (**Dispute Notice**).
- (c) If the parties cannot resolve the Dispute within forty (40) Business Days of receiving a Dispute Notice, the Dispute must be referred to a senior executive of the Department (or their authorised delegate) and the AFP's chief executive officer (or their authorised delegate), who:
 - (i) Does not have prior direct involvement in the Dispute;
 - (ii) Has authority to negotiate and settle the Dispute on behalf of the party; and
 - (iii) Must work in good faith to resolve the Dispute within ten (10) Business Days.
- (d) If the Dispute is not resolved within ten (10) Business Days after the meeting of senior representatives, either party may refer the Dispute to mediation or commence formal proceedings.
- (e) If the Department requests it, the AFP must continue performing its obligations under the Funding Agreement while a Dispute is being dealt with in accordance with this clause 20 (Dispute resolution), to the extent practicable to do so.
- (f) Nothing in this clause 20 (Dispute resolution) will prevent either party from seeking urgent interlocutory relief.

21. General

21.1 Relationship

- (a) The AFP acknowledges that neither the AFP nor any of its Personnel are employees, partners or agents of the Department.
- (b) The AFP must not, and must ensure that its Personnel do not, represent that the AFP or a member of its Personnel is an employee, partner or agent of the Department.

21.2 Change in Control

Any change in Control (defined by section 50AA of the *Corporations Act 2001* (Cth)) of the AFP requires the Department's prior written approval. The Department may terminate the Funding Agreement at any time if a change in Control occurs without the Department's prior written approval.

21.3 Subcontracting

- (a) The AFP must not subcontract any part of the activity under the Funding Agreement without the prior written consent of the Department.
- (b) Any consent given by the Department in accordance with this clause 21.3 does not relieve the AFP of its obligations under the Funding Agreement.

21.4 Set-off

Any monies, fees, costs or other expenses, damages, rebates or losses recoverable by the Department from the AFP may be deducted from any money due to the AFP. If the money due to the AFP is insufficient, the balance remaining unpaid will be a debt immediately due and payable by the AFP to the Department. Such monies must be paid to the Department within twenty (20) Business Days of a request for payment.

21.5 Obligations

The AFP will perform its obligations under the Funding Agreement at its own cost. The Department's only obligation is to provide the Funding in accordance with the Funding Agreement.

21.6 Notices

- (a) Subject to clause (c), a notice or communication has no effect unless it is sent by email. For funding matters, the Department's email address is ecec.funding@det.nsw.edu.au or, in respect of a particular Program, any alternative email address set out in the applicable Guidelines. For all other matters, the Department's email address is ececd@det.nsw.edu.au. It is the responsibility of the AFP to update service provider and service email address details in the Contract Management System. The email address specified for the AFP in the Contract Management System will be used by the Department for all notices to the AFP.
- (b) A notice is taken to be received at the time the email is sent if there is no delivery failure report provided to the sender within 24 hours of the email being sent.
- (c) If an emergency occurs and the AFP requires immediate assistance from the Department, the AFP may contact the Department by telephone on 1800 619 113 or any alternative telephone number set out in the relevant Guidelines. If the AFP contacts the Department by telephone in accordance with this clause (c), it must provide an email to the Department, within three (3) Business Days, confirming that contact and the information provided to the Department.

21.7 Further assurances

Each party must promptly (at its own cost) do all things necessary or desirable to give full effect to the Funding Agreement.

21.8 Entire understanding

The Funding Agreement (and the documents it specifically refers to) is the entire agreement between the parties on everything connected with the subject matter of the

Funding Agreement and supersedes any prior agreement (in respect of the period and Programs from 1 January 2025 to 31 December 2025). For the avoidance of doubt, the Funding Agreement does not affect any funding agreement prior to 1 January 2025.

21.9 Survival

Any provision of the Funding Agreement which, by its nature, would reasonably be expected to be performed after the end or termination of the Funding Agreement will continue to apply. These provisions include clause 2(f) (Deduction and repayment), clause 2(g) (Debt), clause 4(f) (Data collection), clause 8 (Accountability including reporting and performance review), clause 12 (Termination and other rights if default), clause 13 (Information management), clause 15 (Indemnity), clause 16 (Exclusion of liability), clause 17 (Publicity and reputation), clause 18 (Confidential Information), clause 19 (Intellectual Property) and clause 21 (General).

21.10 Severable

If any clause of the Funding Agreement is illegal or unenforceable it will not apply and will be excluded from the Funding Agreement. The rest of the Funding Agreement will not be affected.

21.11 Waiver

Except as expressly stated in the Funding Agreement, each party acknowledges that:

- (a) A waiver or consent under the Funding Agreement is not effective unless it is in writing and signed by the party entitled to give it;
- (b) A waiver or consent may be given conditionally or unconditionally or withheld in the absolute discretion of the party entitled to give the waiver or consent;
- (c) A waiver of a power or right or the giving of consent is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given;
- (d) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right; and
- (e) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

21.12 Variation

The Department may vary the Program Guidelines for matters relating to minor issues and to allow for additional, related funding to be provided (with corresponding additional spending rules). Otherwise, unless specified in the Funding Agreement, any change to the Funding Agreement is only effective if agreed in writing by each party.

21.13 Assignment and novation

- (a) The AFP must not assign, novate or transfer any of its rights or obligations under the Funding Agreement without the Department's prior written approval. Any consent given by the Department may be conditional.
- (b) The Department may assign, novate or transfer any of its rights or obligations under the Funding Agreement without the AFP's consent.
- (c) The Department may require the AFP to repay some or all of the Funds in the case of service changes as referred to in clause 8.3(a)(iv)

- (d) Where there is an assignment, novation or transfer under this clause, the Department may determine, in its absolute discretion, the amount of Funding that any new entity may or may not receive.
- (e) A breach of this clause 21.13 by the AFP will be an Event of Default.

21.14 Electronic signature and exchange

- (a) The parties consent to the Funding Agreement and any variations being signed by electronic signature by the methods set out in this clause. The parties agree that the following methods validly identify the person signing and indicate their intention to sign:
 - (i) use of a secure digital platform such as the Contract Management System;
 - (ii) as otherwise agreed in writing by the Department.

Any such electronic signatures will be deemed original signatures and are to be treated in all respects as having the same effect.

- (b) The parties may exchange executed copies of the Funding Agreement, any variation, or any other document required to be executed under the Funding Agreement, via using a secure digital platform such as the Contract Management System or (where agreed in writing by the Department) other means of electronic transmission. Any such use or transmission is to be treated in all respects as having the same effect as delivery of an original executed copy of the Funding Agreement.

22. Definitions and interpretation

22.1 Definitions

In these Terms and Conditions, unless the contrary intention appears:

AFP or Approved Funded Provider means the organisation approved to receive Funding under a Program and who is a party to the Funding Agreement.

Approved Provider means an early childhood education and care provider who has been approved to provide this service under the National Law.

Business Day means a day that is not a Saturday, Sunday or public holiday or a bank holiday in NSW.

Contract Management System means the system used by the Department to manage funding and contracting in respect of a Program. This may include the Early Childhood Contract Management System (ECCMS) and the ECEC Digital Hub. For the purposes of the Funding Agreement, this definition extends to any software that replaces ECCMS or the ECEC Digital Hub at the discretion of the Department as the platform to manage funding and contracting.

Early Childhood Outcomes Division means the division of the Department responsible for administering the Funding Agreement, and includes any division or re-named division that may replace it from time to time.

Funding and Funds means the amounts paid or payable to the AFP under the Funding Agreement for the purposes of any applicable Program as set out in the spending rules referred to in clause **Error! Reference source not found.**

Funding Agreement means these Terms and Conditions, any applicable Program Guidelines, any other conditions attached to the Funding and any other documentation provided to the Department by the AFP in connection with the Funding (e.g. the AFP's application for Funding).

Funding Specification means a Program's specific funding details outlined in:

- (a) the Contract Management System; or
- (b) elsewhere in writing by the Department,

and may be amended from time to time.

Guidelines means the guidelines that apply to a Program, as amended from time to time. Details of the relevant Guidelines may be published online (on the Department's website) or otherwise detailed in communications from the Department to the AFP, and may be referred to in Schedule A. It is the responsibility of the AFP to review the Guidelines and keep up to date with any changes.

Insolvency Event means any of the following events in relation to the AFP:

- (a) Becoming unable to pay its debts as and when they fall due;
- (b) An application for winding up is made and not dismissed within ten (10) Business Days or a winding up order is made;
- (c) A controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed; or
- (d) Any actions of a substantially similar effect are taken in any jurisdiction.

Law means:

- (a) Any act, regulation or other statutory instrument or proclamation of any applicable jurisdiction in which any act or obligation in connection with the Funding Agreement is or is not to be carried out or regulated;
- (b) Any applicable law, whether of a legislative, equitable or common law nature; and
- (c) Any judgement, decree or similar order with mandatory effect or any binding requirement or mandatory approval of any Commonwealth, State, Territory, local or foreign government or semi-governmental authority, court, administrative or other judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any other person having jurisdiction in connection with the Program(s).

Legally Committed means at any time, a present or accrued obligation on the AFP under contract or at Law to pay money to a third party in accordance with the purposes for which the Funding can be used as set out in the relevant Guidelines. It does not include any future obligations to make payment to a third party:

- (a) Which is subject to any outstanding condition to payment (other than the expiration of time) or other contingency that has not been satisfied at that time; or
- (b) Which the AFP has a right to cancel, suspend or terminate for convenience, or otherwise, without liability to the AFP under the contract or under Law.

National Law means the *Children (Education and Care Services) National Law (NSW) (2010)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011 (NSW)*.

Personnel of a person or entity includes its employees, agents, officers or contractors. The AFP's Personnel does not include the Department. The Department's Personnel does not include the AFP.

Program means a funding program(s) administered by the Department's Early Childhood Outcomes Division under which an AFP receives NSW Government funding under these Terms and Conditions and referred to at Schedule A or as later agreed by the parties. A Program may be amended or replaced by the Department in accordance with clause 21.12 (Variation) during the term of the Funding Agreement, and a new program or programs may be added by the parties' agreement during the term. For each Program, there is a Guideline.

Records includes documents, information and data stored by any means and all copies and extracts of the same.

Software Provider means an organisation that has entered into an agreement with:

- (a) the AFP where the organisation hosts information concerning the AFP's Personnel and the children (and their parents or legal guardians) that use a Program (**Hosted Information**); and
- (b) the Department to share the Hosted Information on behalf of the AFP.

Unexpended Funds has the meaning set out in clause (a)(ii)

22.2 Interpretation

In the Funding Agreement, unless the contrary intention appears:

- (a) A reference to:
 - (i) A document includes any variation or replacement of it;
 - (ii) A statute, government policy or other law includes a regulation or other statutory instrument made or issued under it and consolidations, amendments, or replacements; and
 - (iii) A party, includes the party's executors, administrators, successors and permitted assigns;
- (b) The words **include, including, for example** or **such as** when introducing an example, do not limit the meaning of the words to which the example relates or to examples of a similar kind; and
- (c) Headings and any index are for convenience only and do not form part of the Funding Agreement.

22.3 Consents or approvals

- (a) (**discretion for Department consents and approvals**) If any act, matter or thing under the Funding Agreement is dependent on the consent or approval of the Department or is within the discretion of the Department, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld at the Department's absolute discretion.
- (b) (**approvals in writing**) Any matter or thing which requires the approval of the Department, requires such approval in writing.

22.4 No fetter on Department's powers

The Funding Agreement does not restrict or otherwise affect the Department's unfettered discretion to exercise its statutory powers, including powers relating to the granting or revocation of any authorisations, approvals, licences or consent required under any laws.

Schedule A

Grants and funded programs overview

The NSW Government is committed to ensuring that all children in New South Wales can participate in 600 hours of quality preschool education in the year before school. The Department's early childhood education grants and funded programs are designed to help services meet this goal.

Visit [Grants and funded programs](#) webpage for more information.

Early Childhood Contract Management System (ECCMS)

The Early Childhood Contract Management System (ECCMS) is the online system used by the Department to manage funding and contracting arrangements with early childhood service providers.

ECCMS provides a secure portal for service providers to log in and access information about their funded service and the funding they receive.

Updating service provider and service details in ECCMS

It is the responsibility of the Approved Funded Provider (AFP) to update service provider and service details in ECCMS. The AFP needs to ensure that the following information is always up to date:

- The Main Service Provider page – all details on the Main Details tab, Contacts and Address tabs need to be up to date
- Each Funding Specification page – all details on the Main, Contacts and Address tabs need to be up to date

Visit the [Early Childhood Contract Management System \(ECCMS\)](#) webpage for more information.

Early Childhood Outcomes - Program guidelines

Disability and Inclusion Program (Higher Learning Support Needs and Inclusive Environments):

<https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/grants-and-funded-programs/disability-and-inclusion-program>

Mobile Preschool Funding Program:

<https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/grants-and-funded-programs/mobile-preschool-funding-program>

Start Strong for Community Preschools:

<https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/grants-and-funded-programs/start-strong-funding/start-strong-for-community-preschools>

Start Strong for Long Day Care:

<https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/grants-and-funded-programs/start-strong-funding/start-strong-for-long-day-care>

Start Strong Pathways:

<https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/grants-and-funded-programs/start-strong-pathways>