



Terms and conditions

1. Definitions and Interpretation

1.1 In this Agreement:

- “Agreement” means this document, including any schedule or annexure to it, together with the Application for Enrolment issued by Brainy Bears;
- “Child” means any children of the Client who is enrolled with Brainy Bears;
- “Client” means any person who accepts this Agreement, personally or by an agent, by enrolling their child with Brainy Bears;
- “Brainy Bears” means Jessica Mounsey trading as Brainy Bears of 16 Springbrook Parkway, Cobblebank, and its successors, permitted assigns and licensees, franchisees and/or its agents;
- “Costs” means the cost to be charged by Brainy Bears to the Client for undertaking the Services as set out in the Application for Enrolment as issued to the Client from time to time or as otherwise agreed;
- “Equipment” means all plant and operational equipment used by Brainy Bears in undertaking the Services;
- “GST” means any tax imposed by or through the GST Legislation on supply (without regard to any input tax credit);
- “GST Legislation” means A New Tax System (Goods and Services Tax) Act 1999 (“Act”) and any related tax imposition Act (whether imposing tax as a duty or customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts;
- “Materials” means the goods and materials to be used by Brainy Bears and supplied to the Client in undertaking the Services;
- “Party” means a party to the Agreement;
- “Premises” means Brainy Bears premises, or other premises used to provide the Services;
- “Services” means all work to be undertaken by Brainy Bears in its school readiness program, pre-kinder program, kinder program, early primary program, Back on Track intervention, school holiday programs and parent workshops, designed for children to engage in research based practises that provide the opportunity to learn to read, write,

and spell, and parents to grow and learn about phonics and the reading process, it also includes any other services reasonably required by the Client and agreed to by Brainy Bears.

1.2 Parties

- 1.2.1 If a Party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly;
- 1.2.2 An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly; and

2. Provision of Services

2.1 The Services to be carried out by Brainy Bears will provide your child with the opportunity to learn the foundational skills for reading, writing and spelling.

2.2 Brainy Bears will carry out the Services to the best of its ability.

2.3 The Services will be carried out at the Premises.

2.4 You acknowledge that bookings are subject to availability and an offer of enrolment by Brainy Bears. Brainy Bears reserves the right to cancel, with a full refund offered, any Services that do not meet the minimum enrolment requirements (Services must have a minimum of 3 enrolments to proceed).

2.5 You acknowledge that any session may be cancelled for any reason, without refund, by Brainy Bears. The Client will be notified by email or text message in advance.

2.6 Should the Child fail to attend any class for any reason, the Client will not be entitled to a refund unless determined otherwise at the express decision of Brainy Bears.

2.7 Term dates will be notified to you from time to time as determined by Brainy Bears.

3. Acceptance of offer

3.1 This document and the Application for Enrolment comprise an offer to enter into an Agreement with you. If you accept this offer you will be regarded as having entered into an Agreement with Brainy Bears. This means you will be bound by the terms and conditions set out in this document, including being billed in accordance with it. Acceptance may be by any one of the following means:

3.1.1 signing and returning a copy of the Application for Enrolment; or

3.1.2 giving us instructions after receiving this document; or

3.1.3 contacting Brainy Bears and advising of your acceptance.

4. Client's Warranties, Acknowledgment and Indemnity

4.1 The Client warrants to Brainy Bears that any information provided to Brainy Bears will be accurate.

4.2 The Client indemnifies Brainy Bears keeps Brainy Bears indemnified against all and any actions, suits, claims, damages or loss sustained by or brought against Brainy Bears either directly or indirectly as a result of any breach by the Client of this Agreement or as a result of any damage caused by the Client to Brainy Bears.

5. Terms of Payment

5.1 The Client agrees to pay to Brainy Bears the full amount of the Costs together with any applicable GST without set off or cross claim.

5.2 Payment of the Costs is required in full prior to the Services being provided or the commencement of each term.

5.3 Brainy Bears may charge interest on the Costs and all amounts not paid by the Client by the due date at the rate per annum equal to the Commonwealth Bank of Australia Standard Variable Rate applicable to home loans at the time the amount is overdue plus 5% per annum from and including the due date to the date of the actual receipt of payment.

5.4 The right to demand payment of interest is without prejudice to any other right and remedies that Brainy Bears may have in respect of a failure to make payment by the Client under this Agreement.

5.5 The Client is not entitled to withhold or reduce payment of the Costs on the basis of any set off or cross demand however so arising. Standard Terms & Conditions of Enrolment

5.6 The Client agrees to pay on demand as liquidated damages to Brainy Bears any costs or expenses Brainy Bears incurs as a result of a breach of this Agreement by the Client including legal costs in respect of recovery of any outstanding Costs on a solicitor and own client basis.

5.7 If the Client fails to pay the Costs by the due date Brainy Bears can suspend the Services until payment in full of all outstanding Costs is made. Upon the suspension of the Services in the circumstances described herein, the Client acknowledges that Brainy Bears will not be liable for any loss or damage suffered by the Client in respect of that suspension.

5.8 The Costs charged by Brainy Bears are subject to change. Any such changes will be notified to the Client at least 14 days in advance of the change taking effect.

6. Exclusion of Conditions and Warranties and Limitation of Liability

6.1 To the full extent permitted by law Brainy Bears excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or State legislation.

6.2 Brainy Bears and the Client agree that in the event of the Client suffering any loss (including economic loss), damage, costs, expense or claim however so arising as a result of the Agreement or the Services, Brainy Bears shall not be liable under any circumstances for any direct, indirect, economic, special or consequential loss or damage of any nature whatsoever to the Client however so arising.

7. Termination

7.1 The Agreement may be terminated by agreement between the parties in writing. 7.2 Brainy Bears may terminate this Agreement and cease to provide the Services for any reason including, but not limited to, if you:

7.2.1 breach the Agreement;

7.2.2 require Brainy Bears to act unlawfully or unethically;

7.2.3 fail to give Brainy Bears adequate instructions, information and/or resources;

7.2.4 fail to pay any Costs bills pursuant to this Agreement; and/or

7.2.5 fail to accept advice we give you.

7.3 If this Agreement is terminated by Brainy Bears or by you, Brainy Bears is entitled to all outstanding fees and costs up to the termination.

8. No Advice

8.1 Brainy Bears is not qualified to provide medical or professional advice and will not do so on any occasion.

8.2 You agree not to rely upon any statement by Brainy Bears as medical or professional advice.

8.3 Medical or professional advice for your child/ren is important. It is in your interest to obtain any such advice that you may require.

9. Reservation of ownership of copyright

9.1 All copyright in documents that Brainy Bears produce in the course of providing the Services is retained by Brainy Bears.

10. Joint and several liability of Client

10.1 When two or more parties are named as the Client in this Agreement, then each of you agree to be bound jointly and severally.

11. Refund Policy

11.1 Refunds will be considered by Brainy Bears on a case by case basis and will be at the sole discretion of Brainy Bears.

12. Privacy Act

12.1 All enrolment information provided to Brainy Bears will be kept secure in accordance with the Privacy Act 1988 and our Privacy Policy. A copy of the Privacy Policy will also be provided on request.

12.2 The Client acknowledges that Brainy Bears may disclose the Personal Information of themselves or their Child to its associated entities, government agencies and other third parties for the purpose of providing the Services in accordance with these terms and conditions.

13. Medical Acknowledgements and consents

13.1 In the event of a medical issue, Brainy Bears may seek assistance from hospital or emergency services at the Client's expense.

13.2 The Client accepts any decision by Brainy Bears that their child is contagious or too ill to attend a session and the Client agrees to ensure their child is collected promptly after being informed of such a decision. The Client understands that the Costs must still be paid for this day or any subsequent day where their child is absent.

13.3 The Client agrees to provide current information and continuous disclosure to Brainy Bears of any of the child's medical conditions, including allergies, sensitivities or immunisation history.

13.4 In the event of any illness or injury to the child, and if in the opinion of Brainy Bears it is necessary to do so, you authorise Brainy Bears to seek urgent: – Medical or dental treatment; – Assistance from any person nominated on the child's application for enrolment; – Ambulance transportation.

13.5 The Client agrees that Brainy Bears will not be responsible for administering medication or treatment to the child in any circumstances, save for at the express decision of Brainy Bears.

13.6 The Client consents to the Child being photographed and/or filmed at the Premises or while in the care of Brainy Bears and any resulting images, together with the Child's first name, being used by Brainy Bears in connection with the Services.

14. Dispute Resolution Standard Terms & Conditions of Enrolment

14.1 Any dispute between Brainy Bears and the Client arising under or in connection with the Agreement may be referred to mediation by the Institute of Arbitrators & Mediators Australia (“IAMA”) or the Victorian Civil and Administrative Tribunal (“VCAT”) or other appropriate Court.

15. Miscellaneous

15.1 The person entering into this Agreement for and on behalf of the Client hereby covenants with Brainy Bears that he or she has the authority of the Client to make this Agreement on the Client’s behalf and is empowered by the Client to bind the Client to this Agreement and hereby indemnifies Brainy Bears against all losses, the Costs and claims incurred by Brainy Bears arising out of the person so entering this Agreement not in fact having such power and/or authority.

15.2 If any term or condition of this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

15.3 No failure to exercise nor any delay in exercising any right, power or remedy by Brainy Bears operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. The waiver is not valid or binding on the Party granting that waiver unless made in writing.

15.4 The rights, powers and remedies of a Party under this Agreement are in addition to, and do not exclude or limit any right, power or remedy provided by law or equity or by this Agreement.

15.5 This Agreement is governed by the law of Victoria and the Parties submit to the non-exclusive jurisdiction of the Courts of Victoria and of the Commonwealth of Australia.

15.6 No other terms and conditions are binding upon Brainy Bears unless agreed to in writing by Brainy Bears.

15.7 This Agreement:

15.7.1 is the entire Agreement and understanding between the Parties on everything connected with the subject matter of this Agreement;

15.7.2 supersedes any prior agreement or understanding on anything connected with that subject matter.

15.8 The Parties have entered into this Agreement without relying on any representation by any other Party or any person purporting to represent that Party, other than as may be set out in this Agreement.