

**1. Definitions**

- 1.1 “**Agreement**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement.
- 1.2 “**Absence Fee**” means a Fee charged at the discretion by Treetops ELC that is equivalent to the regular Fees payable for the time a Child or Children are absent from Treetops ELC on their booked days.
- 1.3 “**Child**” shall mean the Child or Children of the Parent enrolled with Treetops ELC.
- 1.4 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Parent does not wish to allow Cookies to operate in the background when using Treetops ELC’s website, then the Parent shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 “**ECE**” means an Early Childhood Education subsidy that if your Child is 3, 4 or 5 and goes to an ECE service or kōhanga reo that offers twenty (20) Hours ECE, the cost can be fully subsidised for up to six (6) hours a day and up to twenty (20) hours a week
- 1.6 “**Fee**” shall mean the cost of the Services (including any Goods and Services Tax (“GST”) where applicable) as agreed between Treetops ELC and the Parent, subject to clause 4 of this Agreement.
- 1.7 “**Parent**” means the person/s (legal guardian (or guardians) of the Child) requesting Treetops ELC to provide the Services as specified in any invoice, document, or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.8 “**Services**” means all services (including any incidental items, goods, materials created used or consumed) supplied by Treetops ELC to the Parent and includes any advice or recommendations and includes any advice or recommendations.
- 1.9 “**Treetops ELC**” means Marali Limited T/A Treetops Early Learning Centre Botany, its successors, and assigns.

**2. Acceptance**

- 2.1 The Parent is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Parent accepts Services provided by Treetops ELC.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with the *Enrolment Form*, *Fee Structure*, any other document or agreement between the Parent and Treetops ELC.
- 2.3 None of Treetops ELC’s employees, agents or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the Principal of Treetops ELC in writing, nor is Treetops ELC bound by any such unauthorised statements.
- 2.4 The Parent acknowledges and accepts that Treetops ELC shall not:
- (a) tolerate any behaviour (including, but not limited to, violence and bad language) which impinges upon the physical or mental safety of all staff and children; or
- (b) use physical punishment in managing the Children’s behaviour.
- 2.5 Any breach by the Child of Treetops ELC’s behavioural policies shall result in the Parent being contacted and asked to make arrangements for the Child to be removed from the programme at the expense of the Parent. Any cost incurred as a direct result of the incident, shall be at the expense of the Parent.
- 2.6 Whilst Treetops ELC is committed to providing safe programmes, experiences and environments, there is an element of risk involved with all activities. The Parent acknowledges and accepts that by the Child participating in any of the experiences provided, the Parent accepts such risk and Treetops ELC and staff of Treetops ELC shall not be held responsible for personal injury or loss or damage to belongings.

**3. Change in Control**

- 3.1 The Parent shall give Treetops ELC not less than fourteen (14) days prior written notice of any proposed change in the payment arrangements and/or any change (in circumstances from) to the details as outlined in the *Enrolment Form*; including, but not limited to, change of name, address, contact phone or fax number/s, the living arrangements of the Child and/or Parent, and/or any changes or developments in the Child’s medical history or those who can collect the Child. The Parent shall be liable for any loss incurred by Treetops ELC as a result of the Parent’s failure to comply with this clause.
- 3.2 The Parent is obliged to contact Treetops ELC if:
- (a) there is any change in circumstances which may have a bearing on the amount of Fees to be paid and/or their eligibility for any ECE or other subsidy; and
- (b) the Child uses another approved registered care service.

**4. Fees and Method of Payment**

- 4.1 At Treetops ELC’s sole discretion the Fee shall be as indicated:
- (a) on the *Enrolment Form* or otherwise specified, in respect of Services provided, and charged at Treetops ELC’s current rates; or
- (b) on any invoice provided by Treetops ELC to the Parent.
- 4.2 At Treetops ELC’s sole discretion, an advance on the Fees (equal to a full week of Fees,) shall be required for each Child.
- 4.3 Fees must be paid in full weekly unless the Parent is granted the ECE childcare subsidy. In this case, the Fee payable will be the total Fee due less the approved subsidy amount. It shall be the Parent’s responsibility to inform Work and Income of any changes in circumstances and/or care arrangements, and ensure the governing authority is fully informed of any benefit you may be receiving (e.g. the ECE subsidy). The Parent shall be responsible for any refund of benefits to the governing authority, including any loss Treetops ELC has suffered as a result of any overpayment or over-allocation of subsidy hours.
- 4.4 Parents are only charged for the booked hours. This shall also apply to ECE subsidies.
- 4.5 Upon issuance of any invoice given to the Parent by Treetops ELC, payment shall be due within seven (7) days.
- 4.6 Fees remain payable in full where the Child is absent through illness, where the Child is on holiday (subject to clause 7.1(e)), or for any other reason.
- 4.7 All Fees are to be paid in full prior to commencing a new term or holiday programme.
- 4.8 At Treetops ELC’s sole discretion, a late fee shall be charged where the Parent collects the Child after booked time without prior approval.

- 4.9 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Parent and Treetops ELC and a receipt shall be provided.
- 4.10 The Parent shall not be entitled to set off against, or deduct from the Fees, any sums owed or claimed to be owed to the Parent by Treetops ELC nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Parent must notify Treetops ELC in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Treetops ELC investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Treetops ELC placing the Parent's account into default and subject to default interest in accordance with clause 18.1.
- 4.11 Unless otherwise stated the Fees do include GST.
- 4.12 Receipt by Treetops ELC of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised and until then Treetops ELC's ownership or rights in respect of the Services shall continue. Treetops ELC shall issue a receipt to the Parent on cash/cheque payments.

## **5. Bookings and Provision of Services**

- 5.1 The Child must have completed an enrolment form in order to commence a programme.
- 5.2 The Parent acknowledges and accepts that any information provided on the enrolment form can and will be shared with the Ministry of Social Development/MOE.
- 5.3 The Parent acknowledges that any personal property (including, but not limited to, clothing, and other items) must be marked with the Child's name. Treetops ELC accept no responsibility for any loss or damage to personal property.
- 5.4 Unless expressly requested otherwise in writing, the Parent permits the Child to participate in local community walks to the park, shops and library with other children and appropriate staff ratios. The Parent acknowledges that occasionally Treetops ELC will have the opportunity to go on trips further afield. Treetops ELC will inform the Parent beforehand and will give the Parent the opportunity for the Child to participate, in which the Parent will be required to fill in a consent form. Occasionally, a fee may be required for transport, entrance fees and any other applicable charges.
- 5.5 Both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties.
- 5.6 Treetops ELC shall ensure copies of Treetops ELC's Policies and Procedures shall be available for inspection at all times.

## **6. Collection of the Child and Permitted Persons to Collect a Child**

- 6.1 The Child may be released into the care of either the Parent or a person (who is over the age of fourteen (14) years) into whose care a custodial Parent has signed permission for the Child to be released. This may include persons nominated as Emergency Contacts, persons nominated on the **Enrolment Form** to collect the Child, or persons nominated to collect the Child on specific occasions.
- 6.2 The person collecting the Child (other than the Parent) may be required to produce proof of identity to satisfy Treetops ELC of their bona fides before the Child will be released.
- 6.3 Treetops ELC staff will not be responsible for the removal of a child from Treetops ELC by a non-custodial Parent or other person, however they will do all in their power to prevent this. In such a case, Treetops ELC staff will make every effort to contact the custodial Parent and Police.

## **7. Absences and Illness**

- 7.1 It is the responsibility of the Parent to:
- (a) inform Treetops ELC if the Child has been ill within twenty-four (24) hours prior to intended attendance. Treetops ELC shall be entitled to decide whether or not to accept the sick Child for care, however, if the Child is accepted and later sent home due to illness, the Absence Fee will apply; and
  - (b) any notification of a Child's absence due to illness the Absence Fee shall apply; and
  - (c) advise Treetops ELC if a Child is to be absent (other than illness) on their booked days/s, as soon as possible. An Absence Fee of regular Fees for the time absent shall apply; and
  - (d) for children who receive either a ECE subsidy, the Absence Fee will be the equivalent of their subsidy or their usual Fee, whichever is the greater; and
  - (e) provide Treetops ELC with at least two (2) weeks' notice of annual leave; and inform Treetops ELC of the estimated length of the Child's absence from Treetops ELC in writing.
- 7.2 A Child will not be able to attend Treetops ELC for any period of time during which:
- (a) the Child is suffering from a disease or condition which is contagious through normal social contact; or
  - (b) a medical practitioner has recommended the Child not attend; or
  - (c) the Principal of Treetops ELC requests that the sick Child be kept away from Treetops ELC because the Child requires care which Treetops ELC staff resources do not provide.
- 7.3 After twenty-one (21) days any funding will stop and outstanding costs are then passed to the parent and placement with Treetops ELC may be compromised.

## **8. Emergency Contacts**

- 8.1 The Parent must provide Treetops ELC with the names and addresses of two (2) responsible persons over the age of eighteen (18) who can collect the Child in case of an emergency or illness. When contacted by Treetops ELC Principal or their delegate, the Parent (or a responsible person authorised by the Parent) must go immediately to Treetops ELC to collect the sick or injured Child.

## **9. Medication**

- 9.1 Where the Child requires the administration of medication, the Parent will provide:
- (a) written permission for Treetops ELC to administer the medication; and

- (b) the correct medication in its original container, and clearly labelled with the Child's name; and
  - (c) written instructions from a medical practitioner for the administration of on-going-prescription medication; and
  - (d) the name and contact phone number of the Child's doctor.
- 9.2 Treetops ELC staff are authorised to administer medication only in accordance with the Parents written authority. In doing so, Treetops ELC staff will be regarded as acting as the Parent's agent. Staff shall not be liable for any allergic reaction or injury caused to the Child by the administration of the medication in accordance with the Parent's written authority. Nor will they be responsible for any error contained in the written permission, or the supply of incorrect medication by the Parent.
- 10. Accident or Emergency**
- 10.1 Whilst every reasonable effort shall be made by Treetops ELC to contact the Parent (or Emergency Contacts) in the event of an accident or emergency, the Parent hereby gives authority to the Principal or their delegate to, on behalf of the Parent, authorise the administration of medication, transportation to hospital and administration of treatment as is recommended by the Child's doctor, any attending doctor, ambulance officer, police or Government Officer. The Parent will be responsible for any costs incurred as a result of transportation or treatment.
- 11. Administration of Non-Ingsted Preparations**
- 11.1 The Parent gives permission to Treetops ELC for the application of non-ingsted preparations, such as sunscreen protection and insect repellent to the Child when appropriate. In the event any Child is allergic to certain brands of non-ingsted preparations, the Parent must supply a brand that is safe for Treetops ELC to use.
- 12. Notification of Child Abuse**
- 12.1 By law, Treetops ELC's employees are mandatory reporters, and as such, are obliged to report any suspected incidents of child abuse or mistreatment to the appropriate local authority.
- 13. Court Action**
- 13.1 Should the Child be the subject of any court action, particularly custody or access issues, being heard before the Courts, Treetops ELC shall not allow staff to issue statements or provide reports regarding the Child, except where instructed to do so by the Court itself.
- 14. Security and Charge**
- 14.1 In consideration of Treetops ELC agreeing to supply Services, the Parent charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Parent either now or in the future, and the Parent grants a security interest in all of its present and after-acquired property, to secure the performance by the Parent of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 14.2 The Parent indemnifies Treetops ELC from and against all Treetops ELC's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising Treetops ELC's rights under this clause.
- 14.3 The Parent irrevocably appoints Treetops ELC and each director of Treetops ELC as the Parent's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Parent's behalf.
- 15. Intellectual Property**
- 15.1 Where Treetops ELC has designed, drawn, written, or created educational systems, techniques, and curriculum in relation to the Child, then the copyright in those designs, drawings, documents, systems, techniques, and curriculum shall remain vested in Treetops ELC, and shall only be used by the Parent at Treetops ELC's discretion.
- 16. Quality Assurance**
- 16.1 Unless expressly requested otherwise in writing, the Parent permits Treetops ELC to photograph or video record the Child for quality assurance, documentation, promotional or marketing purposes (including newsletters and slideshows, and DVDs for display in the centre and/or gifts to parents), or to be used within Treetops ELC and/or local and national newspaper stories.
- 17. Complaints Policy**
- 17.1 The Parent shall be entitled to report any concern they may have in relation to the Services, any matters of safety, care, or quality, or where the Parent wishes to make a suggestion. These shall be addressed with the appropriate staff member of Treetops ELC's, or if the complaint it in relation to any of the staff, to the Principal of Treetops ELC, where in most incidences the issue can be rectified.
- 17.2 Verbal complaints will be verbally acknowledged by Treetops ELC and a timeframe specified on when a response will be provided to the complainant. Written complaints will be acknowledged by Treetops ELC in writing within forty-eight (48) hours of receiving the complaint.
- 17.3 Where the complaint is in relation to any staff member of Treetops ELC:
- (a) the complaint, and the identity of the complainant, will be kept confidential between the parties concerned;
  - (b) a written record of events may be required to be documented by the staff of Treetops ELC in order to authenticate the complaint;
  - (c) all compiled written information will be supplied to the Principal of Treetops ELC to enable an informed decision to be made regarding the complaint;
  - (d) the complainant and applicable staff member(s) will be advised of the outcome of the investigation and any disciplinary action, which will be managed in accordance with the *Centre's Rules* and/or *Individual Employment Contract*;
  - (e) in the event the complainant is unsatisfied with the outcome of the investigation, Treetops ELC's management and the complainant shall confer to discuss the matter further;
  - (f) if the complainant is still not satisfied with the outcome, then a formal complaints can be made to the Ministry of Education.

**18. Default and Consequences of Default**

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Treetops ELC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Parent owes Treetops ELC any money the Parent shall indemnify Treetops ELC from and against all costs and disbursements incurred by Treetops ELC in recovering the debt (including but not limited to internal administration fees such as late payment fees, legal costs on a solicitor and own client basis, collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Treetops ELC may have under this Agreement, if a Parent has made payment to Treetops ELC, and the transaction is subsequently reversed, the Parent shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Treetops ELC under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Parent's obligations under this Agreement.
- 18.4 Without prejudice to Treetops ELC's other remedies at law Treetops ELC shall be entitled to cancel all or any part of any order of the Parent which remains unfulfilled and all amounts owing to Treetops ELC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Treetops ELC becomes overdue, or in Treetops ELC's opinion the Parent will be unable to make a payment when it falls due;
  - (b) the Parent becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Parent or any asset of the Parent.

**19. Termination of Enrolment**

- 19.1 Without prejudice to any other remedies Treetops ELC may have, if at any time the Parent is in breach of any obligation (including those relating to payment) under these terms and conditions Treetops ELC may suspend or terminate the supply of Services to the Parent. Treetops ELC will not be liable to the Parent for any loss or damage the Parent suffers because Treetops ELC has exercised its rights under this clause.
- 19.2 If the Child is to be withdrawn from care, the Parent is to give fourteen (14) days written notice to the co-ordinator at Treetops ELC.
- 19.3 Where the Parent has notified Treetops ELC within the specified time period and has prepaid the payment for the programme, any credit shall be returned.
- 19.4 Treetops ELC may cancel these terms and conditions or terminate the Child's enrolment at any time by giving written notice to the Parent. Treetops ELC shall not be liable for any loss (including, but not limited to, loss of income) arising from such termination.

**20. Privacy Policy**

- 20.1 All emails, documents, images, or other recorded information held or used by Treetops ELC is "**Personal Information**" as defined and referred to in clause 20.3 and therefore considered confidential. Treetops ELC acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Treetops ELC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Parent's Personal Information, held by Treetops ELC that may result in serious harm to the Parent, Treetops ELC will notify the Parent in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Parent by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Treetops ELC in respect of Cookies where the Parent utilises Treetops ELC's website to make enquiries. Treetops ELC agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Parent's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Treetops ELC when Treetops ELC sends an email to the Parent, so Treetops ELC may collect and review that information ("collectively Personal Information")
- If the Parent consents to Treetops ELC's use of Cookies on Treetops ELC's website and later wishes to withdraw that consent, the Parent may manage and control Treetops ELC's privacy controls via the Parent's web browser, including removing Cookies by deleting them from the browser history when exiting the website.
- 20.3 The Parent authorises Treetops ELC or Treetops ELC's agent to:
- (a) access, collect, retain and use any information about the Parent;
    - (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Parent's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Parent.
  - (b) disclose information about the Parent, whether collected by Treetops ELC from the Parent directly or obtained by Treetops ELC from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Parent.
- 20.4 Where the Parent is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 20.5 The Parent shall have the right to request (by e-mail) from Treetops ELC, a copy of the Personal Information about the Parent retained by Treetops ELC and the right to request that Treetops ELC correct any incorrect Personal Information.
- 20.6 Treetops ELC will destroy Personal Information upon the Parent's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.7 The Parent can make a privacy complaint by contacting Treetops ELC via e-mail. Treetops ELC will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint.

In the event that the Parent is not satisfied with the resolution provided, the Parent can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

**21. Service of Notices**

- 21.1 Any written notice given under this Agreement shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Agreement;
  - (c) by sending it by registered post to the address of the other party as stated in this Agreement;
  - (d) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

**22. General**

- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Manukau Courts of New Zealand.
- 22.3 Treetops ELC shall be under no liability whatsoever to the Parent for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Parent arising out of a breach by Treetops ELC of these terms and conditions (alternatively Treetops ELC's liability shall be limited to damages which under no circumstances shall exceed the Fees).
- 22.4 This Agreement is subject, in all cases except where the Parent/Guardian is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993
- 22.5 The Parent agrees that Treetops ELC may amend these terms and conditions by notifying the Parent in writing. These changes shall be deemed to take effect from the date on which the Parent accepts such changes, or otherwise at such time as the Parent makes a further request for Treetops ELC to provide Services to the Parent.
- 22.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including, but not limited to, any Government imposed lockdowns, etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Parent to make a payment to Treetops ELC.
- 22.7 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.