



# Content Licence Agreement for Listing on Toddle – Basic Plus Level

## Background

Toddle owns and operates the Platform, where parents and other carers can readily obtain information on, and connect and communicate with, childcare services. The Childcare Provider wants Toddle to include the Childcare Services on the Platform, at the Basic Plus level.

## 1. Term

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This agreement (Agreement):

- a. is comprised of these clauses 1 to 12 and the attached Paid Services Addendum; and
- b. commences on the Start Date and continues until terminated in accordance with clause 9 (Term).

## 2. Licence of Childcare Service Content

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The Childcare Provider hereby grants to the Toddle Group a non-exclusive, worldwide, royalty-free licence to copy, modify, display, communicate to the public and otherwise use the Childcare Service Content during the Term in accordance with the terms and conditions set out in this Agreement.

## 3. Providing Toddle with access

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The Childcare Provider will:

- a. use its best endeavours to provide Toddle with access to the CCMS via an RSS feed or API to enable Toddle to access the Childcare Service Content and integrate it with, and display it on, the Platform; or
- b. failing that, provide the Childcare Service Content to Toddle manually in a format requested by Toddle; and
- c. if it is a client of QikKids, provide its QikKids support ID to Toddle, and hereby authorises Toddle to use such ID to access and use the relevant Childcare Service Content.

## 4. Ownership of Intellectual Property

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Each party acknowledges and agrees that nothing in this Agreement transfers any right, title or interest in the Intellectual Property Rights of one party to the other. All Intellectual Property Rights subsisting in, relating to or arising out of the Platform are owned by and vest in Toddle.

## 5. Confidentiality

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Each party must treat the other party's confidential information as strictly confidential and use it solely for the purposes contemplated by this Agreement, and must not disclose confidential information except (and only to the extent) as required by law, as permitted in writing by the other party or for the purposes contemplated by this Agreement.

## 6. Warranties

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The Childcare Provider undertakes, represents and warrants to the Toddle Group that the Childcare Provider Group has obtained, and will maintain during the Term, all approvals, licences, permits, rights and consents required from the Other Childcare Providers and all third parties (including relevant regulatory authorities, staff members and any other person or organisation), that may be necessary to operate the Childcare Services and grant Toddle Group access to the Childcare Service Content, and the Childcare Provider Group will carry out all of its obligations and other activities related to this Agreement in accordance with all applicable laws.

## 7. Liability

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To the extent permitted by law:

- a. Subject to clause 8.2, the aggregate liability of each party to the other party in respect of all claims, actions, proceedings, losses, damages, liabilities and costs (including legal expenses) arising out of or in connection with this Agreement, whether in contract, tort (including negligence), or otherwise, will not exceed \$10,000; and
- b. each party excludes all liability, whether in contract, tort (including negligence), or otherwise to the other party for any loss of opportunity, goodwill, profits, business or loss or corruption of data or any special, indirect or consequential loss arising out of or in connection with this Agreement.

## 8. Childcare Provider Indemnity

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- 8.1 *The Childcare Provider will indemnify and hold the Toddle Group harmless against all claims, actions, proceedings, losses, damages, liabilities and costs (including legal expenses) sustained, incurred or suffered by the Toddle Group as a result of:*
  - a. any claim, action or proceeding that the use, possession or receipt by the Toddle Group of any Childcare Service Content infringes the Intellectual Property Rights or other rights of any third party; or
  - b. any breach by the Childcare Provider of any of the warranties in clause 6.
- 8.2 Clause 7 does not apply in relation to any liability of the Childcare Provider arising under *the indemnity in clause 8.1.*

## 9. Termination and its Effects

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- 9.1 Termination  
Either party may terminate this Agreement:
  - a. with immediate effect by providing written notice to the other party if the other party:
    - i. is in material breach of this Agreement and fails to remedy the breach within thirty (30) days of its receipt of a notice requiring it to do so; or
    - ii. becomes insolvent; or
  - b. on at least 90 days' notice for any (or no) reason.
- 9.2 Effects of Termination  
On termination or expiry of this Agreement:
  - a. the obligations of confidentiality (but not the rights to use or disclose) under clause 5 will continue to apply to the parties;
  - b. each party must promptly return to the other party (or at the request or with the consent of the other party, destroy) all confidential information (including copies, summaries and excerpts) and Intellectual Property of or belonging to the other party which are in its possession or control; and
  - c. clauses 4, 5, 7, 9, 10,11 and 12 will continue to apply to the parties.

## 10. General

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- 10.1 Assignment and Subcontracting
- a. The Childcare Provider must not assign, novate, transfer, sub-contract or otherwise dispose of any or all of its rights and/or obligations under this Agreement without Toddle's prior written consent.
  - b. If the Childcare Provider ceases to own or operate any Childcare Service during the Term, the licence under clause 2 to the Childcare Service Content of such Childcare Service nonetheless remains valid, and the Childcare Provider's obligations in relation to that Childcare Service remain in effect.
  - c. Toddle may assign, transfer, sub-contract or otherwise dispose of any or all of Toddle's rights and/or obligations under this Agreement to any person.
- 10.2 Entire Agreement
- This Agreement constitutes the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 10.3 Governing Law and Jurisdiction
- This Agreement is governed by, and must be construed in accordance with the laws of the State of Victoria, and each party agrees to submit to the non-exclusive jurisdiction of the courts of Victoria.
- 10.4 Notices
- Any notice or other communication required to be given under this Agreement (Notice) must be in writing (including email), in the English language, and must be given:
- a. to the Childcare Provider as per the business address on the Toddle Content Agreement coverpage; or
  - b. to Toddle at the contact details specified on the Platform, or as otherwise notified by the party.

## 11. Toddle marketing

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The Childcare Provider agrees to receive marketing messages and promotional offers from KN Enrol Pty Ltd (Toddle) via email, direct mail and SMS. The Childcare Provider understands that if they have provided consent above to join Toddle's contact list or allow Toddle to make automated decisions the Childcare Provider can withdraw that consent at any time by following instructions Toddle provides in each marketing message. If the Childcare Provider provided consent to join Toddle's contact list they can withdraw that consent at any time by following instructions Toddle provides in each marketing message.

## 12. Definitions

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In this Agreement:

**Affiliate** means, in respect of a company or other business entity, any company or other business entity Controlled by, Controlling, or under the common Control of a third party that also Controls that company or other business entity from time to time.

**CCMS** means the childcare management IT system or systems (including the content management system or systems) used by the Childcare Provider Group.

**Childcare Service** mean each childcare service (being a service granted service approval under the Education and Care Services National Law Act 2010 (Cth)) operated and/or owned by the Childcare Provider or one of the Other Childcare Providers.

**Childcare Service Content** means, in relation to each Childcare Service, information, content and material available online or otherwise available regarding the Childcare Service, such as photos, videos, opening hours, location and address, type of childcare (e.g. long day care), age ranges and operational capacities of childcare rooms, childcare fees (daily and other), estimates of daily costs for consumers, facilities and resources, licensed capacity, written descriptions, consumer ratings and reviews, ratings from public web platforms (e.g. Google),

the ACECQA National Quality Standard Ratings, the level of childcare availability (e.g. waitlist only, available, etc.) and (where applicable) information and material available via its QikKids account.

**Childcare Provider Group** means the Childcare Provider and the Other Childcare Providers.

**Control** means the direct or indirect power to direct or cause the direction of the management and policies of a company or other business entity, whether through ownership of fifty per cent (50%) or more of the voting interest, by contract, or otherwise (and Controlled and Controlling are to be construed accordingly).

**Intellectual Property Rights** means patents, trade marks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; inventions, know-how, secret formulae and processes, lists of customers and suppliers and other proprietary knowledge and information; internet domain names; rights protecting goodwill and reputation; database rights; moral rights; and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world.

**Other Childcare Provider** means each other childcare provider which is an Affiliate of the Childcare Provider and operates and/or owns one or more Childcare Services.

**Platform** means the Toddle platform available via Toddle's customer-facing website and app.

**QikKids** means the QikKids platform operated by QK Technologies Pty Ltd (ACN 119 998 122) for use by childcare providers, parents and carers and which, among other things, includes childcare subsidy technology.

**Start Date** means the date the last party executes this Agreement.

**Toddle Group** means Toddle and any other Affiliate of Toddle from time to time.

## 13. Interpretation

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In this Agreement:

- a. the word 'includes' in any form is not a word of limitation; and
- b. no rule of construction applies to the disadvantage of the party preparing this Agreement on the basis that it prepared or put forward this Agreement or any part of it.