

MUTUAL AGREEMENT TO ARBITRATE DISPUTES

This Mutual Agreement to Arbitrate Disputes (“**Agreement**”) is made and entered into as of date written below (the “**Effective Date**”) by and between Learn and Play Montessori Hercules on behalf of itself, its subsidiaries and other corporate affiliates (“**School**”) and Legal Guardian whose name and signature appear below (“**Legal Guardian**”), on behalf of the Student whose name appears below (“**Student**”) (School and Legal Guardian are individually referred to as “**Party**” and collectively as “**Parties**”).

1. **Intent of Agreement.** It is the intent of Legal Guardian and School that this Agreement will govern the resolution of all disputes, claims and any other matters in question arising out of or relating to the Parties’ relationship. Except as otherwise stated in this Agreement, the Parties shall resolve all disputes arising out of their relationship in accordance with the provisions of this Agreement.

2. **Mandatory Arbitration.** Except as otherwise stated in this Agreement, School and Legal Guardian agree that any claim, complaint, or dispute that relates in any way to the Student’s attendance at the School, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, shall be resolved by final, binding, and confidential arbitration in accordance with the Federal Arbitration Act (9 U.S.C. §1, et seq.), or, if for any reason the Federal Arbitration Act is inapplicable or held not to require arbitration of a particular claim, then in accordance with the California Arbitration Act (Cal. Code Civ. Proc. §1280, et seq.). The Parties agree that all Covered Claims (defined below) shall be submitted to binding arbitration administered by conducted by Judicial Arbitration and Mediation Services, Inc. (“**JAMS**”) under its applicable Comprehensive Arbitration Rules & Procedures, in accordance with the Expedited Procedures of those Rules (“**Rules**”) then in effect. A copy of the Rules is available from School’s CEO or online at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. You can also call JAMS at 925-938-5060 if you have questions about the arbitration process. If the JAMS Rules are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern.

3. **Covered Claims.** This Agreement to arbitrate covers all grievances, disputes, claims, or causes of action (collectively, “**Claims**”) in a federal, state, or local court or agency under applicable federal, state, or local laws, arising out of Student’s attendance at the School, including Claims Legal Guardian or Student may have against School or against its officers, directors, supervisors, managers, employees, or agents in their capacity as such or otherwise, or that School may have against Legal Guardian or Student, including, but are not limited to, claims for breach of any contract or covenant (express or implied), tort claims, claims for violation of any federal, state, or other governmental law, statute, regulation, or ordinance (“**Covered Claims**”).

4. **Claims Not Covered.** Claims not covered by this Agreement are Claims eligible to be adjudicated by California small claims court.

5. **Waiver of Class Action and Representative Action Claims.** Except for representative Claims which cannot be waived under applicable law and which are therefore excluded from this Agreement (“**Excluded Claims**”), Legal Guardian and School expressly intend and agree that: (a) class action and representative action procedures are hereby waived and shall

not be asserted, nor will they apply, in any arbitration pursuant to this Agreement; (b) each will not assert class action or representative action Claims against the other in arbitration or otherwise; and (c) Legal Guardian and School shall only submit their own, individual Claims in arbitration and will not seek to represent the interests of any other person. To the extent that the Parties' dispute involves both timely filed Excluded Claims and Covered Claims, the Parties agree to bifurcate and stay for the duration of the arbitration proceedings any such Excluded Claims.

6. **Waiver of Trial by Jury.** THE PARTIES UNDERSTAND AND FULLY AGREE THAT BY ENTERING INTO THIS AGREEMENT TO ARBITRATE; THEY ARE GIVING UP THEIR CONSTITUTIONAL RIGHT TO HAVE A TRIAL BY JURY, AND ARE GIVING UP THEIR NORMAL RIGHTS OF APPEAL FOLLOWING THE RENDERING OF A DECISION, EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS. THE PARTIES ANTICIPATE THAT BY ENTERING INTO THIS AGREEMENT, THEY WILL GAIN THE BENEFITS OF A SPEEDY AND LESS EXPENSIVE DISPUTE RESOLUTION PROCEDURE.

7. **Claims Procedure.** Arbitration shall be initiated upon the express written notice of either Party. The aggrieved Party must give written notice of any claim to the other Party. Written notice of a Legal Guardian's claim shall be mailed by certified or registered mail, return receipt requested, to School's CEO at 1702 Pheasant Drive Hercules, CA 94547. Written notice of School's claim will be mailed to the last known address of Legal Guardian. The written notice shall identify and describe the nature of all Claims asserted and the facts upon which such Claims are based. Written notice of arbitration shall be initiated within the same time limitations that California law applies to those claim(s). The Parties acknowledge that this Agreement is being entered into Contra Costa County, California. The arbitration shall take place in Contra Costa County, California, or the nearest JAMS office if the Parties are unable to schedule such arbitration in Contra Costa County, California.

8. **Arbitrator.** The Arbitrator shall be selected as provided in JAMS Rules and Procedures. The Arbitrator shall: (a) conduct and preside over an arbitration hearing of reasonable length, to be determined by the Arbitrator; (b) be authorized to award any or all remedies that the Parties would be entitled to seek in a court of law; and (c) issue a written arbitration decision within thirty (30) days of the arbitration hearing to include the arbitrator's essential findings and conclusions and a statement of the award.

9. **Discovery.** The Parties shall be entitled to conduct discovery to the full extent authorized by the California Code of Civil Procedure. The Arbitrator selected according to this Agreement shall decide all discovery disputes.

10. **Substantive Law.** The Arbitrator shall apply the state of California or Federal law (and the law of remedies, if applicable) as applicable to the claim(s) asserted without regard to its conflicts of law principles. The Arbitrator's decision shall be final and binding upon the Parties.

11. **Motions.** The Arbitrator shall have jurisdiction to hear and rule on prehearing disputes and is authorized to hold prehearing conferences by telephone or in person as the Arbitrator deems necessary. The Arbitrator shall have the authority to set deadlines for completion

of discovery, for filing motions for summary judgment, and to set briefing schedules for any motions. The Arbitrator shall have the authority to adjudicate any cause of action, or the entire claim, pursuant to a motion for summary adjudication and/or summary judgment, and, in deciding such motions.

12. **Compelling Arbitration/Enforcing Award.** Either Party may bring an action in court to compel arbitration under this Agreement, to otherwise determine the arbitrability of Claims under this Agreement, to review the arbitration award for legal error, to confirm or vacate an arbitration award, and to enforce the arbitration award. Each Party shall bear its own attorney fees and costs and other expenses of such action.

13. **Arbitration Fees and Costs.** The Parties shall be equally responsible for the arbitrator's fees and expenses. Each Party shall pay its own costs and attorneys' fees, if any. However, if any Party prevails on a statutory claim which affords the prevailing party attorneys' fees and costs, or if there is a written agreement providing for attorneys' fees and costs, the Arbitrator may award reasonable attorneys' fees and costs to the prevailing party. Any dispute as to the reasonableness of any fee or cost shall be resolved by the Arbitrator.

14. **Term of Agreement.** This Agreement to arbitrate shall survive the termination of Student's attendance at the School. It can only be revoked or modified in writing signed by both Parties that specifically states an intent to revoke or modify this Agreement and is signed by an officer of the School.

15. **Severability; Interpretation.** This arbitration agreement shall in all respects be governed by and construed in accordance with the Federal Arbitration Act and the laws of the State of California, including all matters of construction, validity and performance, without regard to its conflicts of law principles. If any provision of this Agreement to arbitrate is adjudged to be void or otherwise unenforceable, in whole or in part, the void or unenforceable provision shall be severed and such adjudication shall not affect the validity of the remainder of this Agreement to arbitrate. The presumption found in California Civil Code Section 1654, that uncertainties in a contract are interpreted against the party causing an uncertainty to exist, is hereby waived by the Parties.

16. **Successors and Assigns.** The School may assign this Agreement to any subsidiary, corporate affiliate, successor, or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise). This Agreement shall inure to the benefit of the School, its subsidiaries, corporate affiliates, permitted successors, and assigns. The Legal Guardian may not assign this Agreement or any part hereof. Any purported assignment by the Legal Guardian shall be null and void from the initial date of purported assignment.

17. **Modification and Waiver.** No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by Legal Guardian and by a duly authorized officer of School. No waiver by either of the Parties of any breach by the other Party of any condition or provision of this Agreement to be performed by the other Party shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the Parties in exercising

any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

18. **Entire Agreement.** This Agreement supersedes and replaces all prior and contemporaneous agreements, whether written, oral, express, or implied, and constitutes the entire understanding between the Parties, regarding the subject matter herein.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. True and correct copies, including faxed or e-mailed signatures, may be used in lieu of the original.

20. **Voluntary Agreement; Counsel.** By executing this Agreement, the Parties represent that they have been given the opportunity to fully review, comprehend, and negotiate the terms of this Agreement. The Parties understand the terms of this Agreement and freely and voluntarily sign this Agreement.

The Parties each acknowledge that they have been advised to retain and have had a reasonable opportunity to retain independent legal counsel regarding the terms and consequences of this agreement prior to entering into it, and that they have had the opportunity to discuss this matter with and obtain advice from their own private attorneys or have freely chosen not to seek such advice.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date below.

THE UNDERSIGNED LEGAL GUARDIAN AND SCHOOL EACH UNDERSTAND AND ACKNOWLEDGE THAT BY ENTERING INTO THIS AGREEMENT AND THE ARBITRATION PROVISIONS CONTAINED HEREIN, THEY HAVE SURRENDERED AND WAIVED THE RIGHT THEY WOULD OTHERWISE POSSESS TO SUBMIT A DISPUTE BETWEEN THEM FOR RESOLUTION BY COURT OR JURY, INCLUDING THE RIGHT OF APPEAL TO A HIGHER COURT.

LEGAL GUARDIAN

**LEARN AND PLAY MONTESSORI
HERCULES.**

Signature: _____

By: _____

Print Name: _____

Name: _____

Student Name: _____

Title: _____

Effective Date: _____