

## SCHOOL COUNCIL NDIS FUNDED THERAPY LICENCE

[Instructions for use of this document: wherever brackets [ ] or highlighted text appear within this document, complete instruction or delete if not applicable – including these instructions]

### Between

The School Council listed in Item 1 of Schedule 1 (**Portland Bay School**)

and

The Licensee listed in Item 2 of Schedule 1 (**Licensee**)

### Background

- A. The Licensee wishes to use the Licensed Area for the Permitted Use.
- B. In accordance with the *Education and Training Reform Act 2006* (Vic), the School Council has agreed to grant to the Licensee a licence to use the Licensed Area in accordance with the terms and conditions set out in this Licence.

### Agreed terms

#### 1. GRANT OF LICENCE

- (a) The School Council grants the Licensee a licence to occupy the Licensed Area for the Term subject to the terms and conditions of this Licence.
- (b) The parties agree that:
  - (i) this Licence will not confer a right of exclusive occupation of the Licensed Area to the Licensee;
  - (ii) the School Council may at any time exercise all rights as the owner of the Licensed Area including (but without in any way limiting the generality of this provision) the right to use, possess and enjoy the whole or any part of the Licensed Area save only in so much as such rights will not prevent the operation of the Licence hereby granted; and
  - (iii) the right to exclusive possession of the land making up the Licensed Area will remain with the Minister through the School Council.

#### 2. REPRESENTATIVES

- (a) The School Council and the Licensee each appoint the person listed in Item 12 as their respective representatives who

will be responsible for communications under this Licence.

- (b) Either party may replace its representative by giving Notice to the other party.
- (c) Each party acknowledges that the representative appointed under this clause is authorised to act as the agent of that party in relation to the exercise of that party's rights, discretions and obligations under this Licence, and that the representative has full power and authority to act for and on behalf of and to bind that party in relation to the exercise of those rights, discretions and obligations.
- (d) The Licensee must comply with any instruction or direction given by the School Council's Representative.

#### 3. LICENCE FEE

The Licensee must pay the Licence Fee to the School Council:

- (a) at the School Council's address specified in Item 1 (or to any other address or in any other way the School Council notifies the Licensee by Notice); and
- (b) at the times and in the manner set out in Item 7.

#### 4. **USE OF LICENSED AREA**

- (a) If Dates and/or Days of Use are listed in Item 8 and/or Hours of Use are listed in Item 9, the Licensee may only use the Licensed Area during the Term on those dates, days and/or hours (as applicable).
- (b) The Licensee acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the School Council regarding the suitability of the Licensed Area for the conduct of the Permitted Use otherwise than as expressly contained in this Licence, or for any other use.
- (c) The Licensee:
  - (i) must only use and occupy the Licensed Area;
  - (ii) may access other parts of the School in common with others and being solely those parts of the School required for the purpose of accessing the Licensed Area and performing the tasks of the Licensee;
  - (iii) acknowledges that if the Licensed Area includes external areas (for example, playgrounds and ovals), School amenities, kitchen facilities, carparks and/or staff facilities, these areas will be used and occupied together with other occupiers of the School; and
  - (iv) acknowledges that the School Council may grant its consent, which consent will be at the absolute discretion of the School Council, for the Licensee to use other areas of the School for the purposes of the Licensee's use of the Licensed Area.

#### 5. **COMPLIANCE WITH LAWS**

- (a) The Licensee must at its own expense observe and comply with all Laws that apply to this Licence and all directions, notices and Requirements of any Government Agency relating to its use and occupation of the Licensed Area, and any other use which the Licensee may undertake on the Licensed Area.
- (b) The Licensee must keep in force and available for inspection by the School Council on request, all licences, permits and registrations required for the carrying on of the Services or other activity conducted by the Licensee in or upon the Licensed Area.

#### 6. **LICENSEE'S OBLIGATIONS**

The Licensee must:

- (a) only use the Licensed Area for the Permitted Use;
- (b) not use the Licensed Area for any illegal purpose;
- (c) ensure the Licensed Area is kept secure, clean and free from debris and rubbish;
- (d) comply with all Department, School and School Council policies, rules, regulations, protocols, procedures, guidelines and any other information of which the Licensee has been notified (**Policies**), including Policies that deal with safety or health of persons on the Licensed Area or otherwise under the Licensee's control;
- (e) observe fire precautions;
- (f) at all times exercise due care, skill and judgement and act with the utmost good faith;
- (g) ensure that all external doors and windows are secured and locked and all lights extinguished daily at the end of its use of the Licensed Area;
- (h) not store the Licensee's property in the Licensed Area without the Principal's written consent; and
- (i) if the Licensee is a Framework Organisation or an Agency under the FVP Act it warrants to the School Council that:
  - (i) it will Align its relevant policies, procedures, practice guidance and tools with the Approved Framework as amended from time to time; and
  - (ii) it will maintain Alignment of its relevant policies, procedures, practice guidance and tools with the Approved Framework during the Term of this Licence.

#### 7. **REPAIRS**

- (a) Except for fair wear and tear, the Licensee must keep the Licensed Area clean and in the same condition as at the Commencement Date and properly repaired and maintained.
- (b) The Licensee must promptly repair damage to the Licensed Area to the extent caused or contributed to by the Licensee. The Licensee is not responsible for damage caused by a

student or members of the community, which the School Council must repair.

- (c) If the Licensee fails to properly repair any damage for which it is responsible under this clause within a reasonable time then the School Council may do so and the Licensee must immediately reimburse the School Council the cost of such repairs.

8. **REQUIREMENT FOR WORKING WITH CHILDREN AND POLICE CHECKS**

- (a) The Licensee must ensure that it and each of its Associates engaged or used by it to provide the Services at the Licensed Area and/or carry out the Permitted Use under this Licence:
  - (i) if required by the Worker Screening Act, has undertaken a satisfactory working with children check;
  - (ii) if required by the School Council, has undertaken a satisfactory police records check; and
  - (iii) has met any additional relevant legal requirements and policies of the School Council, School and/or Department in relation to the suitability of persons to work with children or within the precinct of the School as advised by the School Council.
- (b) The Licensee must ensure the terms and conditions of employment or of engagement of any Associate for the purpose of providing the Services under this Licence are consistent with the above obligations.

9. **CHILD SAFE STANDARDS**

- (a) The parties acknowledge and agree that Victorian government schools are committed to:
  - (i) creating child safe environments;
  - (ii) protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with their legal obligations, including Child Safety Laws.
- (b) This clause only applies to the extent that the Licensee (and its Associates) are engaged in Child-connected work.

- (c) The Licensee acknowledges that the School Council and School staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.

- (d) If the Licensee is an Applicable Entity under the *Child Wellbeing and Safety Act 2005* (Vic), it warrants to the School Council that it:

- (i) is compliant and will continue to comply with Child Safety Laws; and
- (ii) will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Licensee (or its Associates).

- (e) The Licensee (and its Associates) must:

- (i) if applicable (whether or not the Licensee must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and
- (ii) comply with any reasonable direction by the School Council in respect to compliance by the School Council, School staff and/or the Licensee with any Child Safety Laws or any relevant School Council Child Safety Policies.

- (f) The School Council may terminate this Licence immediately if, in the School Council's reasonable opinion, it determines at any time that:

- (i) there is a breach of any Child Safety Laws caused by, or in any way connected with, the Licensee or its Associates; or
- (ii) the Licensee or any of its Associates are not suitable to engage in Child-connected work for the purposes of the School Council and School staff compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

10. **REPORTING**

- (a) At the request of the Principal on behalf of the School Council, the Licensee must provide to the Principal within a reasonable period any information and/or documentation it holds pertaining to this Licence.

- (b) The Licensee must immediately report by Notice to the Principal:
  - (i) any damage to, or accident in, the Licensed Area; and
  - (ii) of any notice or report it has received in relation to the Licensed Area and provide a copy of such notice or report.

## 11. **INSURANCE, RELEASE AND INDEMNITY**

### 11.1 **INSURANCE**

- (a) The Licensee must obtain and maintain the insurance set out in Item 11 in force during the Term.
- (b) The Licensee must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the School Council or any other person.
- (c) Within 10 Business Days of the Commencement Date of this Licence, and immediately upon the request by the Principal from time to time, the Licensee must provide the Principal with evidence of the Licensee's insurance required under this Licence.
- (d) Clauses 11.1(a), 11.1(c), 11.2 and 11.3 do not apply if the Licensee is insured by VMIA or is a municipal council within the meaning of the *Local Government Act 1989* (Vic) and is insured by Liability Mutual Insurance.

### 11.2 **RELEASE**

The Licensee will occupy, use and keep the Licensed Area at the risk of the Licensee and releases, to the fullest extent permitted by Law, the Department, the School Council and its Associates from all Claims and demands of any kind for or resulting from any accident, damage, Loss or injury occurring in or on the Licensed Area, except to the extent that any damage, injury or Loss is caused by the negligent or unlawful act, omission or default of the School Council.

### 11.3 **INDEMNITY**

- (a) Subject to clause 11.3(b), the Licensee must indemnify, keep indemnified and hold harmless the Department, the School Council and their respective Associates (in this clause, each an **Indemnified Party**) from and against any Losses which any Indemnified Party suffers or incurs as a result of any demand, suit, action, claim or proceeding

against an Indemnified Party where the Losses arise as a direct or indirect result of any of the following:

- (i) any negligent act or negligent omission of the Licensee in connection with this Licence;
  - (ii) any loss, injury, illness or damage to persons (including death) including any member of the public or any third party to the extent it is caused by the act or omission of the Licensee in connection with this Licence;
  - (iii) any loss of or damage to property of any kind to the extent it is caused by the act or omission of the Licensee in connection with this Licence;
  - (iv) a breach of an obligation of confidence or privacy, whether under this Licence or otherwise;
  - (v) wilful misconduct, unlawful or fraudulent acts or omissions of the Licensee or its Associates;
  - (vi) any third party claims arising out of a breach of this Licence by the Licensee or its Associates (including breach of warranty); or
  - (vii) the Licensee's breach of this Licence.
- (b) To the extent that the indemnity in this clause refers to persons other than the School Council, the School Council holds this clause on trust for those other persons.
  - (c) The Licensee will not be liable under the indemnity in clause 11.3(a) to the extent that a Loss results from:
    - (i) any fraudulent, negligent or deliberate act or omission of an Indemnified Party;
    - (ii) any breach of this Licence by of an Indemnified Party; or
    - (iii) the condition of the Licensed Area or the Land before the Commencement Date.

## 12. **TERMINATION EVENTS**

### 12.1 **DAMAGE, DESTRUCTION, INTERRUPTION OR INACCESSIBILITY**

In the event that the Licensed Area is damaged or destroyed or there is interruption to access to the Licensed Area so as to render the Licensed Area or any part of the Licensed Area wholly or substantially unfit for

the Permitted Use and otherwise unfit for the occupation or use of the Licensee or inaccessible by any usual means of access, the School Council, in its absolute discretion may terminate this Licence by Notice to the Licensee.

## 12.2 **GROUNDINGS FOR TERMINATION BY SCHOOL COUNCIL**

The School Council may immediately terminate this Licence by Notice to the Licensee if:

- (a) an agreement between the Licensee and the Student and/or their parent, carer and guardian regarding the provision of Services from the Licensed Area by the Licensee ends for any reason;
- (b) the Student receiving the Services is no longer enrolled at the School;
- (c) the Licensee fails to remedy, to the satisfaction of the School Council, any breach of this Licence (which in the reasonable opinion of the School Council is able to be remedied) within 7 days after the date on which the School Council issues the Licensee a Notice requiring the Licensee to remedy the breach;
- (d) the Licensee (including its Associates) breaches any material provision of this Licence and in the reasonable opinion of the School Council such breach cannot be remedied (including, but not limited to, clauses 8, 9, 14, 17, 18 and 20);
- (e) the Licensee or any of its Associates are guilty of fraud, dishonesty, criminal conduct or any other serious misconduct;
- (f) the Licensee (including its Associates) commits any act or does anything that is, in the opinion of the School Council, contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Licensee (including its Associates) into disrepute and as a consequence the School Council believes that its continued association with the Licensee will be prejudicial or otherwise detrimental to the reputation of the School Council or the State; or
- (g) the Licensee goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt

or enters into a scheme or arrangement with creditors.

## 12.3 **TERMINATION WITHOUT CAUSE**

- (a) The School Council may terminate this Licence without cause by giving the Licensee not less than 30 days' Notice.
- (b) Where this Licence is terminated by the School Council pursuant to clause 12.3(a):
  - (i) the Licensee must cease providing Services from the Licensed Area as soon as practicable following receipt of Notice and take all appropriate action to mitigate any loss and prevent additional costs being incurred; and
  - (ii) the School Council will not be liable for any payment whatsoever to the Licensee resulting from the termination under this clause 12.3, including but not limited to any compensation or damages.

## 12.4 **BY AGREEMENT**

The School Council and Licensee may terminate this Licence at any time by written agreement.

## 12.5 **SCHOOL CLOSURE OR AMALGAMATION**

The School Council may terminate this Licence with one months' Notice to the Licensee in the event that the School closes down or amalgamates with another school.

## 13. **LICENSEE'S OBLIGATIONS ON THE EXPIRY OR TERMINATION OF LICENCE**

- (a) At the expiration or the earlier termination of this Licence, the Licensee must surrender and yield up the Licensed Area (and all keys, including card keys) to the School Council:
  - (i) clean and free from rubbish; and
  - (ii) in a condition consistent with the Licensee's performance and observance of all relevant covenants relating to the Licensed Area under this Licence.
- (b) The expiry or termination of this Licence does not prejudice or affect any rights or remedies the School Council has against the Licensee, for any earlier breach by the Licensee of any of its obligations under this Licence.
- (c) Clauses 9, 11.3, 13, 16, 17, 18, 19, 22 and 23 are continuing obligations,

separate and independent from the other obligations of the Licensee under this Licence, survive the termination or expiry of this Licence and may be enforced at any time.

#### 14. **ASSIGNMENT AND SUBLICENSING**

The Licence is personal to the Licensee. The Licensee must not dispose of, deal with, transfer, novate or assign its interest, rights or powers as Licensee under this Licence without obtaining the School Council's prior written consent, which consent may be granted or withheld in the absolute discretion of the School Council, and if granted, may be granted subject to such conditions as the School Council sees fit to impose.

#### 15. **HOLDING OVER**

If the Licensee continues to use the Licensed Area after the end of the Term with the School Council's consent, it does so as a monthly Licensee:

- (a) under the terms and conditions of this Licence with any changes necessary to make this Licence a monthly licence; and
- (b) at a licence fee equal to one month's proportion of the Licence Fee payable under this Licence immediately before the end of the Term, payable monthly in advance.

#### 16. **DISPUTES**

- (a) A party claiming that a dispute or disagreement has arisen under this Licence may give the other party a Dispute Notice.
- (b) A Dispute Notice may be withdrawn at any time by the party that gave the Dispute Notice.
- (c) Within 10 Business Days of the date of issue of the Dispute Notice, the parties must enter into good faith discussions in an attempt to resolve the issues between them.
- (d) The School Council and Licensee will continue to perform their respective obligations under this Licence pending the resolution of a dispute under this clause.

#### 17. **CONFIDENTIALITY**

##### 17.1 **SCHOOL COUNCIL CONFIDENTIAL INFORMATION**

- (a) Subject to clause 17.1(b), the Licensee must and must ensure its Associates keep confidential:

- (i) the terms and conditions of this Licence; and
- (ii) any information provided to the Licensee by the School Council in connection with this Licence, including but not limited to:
  - (A) personal information relating to students of the School;
  - (B) personal and business information relating to the School Council or the School or its employees, respectively; and
- (iii) information treated by the School Council or the School as confidential.

- (b) The Licensee may make disclosures as it, acting reasonably, considers necessary to:

- (i) its professional advisers, bankers, financial advisers, financiers, investors and potential investors if those persons undertake to keep information disclosed confidential;
- (ii) comply with Laws; and
- (iii) any of its Associates who have a need to know the information to enable the Licensee to perform its obligations under this Licence if that Associate undertakes to keep the information confidential.

- (c) The Licensee acknowledges that the School Council will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Licensee of this clause and without the need on the part of the School Council to prove any special damage.

##### 17.2 **LICENSEE'S CONFIDENTIAL INFORMATION**

- (a) Subject to clause 17.2(b), the School Council agrees to treat as confidential all information of or relating to the Licensee that is provided to it by or on behalf of the Licensee and which is identified in writing by the Licensee as confidential.
- (b) The Licensee hereby acknowledges and/or consents to the School Council and the Department making available all information in relation to the Licensee or this Licence as may be required to comply with Law, including its obligations under the *Freedom of Information Act 1982* (Vic).

## 18. **PRIVACY**

- (a) The Licensee acknowledges that it is bound by professional and legal obligations relating to privacy and data protection, including the Information Privacy Principles, any applicable Code of Practice, the Health Privacy Principles, the *Privacy Act 1988* (Cth) and any applicable Laws, standards, guidelines and policies of the Australian Health Practitioner Regulation Agency (**AHPRA**) (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Licensee in connection with this Licence.
- (b) The Licensee acknowledges that the School Council is bound by legal obligations relating to privacy and data protection, including obligations under the PDP Act, the Victorian Protective Data Security Framework and the *Health Records Act 2001* (Vic).
- (c) The Licensee must not do any act or engage in any practice that would cause the School Council to contravene the obligations referred to in this clause in respect of any data collected, held, used, managed, disclosed or transferred by the Licensee under or in connection with this Licence.

## 19. **NOTICES**

- (a) A Notice must:
  - (i) be in writing;
  - (ii) signed by or on behalf of the party giving it; and
  - (iii) be hand delivered to the address of the addressee or sent by post to the address of the addressee, or if sent by facsimile to the facsimile number of the addressee, or if sent by email to the email address of the addressee.
- (b) A Notice takes effect from the time it is received, unless a later time is specified in it. A Notice will be deemed to have been received by the addressee:
  - (i) in the case of hand delivery, on delivery to the addressee or to the address of the addressee;
  - (ii) in the case of post, on the fourth Business Day after posting; and
  - (iii) in the case of email, at the time the sender receives a transmission

report which indicates the email was delivered to the addressee.

- (c) If any Notice or document is delivered or deemed to be delivered:
  - (i) after 4.00 pm in the place of receipt; or
  - (ii) on a day which is a Saturday, Sunday or public holiday in the place of receipt,it is taken as having been delivered at 9.00 am on the next business day.

## 20. **SPECIAL CONDITIONS**

Any special condition set out in Item 13:

- (a) binds the parties; and
- (b) if there is an inconsistency between a special condition and any other provision of this Licence, the special condition prevails.

## 21. **CONFLICT OF INTEREST**

- (a) The Licensee warrants that, to the best of its knowledge and belief, after due inquiry as at the date of this Licence, neither it or its employees have any duties or interests that create or might reasonably be anticipated to create a conflict with their duties and obligations under this Licence.
- (b) The Licensee warrants that during the Term neither it nor its employees will take any action that will result in the Licensee or its employees having a duty or interest that creates or might reasonably be anticipated to create a conflict with their duties and obligations under this Licence.

## 22. **GENERAL**

### 22.1 **AMENDMENT**

This Licence may only be varied or replaced by agreement in writing.

### 22.2 **WAIVER AND EXERCISE OF RIGHTS**

A single or partial exercise or waiver by a party of a right relating to this Licence does not prevent any other exercise of that right or the exercise of any other right.

### 22.3 **OTHER COSTS**

Each party must pay its own legal costs, including costs of the preparation, negotiation and execution of this Licence, and any variation to this Licence.

## 22.4 SEVERABILITY

Any provision of this Licence which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

## 22.5 SET OFF

The School Council may set off against any sum owing to the Licensee under this Licence any amount then owing by the Licensee to the School Council.

## 22.6 GOVERNING LAW AND JURISDICTION

This Licence is governed by and is to be construed in accordance with the laws applicable in Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.

## 22.7 COUNTERPARTS

This Licence may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## 22.8 ENTIRE UNDERSTANDING

This Licence contains the entire understanding between the parties as to the subject matter of this Licence.

## 22.9 ELECTRONIC SIGNATURE

The parties acknowledge and agree that this Licence may be executed by electronic signature which shall have the same force and effect as a handwritten signature. Without limiting this term, 'electronic signature', whether digital or encrypted, will include scanned and transmitted versions (e.g. via pdf) of an original signature. An electronic signature is sufficient to indicate a party's approval of the terms of this Licence and the parties agree to be so bound by their electronic signature and the terms of this Licence.

## 22.10 PUBLICITY

The Licensee must not make any public announcement or media release in respect of any aspect of this Licence without the prior written approval by the School Council. Without limitation, if permission to publish is granted pursuant this clause 22.9, the Licensee must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

## 22.11 RELATIONSHIP OF PARTIES

This Licence is not intended to create a partnership, joint venture or agency relationship between the parties. Nothing in this Licence will constitute or deem a party to be the employee of another party.

## 23. DEFINITIONS AND INTERPRETATION

### 23.1 DEFINITIONS

In this Licence, unless the context otherwise requires:

**Agency** means a provider of services under a contract entered into with the School Council relevant to family violence risk assessment or family violence risk management.

**Alignment** (and correspondingly **Align**) means actions taken by Framework Organisations to effectively incorporate the four pillars of the Framework into existing policies, procedures, practice guidance and tools, as appropriate to the roles and functions of the prescribed entity and its place in the service system.

**Approved Framework** means the Family Violence Risk Assessment and Risk Management Framework as amended from time to time approved under section 189 of the FVP Act.

**Associates** means any officer, employee, agent, contractor, subcontractor, consultant, advisor, invitee, licensee, assignee or servant to the extent that such person or entity is performing an act or a function directly related to the Licence.

**Business Day** means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

**Child-connected work** has the meaning given to it in the Ministerial Order.

**Child Safety Laws** means any Laws that in any way relate to child safety, including the *Child Wellbeing and Safety Act 2005* (Vic).

**Claim** includes any claim, demand, remedy, suit, injury, damage, loss, Cost, Liability, action, proceeding and right of action.

**Code of Practice** means a code of practice as defined in, and approved under the PDP Act.

**Commencement Date** means the commencement date of this Licence set out in Item 5.



**Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature.

**Department** means the Department of Education and Training in the State of Victoria.

**Dispute Notice** means a notice in writing given by either party to the other where a dispute in relation to this Licence arises between the School Council and the Licensee.

**Expiry Date** means the expiry date of this Licence set out in Item 6.

**Framework Organisation** means a body prescribed to be a framework organisation for the purposes of Part 11 of the FVP Act.

**FVP Act** means the *Family Violence Protection Act 2008* (Vic).

**Government Agency** means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity or authority and includes a Minister of the Crown or the Commonwealth of Australia and any person, body, entity or authority exercising a power pursuant to an Act of Parliament.

**Health Privacy Principles** means the health privacy principles set out in the *Health Records Act 2001* (Vic).

**Information Privacy Principles** means the information privacy principles set out in the PDP Act.

**Information Sharing Deed** means the Information Sharing Deed between the Principal of the School and the Licensee that must be entered into (in the form included as Annexure B- Attachment 2 of this Licence) at the same time as this Licence.

**Item** means an item of Schedule 1.

**Land** means the land of which the Licensed Area forms part, as described in Item 4 and includes all rights, easements and appurtenances usually enjoyed with that land.

**Law** means:

- (a) principles of law or equity established by decisions of courts within the Commonwealth of Australia;
- (b) statutes, regulations, by-laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, State of Victoria, any local government or a Government Agency, including but not limited to the

*Education and Care Services National Law Act 2010* and the *Children's Services Act 1996* (Vic);

- (c) the Constitution of the Commonwealth;
- (d) binding requirements and mandatory approvals (including conditions) of the Commonwealth, the State of Victoria or a Government Agency which have the force of law;
- (e) guidelines, policies and requirements under the NDIS in force from time to time (including but not limited to the NDIA Terms of Business, Guide to Suitability and the Quality and Safeguards Working Arrangements); and
- (f) guidelines of the Commonwealth, the State of Victoria or a Government Agency which have the force of law.

**Liability** means any debt, obligation, Cost, expense, Loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

**Licence** means this licence agreement and includes the schedules, annexures, attachments and any documents incorporated by reference.

**Licence Fee** means the licence fee specified in Item 7.

**Licensed Area** means the area as described in Item 3 and shown hatched on the Plan.

**Licensee** means the licensee specified in Item 2 and includes, where appropriate, its Associates.

**Loss** means any liability (including legal expenses) of any kind whatsoever and includes but is not limited to direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other claim arising from any cause whatsoever whether or not the loss, damage or claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.

**Minister** means the Minister for Education in the State of Victoria.

**Ministerial Order** means Ministerial Order 870 entitled "Child Safe Standards – Managing the risk of child abuse in schools" (as amended or replaced from time to time).

**NDIS** means the National Disability Insurance Scheme.

**Notice** means a notice, consent, approval or other communication given under this Licence.

**PDP Act** means the *Privacy and Data Protection Act 2014* (Vic).

**Permitted Use** means the use of the Licensed Area as specified in Item 10.

**Plan** means the plan attached as Annexure A.

**Principal** means the Principal of the School.

**Privacy Obligations** has the meaning given in clause 18(a).

**Requirement** includes any lawful notice, order or direction received from or given by any Government Agency or pursuant to any Law, in writing or otherwise, and notwithstanding to whom such a requirement is addressed or directed but if not addressed to the Licensee then the Licensee must be given a copy.

**Schedule** means any schedule(s) to this Licence.

**School** means the School administered by the School Council.

**School Council** means the School Council specified in Item 1 and, where appropriate, its Associates.

**School Council Child Safety Policies** means any relevant School Council policies, codes, guidelines or associated documents that in any way relate to child safety, including any policies, codes, guidelines or associated documents that the School produces for the purpose of meeting its minimum child safety standards pursuant to the Ministerial Order.

**School Council's Representative** means the School Council's representative nominated pursuant to cl 2.

**Student** means a student enrolled at the School to receive the Services under this Licence.

**Term** means the period of this Licence commencing on the Commencement Date and expiring on the Expiry Date, including any further period during which the Licensee has possession of the Licensed Area.

Executed as an agreement

**School Council**

**Worker Screening Act** means the *Worker Screening Act 2020* (Vic).

## 23.2 INTERPRETATION

Unless expressed to the contrary, in this Licence:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) headings are for guidance only and are to be ignored in interpreting this Licence;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
  - (v) "\$", "dollars" or "AUD" is a reference to the lawful currency of the Commonwealth of Australia; and
- (h) if the date on or by which any act must be done under this Licence is not a Business Day, the act must be done on or by the next Business Day.

Signed by a duly authorised officer of the **School Council** who warrants that he or she is a duly authorised officer able to execute on behalf of the School Council:

---

Signature

---

Full Name of authorised representative  
(print)

---

Date

---

Position

### Licensee

[**Option 1: use this signing clause when the Licensee is an organisation not an individual. Delete if not used**]

Executed for and on behalf of [**insert name and ACN/ABN =** ]

by a duly authorised representative who warrants that he or she is a duly authorised representative able to execute on behalf of the Licensee:

---

Signature

---

Full Name of authorised officer

---

Date

---

Position

[**Option 2: use this signing clause when the Licensee is an individual. Delete if not used**]

Executed by the Licensee:

---

Signature of Licensee

---

Date



**Schedule 1 Licence Details**

<b>Item 1</b>	<b>School Council's Name (Licensor)</b>	<p>Portland Bay School</p> <p>77 Henty Street Portland Vic 3305</p> <p>ABN 11 730 740 101</p>
<b>Item 2</b>	<b>Licensee's Name</b>	[Insert full name of Licensee (including ACN (if a company) or registered association number (if an incorporated association), and full address)]
<b>Item 3</b>	<b>Licensed Area</b> [Insert description of part of Land which is to be licensed to the Licensee]	<p>That part of the Land comprising:</p> <ul style="list-style-type: none"> <li>• [e.g. rooms/areas made available to the Licensee]</li> <li>• other spaces as agreed between the parties from time</li> <li>• See Annexure A</li> </ul>
<b>Item 4</b>	<b>Land</b>	[Insert full address of the school/Licensed Area]
<b>Item 5</b>	<b>Commencement Date</b>	<p>[Insert the date the Licence is to commence or keep below]</p> <p>Upon execution of the Licence by all parties</p>
<b>Item 6</b>	<b>Expiry Date</b> [This date should not be more than three years from the Commencement Date unless legal advice has been sought]	The date which is [e.g. one year / two years / three years] from the Commencement Date
<b>Item 7</b>	<b>Licence Fee</b> [Insert details of any licence fee payable (if any). The licence fee must be a minimum of \$1.00 "on demand". Do not leave blank]  Charges that are identified as being a direct result of the therapy may be charged back to the therapist.	<p>\$ (GST inclusive/exclusive)</p> <p>per week/month/annum</p> <p>payable weekly/monthly/annually in advance</p>
<b>Item 8</b>	<b>Dates and/or Days of Use</b>	[Insert specific dates and/or days during the Term the Licensee may use the Licensed Area. If this is unlimited, insert "Not applicable" or insert "As agreed between the parties from time to time"]
<b>Item 9</b>	<b>Hours of Use</b>	

		[Insert specific hours of the day during the Term the Licensee may use the Licensed Area. If this is unlimited, insert "Not applicable" or insert "As agreed between the parties from time to time"]
<b>Item 10</b>	<b>Permitted Use</b>	The reasonable use of the Licensed Area for the purposes of providing the NDIS funded therapy services to a Student as set out in the Request Form(s) under the heading 'Details of Proposed Therapy' ( <b>Services</b> ) which is attached to this Licence as Annexure C.
<b>Item 11</b>	<b>Insurance</b> [Please ensure you obtain a copy of the certificate of currency of insurance from the Licensee before the Commencement Date]	<b>Public Liability Insurance</b> \$10 million per event <b>Professional Indemnity Insurance</b> \$5 million per event
<b>Item 12</b>	<b>School Council Representative and Address for Service</b>	Authorised Officer: Address: Tel: Email:
	<b>Licensee Representative and Address for Service</b>	Authorised Officer: Address: Tel: Email:
<b>Item 13</b>	<b>Special conditions</b>	The following Special Conditions apply:  1 the Special Conditions set out in Annexure B (which includes Attachment 1 to Annexure B); and  2 [Insert additional special conditions if applicable, otherwise delete this point 2]

Annexure A

**Annexure A      Plan**

[Insert or attach a clear plan showing the area to be licensed in shading or hatched lines]

## **Annexure B Special Conditions**

### **1 Provision Services**

- (a) When delivering the Services from the Licensed Area, the Licensee must, for the Term of the Licence:
- (i) ensure that it and its Associates obtain, maintain and furnish proof upon the School Council's request of all necessary, licences, approvals, qualifications and experience to deliver the Services within 5 Business Days of such a request;
  - (ii) ensure that it and its Associates comply at all times with requirements under the NDIS (including, but not limited to requirements under the NDIS Code of Conduct and Victoria's Disability Worker Regulation Scheme from time to time);
  - (iii) provide its Services in a proper manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of Services;
  - (iv) act in good faith and in the best interests of the Department and the School Council; and
  - (v) provide any and all equipment necessary for the performance of the Services.
- (b) The parties agree that the School Council will not be responsible for payment of any fees to the Licensee for the Services.

### **2 Access to premises**

When entering the premises of the School Council, the Licensee must and must ensure that its Associates use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner and comply with the safety standards and policies of the Department and the School Council (as notified to the Licensee).

### **3 School Council's Right to Refuse Access to Premises**

The Principal has the right to request that the Licensee and its Associates immediately leave the school premises and may enforce that request permanently or for any period of time in such manner as the Principal may decide if the Licensee or its Associates:

- (a) fails to be bound by or conform to any applicable rule, regulation, protocol, procedure, policy or by-law of the Department or the School Council (including but not limited to the NDIS Code of Conduct and Victoria's Disability Worker Regulation Scheme from time to time);
- (b) does not behave in a safe or professional manner; or
- (c) in the reasonable opinion of the Principal or nominee, has caused harm or poses a threat to the health or welfare of any Students, employees of the Department or the School Council, or any other person.

### **4 Supervision by the Principal**

- (a) The Licensee must comply with all reasonable instructions, directions and requests of the Principal in relation to the use of the Licensed Area.
- (b) The Licensee must, subject to its Privacy Obligations and in accordance with the Information Sharing Deed, engage in discussions with the Principal or a staff member nominated by the Principal (including a SSS Practitioner, Primary Welfare Officer or member of the area health, wellbeing and inclusion workforce) about:
  - (i) the Licensee's case files;
  - (ii) the Services provided to a Student; and
  - (iii) the other matters specified in the Information Sharing Deed,



to ascertain whether further actions should or must be taken by the Principal, a SSS Practitioner, member of the area health, wellbeing and inclusion workforce or the Licensee, or to enable the Department to educate or support the student or fulfil legal obligations.

- (c) The Principal may, at any time for reasons of safety of a Student and the security of the Licensee, request a staff member or staff members be present or intervene during consultations between a Student and the Licensee.
- (d) The Licensee will be responsible for ensuring that the necessary informed consent from Students and their parent(s), guardians and carers to:
  - (i) the provision of the Services; and
  - (ii) the Licensee disclosing information to the Principal in accordance with the Information Sharing Deed and Special Conditions 4(b) and 5(c),has been obtained prior to the commencement of the Services.
- (e) The consent obtained under Special Condition 4(d) must be obtained by using the form provided in Attachment 1. The consent must be obtained at the time specified in the *Responding to requests for NDIS funded therapy in schools: Guidelines for Principals*, as updated from time to time.
- (f) The Licensee must provide the Principal with a copy of the signed consent form prior to providing Services to the relevant Student.
- (g) Notwithstanding anything in this Special Condition 4, the Licensee is entirely responsible for its Associates at all times while on the Licensed Area.

## **5 Information sharing**

- (a) The parties will enter into an Information Sharing Deed in respect of each Student receiving the Services of the Licensee by using the form provided in Attachment 2.
- (b) The Licensee must ensure that any Student Confidential Information is collected, held, used or disclosed by the Licensee in accordance with its Privacy Obligations.
- (c) Subject to Special Condition 5(b) and the Licensee obtaining consent from the applicable Student and/or their parent, carer or guardian if necessary, the Licensee will, in accordance with the Information Sharing Deed, disclose and make available to the Principal, or any staff member nominated by the Principal, specific information obtained from the Student to enable the Principal to satisfy its legal responsibilities which may include but is not limited to obtaining and retaining information about:
  - (i) a Student's disability or medical condition in relation to which the School may be required to make reasonable adjustments under anti-discrimination law;
  - (ii) any matter which may be relevant to the School's obligations under occupational health and safety laws;
  - (iii) any matter which may be relevant to the School's ability to meet its duty of care obligations to students;
  - (iv) a Student to protect them from sexual, physical and emotional harm to ensure they have access to appropriate care or treatment and that their educational needs are met;
  - (v) any incident of sexual, physical or emotional abuse involving the Student which may require the School to make a report to, or share information with, a Government Agency; and
  - (vi) any matter that the School Council or Principal is required to create, manage, use and dispose of in accordance with the *Public Records Act 1973 (Vic)*.
- (d) All Student Confidential Information provided by the Principal to the Licensee will remain the property of the Department.

- (e) The Licensee's obligations under this Special Condition 5 are continuing obligations, separate and independent from the other obligations of the Licensee and survive the expiry or termination of this Licence.

## 6 Licensee Warranties

The Licensee warrants to the School Council that:

- (a) it and its Associates are fit and proper persons, appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services;
- (b) it will provide the Services in a proper manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of the Services;
- (c) the person providing the Services at the Licensed Area will at all times during the term of this Licence hold a current Working With Children Check pursuant to the Worker Screening Act and a police check;
- (d) it will act in good faith and in the best interests of the School Council; and
- (e) while on premises controlled by the Principal of the School, the Licensee and its Associates will at all times comply with the Principal's reasonable directions and all applicable School and Departmental policies made known to them, including any applicable occupational health and safety and security policies.

## 7 Compliance

The Licensee agrees that it is bound:

- (a) to provide support to Students consistent with the NDIS Code of Conduct and Victoria's Disability Worker Regulation Scheme and other relevant policies and procedures applicable from time to time under the NDIS; and
- (b) by any of the Department's or the School Council's rules, regulations, protocols, procedures, by-laws, policies and any other relevant information of which the Licensee has been notified by the Department or Principal, including the *Responding to requests for NDIS funded therapy in schools – Guidelines for Principals*, as updated from time to time.

## 8 Interpretation

In these Special Conditions, unless the context otherwise requires:

**Primary Welfare Officer** means a School staff member appointed by the Principal to assist in the improvement, coordination and collaboration of a whole-school approach to promoting health and wellbeing within the School community.

**Services** means the Services (or any of them) specified in Permitted Use in Item 10 of Schedule 1 of this Licence.

**SSS Practitioner** mean a Student Support Services professional who works as part of an integrated health and wellbeing team within networks of Victorian Government schools, focusing on providing group-based and individual support for Students, and the provision of specialised services to schools and who may perform their services as a psychologist, guidance officer, speech pathologist, social worker or visiting teacher.

**Student Confidential Information** means any 'personal information' within the meaning of the PDP Act and 'health information' within the meaning of the *Health Records Act 2001 (Vic)*, or other information of, about or in any way related to the Students including any information designated by the Department or School Council as confidential, which is disclosed, made available, communicated or delivered to the Licensee.

Annexure B

**Annexure B – Attachment 1 – Consent Form/s**

Signed copy to be attached

## Annexure B – Attachment 2 – Information Sharing Deed

### INFORMATION SHARING DEED BETWEEN THE PRINCIPAL & LICENSEE

#### NOTE FOR PRINCIPALS:

This Information Sharing Deed applies when a principal has allowed an NDIS funded therapist (**Therapist**) to support a student on school premises, consistently with the *Responding to requests for NDIS funded therapy in schools: Guidelines for Principals*. The school council will license part of the school premises to the Therapist to deliver services to a student. These services are arranged by the parents of the student and the Therapist and generally paid for by the student's NDIS funding. Neither the school nor the Department engages or pays the Therapist for the services.

The Therapist must share with the school principal specific and relevant Student Confidential Information about the student. The Student Confidential Information that the Therapist must share is set out below.

The student and/or parent(s) must give consent to the Therapist providing the Student Confidential Information to the school principal through the Parent Consent Form attached to the Request Form. The consent is given at the time the initial request is made by the parent to the principal.

With some exceptions, the Information Sharing Deed sets out various options for *how* and *when* the Therapist must provide Student Confidential Information to the school. The school principal must tailor the deed as appropriate to the specific circumstances. This means that the school principal must decide **how** the Therapist must provide the Student Confidential Information to the school (e.g. verbally, in writing, through email) and **when** that must occur. The Information Sharing Deed must be completed and signed by the school principal and the Therapist.

If you have any queries about the Information Sharing Deed, please contact the Legal Division for assistance.

## INFORMATION SHARING DEED between the NDIS therapist and the Principal

Student: [insert name of student] (Student)

School: [insert name of school] (School)

### 1. Parties

This Information Sharing Deed is made between the following parties:

a. The Principal of [insert name of school including address]  
(Principal)

and

b. [insert details of the NDIS funded therapist including name, ABN/ACN and address]  
(Therapist)

### 2. Background

The Principal has agreed to permit the Therapist to provide [insert description of services] to the Student on School premises in accordance with the Licence between the Therapist and the [insert school name] School Council dated [insert date of licence] (Licence).

This Information Sharing Deed must be read consistently with:

- a. the *Licence*; and
- b. the *Parent Consent Form* attached to the Request Form which is obtained by the Therapist under Special Condition 4(d) of the Licence and signed by the parent/guardian/carer of the Student on.....  
Insert date

### 3. Obligations

- a. As required by the Licence, the Therapist agrees to provide the following information about the Student to the Principal, in the ways and at the times set out below:
  - i. any *specific information* that the Principal requests about the Student at any time, where examples of the kind of information the Principal may require is set out at Special Condition 5(c) of the Licence; and
  - ii. Information about the *Student's disability and their needs*, in the way and at the times specified in the following table:

Method of Communication	Frequency of communication ( <i>Tick if required</i> )				
	After each therapy session	Daily	Weekly	Monthly	Other (please specify)
By speaking with ..... [insert school staff member/s name]					
By preparing a written report and emailing it to to ..... [insert school staff member/s name]					
Emailing a short summary of the therapy provided to ..... [insert school staff member/s name]					
Other ..... (please specify)					

- b. The Therapist agrees to immediately notify [insert school staff member/s name] of information about the Student that relates to *reasonably foreseeable risk* to anyone. This includes, for example, information about the Student that relates to:
  - i. emotional, wellbeing or self-harm issues;
  - ii. aggressive or violent behaviours; and
  - iii. the Student being a victim or perpetrator of bullying, assault or age-inappropriate sexualised behaviours.
  
- c. On request of the Principal, the Therapist agrees to attend Student Support Group meetings, and other meetings related to the Student.

**4. Execution**

This document is executed by the parties as a deed.

Signed: .....  
 Name: [insert name]  
 Job Title: [insert job title]  
 Therapist: [insert details of Therapist, including name, ABN]  
 Date: [insert date]

Signed .....  
 Name: [insert name]  
 Job Title: Principal  
 School: [insert name of School]  
 Date: [insert date]