**RESPONDING TO REQUESTS FOR NDIS FUNDED THERAPY IN SCHOOLS**

GUIDELINES FOR PRINCIPALS

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PURPOSE

The National Disability Insurance Scheme (NDIS) provides increased choice and control to participants and their families on how disability services and supports are delivered. As a result, principals may receive parent/guardian/carer requests to allow NDIS funded therapists to:

* observe a student in the classroom or in the school environment
* attend a Student Support Group meeting, to monitor and tailor the support provided to the student.

These requests can generally be accommodated by schools and complement holistic student planning and support processes.

Principals may also receive requests for NDIS funded therapists to deliver ongoing therapy at school. These guidelines have been prepared to assist principals in responding to these requests.

Department of Education and Training (Department) Position

The Department is committed to supporting NDIS participants, and their families, to optimise the benefits offered by the NDIS. Consistent with this commitment, Victorian Government schools are encouraged to accommodate students and their parent(s) exercising choice and control in relation to NDIS supports.

On this basis, requests for NDIS funded therapy to be delivered at school should be approved unless the specific circumstances raise practical, legal and/or educational issues that make the approval of the request unfeasible.

The purpose of these Guidelines is therefore to assist principals to deal with each request by:

* recommending a consistent three step process to follow
* highlighting key considerations that a principal must take into account when making a decision
* providing templates for liaising with all relevant parties and establishing practical arrangements.

The Department has designed a three step process (see Figure 1), to assist principals in finalising their response to therapy requests on a case by case basis.



**Figure 1 Process for responding to requests for NDIS funded therapy in schools**

Step 1: Gather information

The principal asks the therapist and parent(s) about the therapy proposed to be provided at school, and the reasons for this request [see ‘Step 1’ section below].

Step 2: Make and communicate decision

The principal considers the request in light of all relevant factors and makes a decision as to whether the therapy can be provided on school grounds. This decision is communicated to the therapist and parent(s) [see ‘Key Considerations’ and ‘Step 2’ sections below].

Step 3: Practical arrangements

If the principal approves the therapy to be provided at school,appropriate arrangements are put in place. This includes ensuring relevant forms and agreements are completed by the therapist [see ‘Step 3’ section below].

BACKGROUND

This Background section aims to provide principals with an understanding of why their school may be experiencing an increase in requests for NDIS funded therapists to provide therapy on school grounds. It outlines some of the opportunities the NDIS offers to school-aged participants to enable them to achieve their goals.

TERMINOLOGY

Throughout this document:

* *principal* refers to the school principal or principal nominee such as a member of the school leadership team
* *parent(s)* refers to parents, guardians and carers
* *therapist* refers to a private therapist/practitioner or a therapist/practitioner employed by an external disability service provider
* *mature minor* refers to a student who the principal has deemed to be mature minor in accordance with the Department’s Mature Minor policy.[[1]](#footnote-2) A mature minor may also make a request/consent on their own behalf.

Introduction to the National Disability Insurance Scheme

The NDIS is the most significant social policy and funding reform in Australia since the introduction of Medicare in 1975. It is a Commonwealth Government scheme that aims to provide eligible persons with significant and permanent disability (known as ‘participants’ of the scheme) with greater choice and control over how and by whom their disability supports are delivered. It is a whole of life approach to the support needed to live an ‘ordinary life’ achieved through working towards each participant’s goals and aspirations. The Commonwealth Government has established the National Disability Insurance Agency (NDIA), to administer and deliver the NDIS.

To access the NDIS and become a ‘participant’ in the scheme, a person must meet a number of legislated residency, age and disability criteria. The person must:

* live in Australia
* be an Australian citizen, a permanent resident, or hold a Protected Special Category Visa
* be under 65 years of age
* have an impairment or condition that is likely to be permanent and that stops a person from doing everyday things by themselves (i.e. a diagnosed significant and permanent disability).

Alternatively, a person can access the NDIS if they meet the ‘early intervention’ access criteria including:

* a child under 6 years of age with a ‘developmental delay’ and the delay means the child usually needs more help with self-care, communication, learning or motor skills than another child of the same age.

The NDIS operates under an entitlement system. Once NDIS eligibility has been determined, each participant creates an NDIS plan with the help of NDIA planners or Local Area Coordinator (LAC) partners. Funding is provided for a range of ‘reasonable and necessary supports’. A plan will include informal, mainstream and community supports as well as the supports to be funded by the NDIS.

NDIS plan

The NDIS plan enables participants to have greater choice and control over what, when, where and by whom most of their disability support is provided.

The pathway for a school-aged participant to build their NDIS plan typically involves the following stages:

1. Students, with their parent(s), create a participant statement with broad goals they want to achieve to increase their independence, inclusion, and social and economic participation.
2. Once goals have been developed, students meet with NDIA planners or LAC partners to determine reasonable and necessary supports to help them achieve these goals. These supports may include therapy to build capacity in areas such as mobility or speech and language development.
3. Supports that are deemed reasonable and necessary are funded under the NDIS.
4. For most participants, after 12 months an annual review occurs with the NDIA planner. At plan review the student’s progress towards their goals and outcomes are measured which may involve a change to the reasonable and necessary funded supports in their plan.

Therapy in Schools

Former system

Historically, prior to the NDIS, therapy for school-aged children has been funded through multiple programs within and across governments, including the commonwealth funding programs; *Better Start* and *Helping Children with Autism*. These programs operate under a rationed system, where students have access to a capped number of therapy sessions each year. Under these programs, students are usually allocated to certain disability service providers, limiting their choice and control over supports they can receive.

In addition to these external therapy providers, schools have directly employed therapists and accessed therapy from Student Support Services for educational supports.

NDIS

The NDIS works as a social insurance scheme. As such, if the NDIA decides (after consideration of relevant evidence, such as special reports and advice from the student’s parents) that a particular therapy is a ‘reasonable and necessary’ support for the student, the NDIS is obliged to fund that support as part of the student’s NDIS plan.

Participant ‘choice and control’ is a key benefit of the NDIS, which means participants and their parent(s):

* have greater choice and control over how and by whom NDIS funded supports are delivered
* can choose how their NDIS plan will be managed. They can choose to self-manage the funds; have the funds managed by a financial intermediary; or have the funds managed by the NDIA. They can also opt for a combination of these methods. Payment to providers for supports are made through the NDIA’s portal system.

As a result of the emphasis on choice and control under the NDIS, schools have seen an increase in the number of parent(s) seeking approval to have NDIS funded supports for students delivered in schools.

Importantly, the therapies funded by the NDIS are related to the participant’s functional whole of life support needs, and **not for educational purposes.** The responsibility of therapy for educational attainment remains with the education system. On this basis, schools should continue to employ therapists and access therapy from Student Support Services to provide educational supports.

victoria’s transition to the ndis

The NDIA conducted a trial of the NDIS in the Barwon area from 1 July 2013 to 30 June 2016. The Victorian and Commonwealth Governments subsequently agreed to the implementation of the NDIS in the remaining areas of the state between 1 July 2016 and 30 June 2019 (known as the ‘transition period’). The transition to the ‘full scheme’ of the NDIS will occur progressively, area by area. It is expected that by the end of the transition period, Victorian NDIS participants will have grown to around 105,000. Further information about the transition arrangements, including the schedule, is on the NDIA website: [www.ndis.gov.au/about-us/our-sites/vic](http://www.ndis.gov.au/about-us/our-sites/vic)

THERAPY IN SCHOOLS: THE BARWON TRIAL EXPERIENCE

The Barwon area encompasses 72 mainstream schools, and three specialist schools. In relation to therapy in schools, many schools in Barwon experienced positive outcomes during trial, including:

* the inclusion of NDIS funded therapists in the school setting provided increased opportunities to observe students at school and inform their therapy goal setting
* some NDIS funded therapists were invited to participate in Student Support Group meetings, which enhanced collaborative planning with the school and teachers
* in some approved circumstances, NDIS funded therapists delivered supports in available learning spaces at the school.

However some issues regarding therapy in schools during the trial period included:

* principals, in particular from specialist schools, received a volume of requests that was beyond the school’s capacity to accommodate, or would significantly disrupt the delivery of educational programs in the school
* NDIS funded therapists arrived at schools unannounced, having organised with the family, but not the school to provide therapy at the school
* principals were unsure about whether they would be in breach of any legal obligations, in particular anti-discrimination obligations, if they were not able to approve therapy requests.

Case studies from the Barwon area have been used throughout these guidelines to provide more clarity around when requests may be approved or declined.

KEY CONSIDERATIONS

These key considerations should be assessed by principals when deciding to grant or refuse each individual therapy request. Each request should be tested on its individual merits. It is therefore not recommended for schools to develop a school policy based on these considerations as a ‘blanket rule’ that allows or disallows all requests for therapy in schools.

Duty of care obligations

Child Safe Standards

The Child Safe Standards are minimum standards that apply to organisations that provide services for children to help protect children from abuse. They are in full implementation in 2017.

The Standards require schools to have strategies, policies and procedures in place to ensure the school is a child safe organisation. This includes having appropriate human resources practices in place to reduce the risk of child abuse by new and existing personnel and having strategies to identify and reduce or remove risks of child abuse.

In light of the Child Safe Standards, schools should consider the seven Standards individually when considering whether to agree to a request for an NDIS funded therapist to provide therapy on school grounds. In particular, this will include:

* the physical space at the school to be used by the therapist is a reasonably safe one
* the school needs to inform the therapist about the school’s policies and commitments regarding Child Safe Standards (including visitor policy, code of conduct, supervision arrangements and internal reporting arrangements)
* parent(s) should be informed about what they should do if they have concerns about their child’s welfare.

If the school does agree to a request for an NDIS funded therapist to provide therapy on school grounds, the school needs to be alert to adverse behavioural or other changes in the student that might be a symptom of abuse, or risk of abuse, whether generally or in connection with the therapy.

For more information about the Child Safe Standards, please see: [www.education.vic.gov.au/school/principals/spag/safety/Pages/childsafestandards.aspx](http://www.education.vic.gov.au/school/principals/spag/safety/Pages/childsafestandards.aspx)

Duty of care

Principals, as delegates of the Minister for Education, have the right to permit and refuse entry of any person to Victorian Government school premises. As an NDIS funded therapist is not a Department or school council employee/contractor, and is not under the direction and control of the principal, principals must carefully consider whether the school can fulfil its duty of care obligations to the student.

Duty of care requires principals and teachers to take all reasonable steps to reduce the risk of any foreseeable harm to students, including by:

* providing safe and suitable premises
* providing adequate supervision of students, for example through line of sight to the therapy session or an additional staff member present to supervise the therapy
* ensuring the therapist holds a satisfactory Working with Children Check.

The responsibility for duty of care remains with principals and teachers, regardless of whether supervision has been delegated to another staff member.

If duty of care requirements are not met, there is a significant legal risk to both the school and the Department.

Requests for therapy on school grounds after school hours

It is important to note that the special duty of care owed by principals and teachers to students outside school supervision hours (for example, at 4pm) is very limited. Accordingly, in circumstances where students are receiving private therapy by a NDIS funded provider who has a licence to use the school grounds, and the therapy takes place outside school supervision hours, there is no requirement for the school to appoint staff to supervise the therapy. Such arrangements place minimal risk to the school, so long as the Licence Agreement and Information Sharing Agreement are in place prior to the commencement of the therapy.

It is recommended in these circumstances that the school/council inform and confirm with parents in writing:

* that the therapy is not organised or managed by the school or the school council and is not a school activity
* that school staff and the school council are not responsible for the supervision of students attending the therapy outside school supervision hours.

Principals maintain the right to decline a request for private therapy sessions to occur at this time, if there are concerns regarding foreseeable risks to students receiving therapy on school grounds outside school supervision hours.

Reportable Conduct Scheme

From 1 July 2017, principals will be required to bring all allegations of 'reportable conduct' by employees, contractors, volunteers, allied health staff and school council employees to the attention of the Department's Employee Conduct Branch. The branch will then report these allegations to the Commission for Children and Young People.

There is an allegation of 'reportable conduct' where a person has a reasonable belief that there has been:

* a sexual offence (even prior to criminal proceedings commencing), sexual misconduct or physical violence committed against, with or in the presence of a child
* behaviour causing significant emotional or psychological harm
* significant neglect of a child.

The Reportable Conduct Scheme extends to NDIS funded therapists. Principals should be aware of their reporting requirements under this scheme if they permit an NDIS funded therapist to enter onto school premises to deliver services for students.

Student access to the curriculum

The principles underlying Government school education include universal access to education and free instruction in the learning areas in Schedule 1 of the *Education and Training Reform Act 2006* (ETR Act). In deciding whether it is reasonable for a student to access NDIS funded supports during school hours, principals should consider what impact this would have on the student’s access to curriculum, given the primary purpose of schooling is to provide educational programs to students during school hours.

Equally, a student’s access to curriculum may be improved by allowing therapy to occur during school hours. The following is a case example from the Barwon trial:

* a student was living in a remote area and the commute to and from therapy was extensive. This meant the student was missing schooling due to the long commute, and was arriving at school tired. In this scenario, the principal allowed the therapy to be delivered at school so the student could access more of the curriculum.

Principals must also consider the impact that an additional adult in the school learning environment may have on staff and access to the curriculum for other students. If the requested therapy will occur in the classroom, this may disrupt the class or cause difficulties in the classroom teacher’s ability to deliver the lesson to other students.

Practical and administrative capacity

Schools need to ensure they have the practical capacity to accommodate NDIS funded therapists providing therapy to students on school grounds. This includes having the physical space available to accommodate the therapy, and ensuring the school is equipped to manage the increased administration that allowing therapy might entail. This is a key consideration for specialist schools with high numbers of NDIS participants.

INDIVIDUAL circumstances of student

In making a decision, principals should also consider all other relevant factors, including the particular family and social circumstances of the student, and the flexibility of the student’s learning program.

A student’s family circumstances may preclude the therapy being delivered outside of school hours, or in another location. This was the case in the following example from the Barwon Trial:

* A student’s domestic situation meant that it was unsafe for the therapist to deliver therapy in the student’s home, and the student did not have adequate means to get to an external location to receive the therapy. The school had physical space available and accepted the therapy request under the unique circumstances.

Anti-discrimination obligations

Disability Discrimination Act (Commonwealth)

The NDIS will fund a range of specialised supports for school-aged children with a disability. However, critically, the NDIS does not replace or duplicate the responsibilities of the education system.

In accordance with relevant anti-discrimination laws[[2]](#footnote-3)[1], schools remain responsible for providing ‘reasonable adjustments’ to ensure that students with disabilities are able to access their education on the same basis as their peers. Schools are legally obliged to provide these adjustments, regardless of whether or not a student is also receiving NDIS support.

These adjustments may include:

* modifying programs and adapting curriculum delivery and assessment strategies
* providing ongoing consultancy support or professional learning and training for staff
* personalised learning and support planning and behaviour management plans
* providing educational software, iPads, or other assistive technology
* modifying schools and classrooms to enable physical access to premises
* providing access to the Department funded Visiting Teacher Service and Student Support Services (SSS) program.

The NDIS does not fund therapy for the purpose of educational attainment. Therefore, principals are unlikely to be in breach of anti-discrimination obligations if they decline a request for NDIS funded therapy to occur at school, in circumstances where all ‘reasonable adjustments’ are in place for a student at the school.

Charter of Human Rights (Vic)

The *Charter of Human Rights and Responsibilities Act 2006* (Charter) requires public authorities to act compatibly with the Charter and give proper consideration to relevant human rights in making decisions. This obligation applies to decision makers involved in assessing requests for NDIS funded therapy in schools.

When assessing a therapy request, decision makers must turn their minds to the possible impact of the decision on the student’s human rights.

Information on the Charter and how to comply with it is available at: <http://www.education.vic.gov.au/hrweb/workm/Pages/Human_Rights.aspx>

School council support

Principals should consult with their School Council prior to agreeing to any request for NDIS funded therapy. School Council support is required for the **Licence Agreement** to use school premises, which must be signed before the NDIS funded therapy can commence at school. The Licence Agreement is set out in more detail in ‘Step 3: Practical Arrangements’ and a template **Licence Agreement** is available at **Attachment 3a**.

STEP 1: REQUEST INFORMATION

Principals should request information from both the NDIS funded therapist (**Request Form**) and the parent(s) of the student **(Parent** **Consent Form**).

This information will enable principals to make transparent, consistent, and informed decisions, based on all relevant factors.

REQUEST FORM

The principal should send the **Request Form** (Attachment 1) tothe NDIS funded therapist when the request is made. The **Request Form** requires the NDIS funded therapist to provide all relevant information about their request, including:

* the purpose of the proposed therapy
* the proposed date and time that therapy will be performed
* the proposed duration and frequency of therapy
* the proposed aims and benefits of the therapy being provided at school and in school time
* proof of a satisfactory Working with Children Check for the therapist
* if the therapist is an NDIS registered practitioner
  + most participants access services from NDIS registered providers who are required to consent to NDIA guidelines, terms of business, and extensive background checks. However self-managing participants can choose to employ unregistered providers. Schools should consider the increased risks associated with unregistered providers.
* copies of certificates of currency for the following insurances held by the therapist:
  + public liability insurance (principals should check that the certificate is current and is for a minimum sum per occurrence of $10 million)
  + professional indemnity insurance (principals should check that the certificate is current, with a reputable insurer, covers the professional services being provided, and is for no less than $5 million per any one event and in the aggregate).

The parent(s) of the student are encouraged to work with the NDIS funded therapist to complete the Request Form, so as to better outline the student’s individual situation and why the student or parent(s) are seeking to have the NDIS funded therapy delivered at the school.

Parent CONSENT FORM

The **Request form** attaches a **Parent** **Consent Form** thatrequires consent to the request and to the student’s personal and health information being provided to the school.

Any of the following people may sign the Parent Consent Form:

* a person with **parental responsibility** for “major long term issues” as defined in the *Family Law Act 1975* (Cth)
* a person authorised to make health decisions for the student under the *Children Youth and Families Act 2005* (Vic).
* An adult student
* An informal carer
* A mature minor.

When the principal receives the completed forms and any other relevant documents, the principal should consider the request in accordance with **Step 2,** outlined below.

The principal should retain a copy of the **Request Form** and **Parent** **Consent Form**, and any documents relevant to the decision, securely on the student’s file, regardless of the decision.

STEP 2: MAKE A DECISION

To decide whether to approve an NDIS funded therapist request, principals should use the information provided by the therapist and parent(s) in the **Request form** and **Parent Consent form**, to consider all factors set out in the ‘Key Considerations’ section above. These questions are designed to guide deliberations:

Child Safe Standards and duty of care

* Does the therapist have a satisfactory Working with Children Check?
* Is the request for therapy to occur during or after school supervision hours?

If the request is for therapy to occur during school supervision hours:

* Can the school provide a safe and suitable location for the therapy to take place in which a staff member has a line of sight to (for example, a corner of the classroom or in an adjunct room with a glass window)?
* If the proposed therapy will take place in a room away from other students, can the school allocate an alternative space and an additional staff member to be present to supervise the therapy?

Reportable Conduct Scheme

* Are all staff members aware of their reporting requirements under the Reportable Conduct Scheme if an NDIS funded therapist is permitted to enter onto school premises to deliver services to students?

Student access to the curriculum

* Is the therapy time-dependent? For example, is the therapy a support that must take place during school hours?
* Has consideration been given to the student’s access to the curriculum or other key benefits of the educational program if they are withdrawn to receive NDIS funded therapy?
* Will the needs of other students in the class and the programs being run by teachers in the school not be disrupted by the proposed therapy?
* Does the student’s learning program have flexibility to accommodate therapy during school hours?

Practical and administrative capacity

* Does the school have available space to accommodate the therapy?
* Is the school equipped to deal with additional administration that allowing therapy might entail (in particular specialist schools with more NDIS participants)?
* Can the NDIS funded therapist and school work together to share information and support the student to meet their goals?

Individual circumstances of student

* Has the therapist outlined clear therapy outcomes and aims in the request form?
* Has the request been made in the best interests of the student, or for the benefit of another party (for example, the working hours of the therapist)?
* Will the student be able to access necessary therapy if the request is declined?
* Will there be any significant adverse effects on the student if the therapy request is declined?

Anti-discrimination obligations

* Does the school have ‘reasonable adjustments’ in place to ensure the student is able to access their education on the same basis as their peers?
* Will school supports and reasonable adjustments all continue regardless of the decision made?

Charter of Human Rights

* Has consideration been given to relevant human rights in assessing and deciding the request?

School Council support

* Have you consulted with School Council regarding NDIS funded therapy being delivered to students on school grounds?

FINALISING DECISION

The final decision should be made on a case-by-case basis, having regard to all relevant factors. However, to ensure decision making is transparent and consistent, principals should also consider how previous requests for NDIS funded therapy at the school have been treated.

If principals require further support or advice when considering requests for NDIS funded therapy to be provided on school grounds, they should contact their Senior Education Improvement Leader (SEIL) in the first instance, or if further advice is required the NDIS Reform Branch at [ndis@edumail.vic.gov.au](mailto:ndis@edumail.vic.gov.au).

COMMUNICATING THE DECISION

Regardless of the decision, principals must:

* document their consideration of the relevant factors listed on page 10, and keep a record of their decision and the **Request Form**, on the relevant student’s file
* communicate the decision to the parent(s) and therapist, using the template letter at **Attachment 2** to these Guidelines.

This template letter outlines reasons for the decision made by the principal. This is intended to promote transparency and consistency in decision making and increase communication between the school, parent(s) and practitioner so any potential negative communication can be minimised.

Dispute Resolution

Schools should respond to any parent concerns and complaints regarding the decision in an effective and timely manner. To ensure that principals use a fair and proper process, it is important that you give parent(s) a chance to respond to your decision, and consider any additional information they provide.

The underlying premise of the Department’s complaints management policy is that parent concerns and complaints are best and most effectively managed at the school level. If the complaint remains unresolved after contact with the school, the complaint will be referred to the Department’s regional office. The Independent Office for School Dispute Resolution is the final step in the Department’s dispute resolution and complaints process. The complaints policy and other useful information regarding parent complaints can be found at: [www.education.vic.gov.au/school/principals/spag/community/Pages/parentcomplaints.aspx](http://www.education.vic.gov.au/school/principals/spag/community/Pages/parentcomplaints.aspx)

If you require further information and support you can also contact your relevant SEIL.

Approving therapy

If the principal decides to approve the therapy request, **Step 3** enables the principal to implement appropriate arrangements necessary to mitigate any risks associated with this arrangement. This includes ensuring that the relevant consent forms are signed and a licensing agreement is entered into with the relevant therapist.

STEP 3: PRACTICAL ARRANGEMENTS

If, after considering all relevant factors in **Step 2** above, a principal decides to permit NDIS funded therapy to take place on school grounds, then schools must take the following four actions:

1. MEETING with THE NDIS FUNDED THERAPIST and parent(s)

Before the therapist commences at school, a meeting should occur between the school, the parent(s) of the student and the NDIS funded therapist. This meeting is referred to in the letter to the parent(s) that the principal will send at the conclusion of **Step 2: Make a Decision**, above.   
  
This meeting will confirm the particular operational arrangements for the therapy including:

* the therapy goals and educational goals for the student, to promote a shared support and planning approach between the school and the therapist
* when, how often and where the therapy will take place (physical location)
* supervision arrangements
* notification arrangements - for instance, if the therapist has to change an appointment or the student is absent that day, who is responsible for informing whom?
* whether the family would like the NDIS funded therapist to attend Student Support Group meetings.

At the first meeting the following documents must be provided to the therapist:

* the **licence to use school premises**
* the **Information Sharing Agreement.**

The meeting outcomes must be minuted and kept on the student’s school file.

The payment for NDIS funded therapists attending meetings at schools is to be funded from the participant’s NDIS plan.

1. DOCUMENTATION

Licence to use school premises

Principals must ensure that any arrangement for a NDIS funded therapist to regularly attend school premises is formalised by the therapist signing a licence to use the school premises. An NDIS funded therapist should not be allowed to commence providing regular therapy on school grounds until the **Licence Agreement** is signed.

The Licence Agreement sets out three possible signing clauses for therapists:

1. where the therapist operates / is entering the licence as a company
2. where the therapist operates / is entering the licence as an incorporated association
3. where the therapist is an individual / sole trader (e.g. private therapist).

A template **Licence Agreement** is available at **Attachment 3a**.

A guide to completing the **Licence Agreement** is available at **Attachment 3b**.

The **Licence Agreement** contains important provisions that:

* require the therapist (described as the “Licensee”) to hold appropriate insurances
* require the therapist to comply with all reasonable instructions, directions and requests of the principal
* allow the principal to put in place appropriate supervision arrangements, including the ability to appoint a staff member to attend the therapy sessions.

Please note that a new Licence Agreement is not required for every changed circumstance regarding the therapy:

* The Licence Agreement covers the therapist providing services to one or more students. However for every student receiving therapy a Parent Consent Form, Therapy Request Form and Information Sharing Agreement is required relating to the additional student/s.
* The Licence Agreement covers one or more therapists employed by the Company or Incorporated Association. If a therapist is to be replaced by another therapist employed by the same Company or Incorporated Association to provide therapy to a student, a Parent Consent Form, Therapy Request Form and Information Sharing Agreement is required relating to the additional therapist/s.

If the school agrees to a change request, the **Licence Agreement** should be amended to take account of these changed circumstances. If this situation occurs, you may contact the Legal Division for further advice at [legal.services@edumail.vic.gov.au](mailto:legal.services@edumail.vic.gov.au).

Information Sharing Agreement

The licence agreement includes an **Information Sharing Agreement** at Schedule 1 (Annexure B). Principals should ensure this agreement is signed by the NDIS funded therapist at the first meeting.

During **Step 1** of these Guidelines, parent(s) must have consented to specific types of information being shared with the School by the NDIS funded therapist (using the **Parent** **Consent Form** provided with the **Request Form** under **Step 1**). The purpose of the **Information Sharing Agreement** is then to set out exactly how and when NDIS funded therapists must share information with the school about the student who is receiving NDIS therapy on school grounds. The aim of this information sharing is to ensure that the NDIS funded therapist provides information to the school that it ‘needs to know’ to enable it to optimally educate and support the student, and fulfil key legal obligations.

It is the responsibility of principals to tailor the **Information Sharing Agreement** so that it is stipulated how often and by which method information about the student will be shared. The specific requirements of the **Information Sharing Agreement** should then be discussed with the NDIS funded therapist at the first meeting.

If you have any queries regarding the preparation of the licence, or the **Information Sharing Agreement**, please contact Legal Division at [legal.services@edumail.vic.gov.au](mailto:legal.services@edumail.vic.gov.au).

Summary of responsibilities

|  |  |
| --- | --- |
| FORM / AGREEMENT | responsible persons for signing |
| Request Form | NDIS funded therapist |
| Parent Consent Form | Parent(s) or Mature Minor |
| Licence Agreement to use the school premises | School Council  **and**  Company / Incorporated Association / Private NDIS funded therapist |
| Information Sharing Agreement | NDIS funded therapist  **and**  School principal (or nominee) |

1. DUAL SERVICING ARRANGEMENTS

Principals should inform relevant school-based therapists and Student Support Services (SSS) staff about the services being delivered by the NDIS funded therapist, to ensure services are coordinated. Strong communication will help ensure co-ordinated intervention occurs both in a student’s everyday life and at school.

School-based therapists and SSS staff may contact a Professional Practice Leader or their relevant professional organisation if they require advice about entering dual servicing arrangements with NDIS funded therapists. For example, Speech Pathology Australia provides guidance for speech pathologists about dual servicing arrangements: <https://www.speechpathologyaustralia.org.au/>

ATTACHMENTS

attachment 1: Request Form and parent Consent Form

Request to provide NDIS funded therapy on school grounds

The Department of Education and Training (the Department), which includes all Victorian government schools, provides educational programs to Victorian government school students.

The National Disability Insurance Scheme (NDIS) is a new way of providing individualised support for eligible participants. The purpose of the NDIS is to enable NDIS participants and their families to exercise more choice and control regarding the support provided to them.

On occasion, parent(s) may ask a Victorian government school to allow an NDIS funded therapist to provide support or therapy to their child (the student) on school grounds (Request). These Requests are made via a completed Request to provide NDIS therapy on school grounds form (the Request Form).

The Department is committed to supporting NDIS participants, and their families, to obtain optimal benefit from the opportunities offered by the NDIS. Consistent with this commitment, Victorian Government schools are encouraged to accommodate students and their parent(s) exercising choice and control in relation to NDIS supports, where practical to do so.

However, there are a number of relevant factors that must be considered when determining whether or not it is possible for the school to agree to such requests. These factors are set out in *Responding to requests for NDIS funded therapy in schools – Guidelines for Principals.*

For the principal to consider such requests, NDIS funded therapists and parent(s) making a request for access to school premises must:

* complete the attached **Request Form**
* have the student’s parent(s) sign the attached **Parent Consent Form**
* providethe completed forms, and any other relevant documentsto the school at the time of making the request.

Principals will not consider any such request until the **Request Form** and **Parent** **Consent Form** are completed and provided to the school.

When the completed **Request Form** and **Parent Consent Form** are provided, the principal will consider all relevant information, and endeavour to respond to the request within 10 working days.

Should you have any queries regarding the **Request Form** or **Parent Consent Form**, please contact the principal.

|  |  |  |
| --- | --- | --- |
| To be completed by NDIS funded therapist | | |
| Details of therapist making request | | |
| Name of therapist |  | |
| Company |  | |
| Company address |  | |
| Phone number |  | |
| Email address |  | |
| Qualifications held by therapist |  | |
| Professional registration details of therapist |  | |
| Is the therapist an NDIS registered practitioner? (Y / N) |  | |
| Details of student | | |
| Name of student |  | |
| Year level / Teacher of student |  | |
| Are there particular family, social or practical circumstances that are relevant to the request? |  | |
| Details of the proposed therapy | | |
| Purpose of the proposed therapy |  | |
| Proposed date / time that therapy will be provided |  | |
| Will the student be withdrawn from class time for the therapy to be provided?  If so, what classes will the student miss? |  | |
| Proposed duration and frequency of therapy  (e.g. one hour, weekly / daily / monthly) |  | |
| Proposed location of therapy  (classroom / other area of school) |  | |
| Proposed aims and benefits of the therapy being provided at school / in school time |  | |
| Is the therapy time-dependent? If so, provide details  For example, is the therapy a medical support that must take place at certain regular intervals each day? |  | |
| Attach relevant documents | | |
| Please attach proof of a satisfactory **Working with Children Check** for the therapist | Tick to confirm the relevant documents are attached | |
| Pleaseattach **certificates of currency** for the following insurances held by the therapist / Company / Incorporated Association:   * public liability insurance * professional indemnity insurance | Tick to confirm the relevant documents are attached | |
| Acknowledgment by NDIS funded therapist | | |
| I ………………………, acknowledge and agree that, if the principal approves my request to provide NDIS funded therapy on school grounds:   * I, or my company/incorporated association if I am an employee of a disability service provider, must enter into a **licensing agreement** with the School Council which sets out the terms and conditions of my use of the school premises; and * subject to the consent of the student’s parent(s), I must sign an information‑sharing agreement which requires me to share relevant information about the student with the Principal and/or nominated school personnel.   Copies of the licensing agreement and information sharing agreement are available upon request. | | Signed ………………………………………….  Print name ……………………………………..  Date ……………………………………………. |

parent consent for ndis funded therapy at school

This Parent Consent Form records consent to:

1. the NDIS funded therapist sharing important and relevant information about the student to the school (as set out in the Information-sharing section below)
2. the NDIS funded therapist providing support or therapy to the student, on school premises (if and when the principal agrees to the Request).

The Parent Consent form can be signed by any of the following people:

* a person with **parental responsibility** for “major long term issues” as defined in the *Family Law Act 1975* (Cth)
* a person authorised to make health decisions for the student under the *Children Youth and Families Act 2005* (Vic).
* an adult student
* an informal carer
* a mature minor

Sharing student information

Schools must comply with the Victorian privacy law when collecting and otherwise managing personal and health information about students and their families (**student information**). Our schools only collect and share student information as permitted by the **Schools’ Privacy Policy**, which is at: [insert school website]

The Department requires that NDIS funded therapists providing support or therapy to a student at school to share important and relevant information about the student with the school. The school requires this information to optimally educate and support the student and fulfil important legal obligations.

This means that the NDIS funded therapist must provide student information to the school as follows:

* information aboutthe student’s disability and their needs - in the way/s and at the times specified by the principal; and
* student information that relates to reasonably foreseeable risk to anyone.This includes, for example, information that the student has emotional, wellbeing or self-harm issues; displays aggressive or violent behaviours; is a victim or perpetrator of bullying, assault or age-inappropriate sexualised behaviours.

The principal and other school staff will only share this information with other staff who ‘need to know’ to enable the school to educate or support the student or fulfil legal obligations. For more information about this see the Schools’ Privacy Policy, which also describes how you may seek to access and/or correct information held by the school about the student. Alternatively, please feel free to contact our school to discuss this further.

Your consent

I confirm that I have read this Consent Form and:

* I support the Request for the NDIS funded therapist to provide support or therapy as described in the Request form, to my child (named below) at school.
* I understand that if the principal agrees to the Request, the NDIS funded therapist must share information about my child with the school, as described above.
* If I wish to withdraw my consent for the NDIS funded therapist to provide support or therapy to my child, I can do so by contacting the school.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| To be completed by parent(s)\* | | | | |
| STUDENT DETAILS | | | | |
| **Student name:** | |  | **Date of birth:** |  |
| **Student’s school:** | |  | **Year level:** |  |
| THERAPIST DETAILS | | | | |
| **Therapist name:** | |  | | |
| **CONSENT of PARENT, GUARDIAN, CARER or MATURE MINOR\*** | | | | |
| **Name:** |  | | **Signature:** | |
| **Relationship to student** |  | | **Date signed:** | |
| **Phone no & email** |  | | | |

**\*Who may sign this form?**

1. Any of the following people may sign this form:
   1. a person with **parental responsibility** for “major long term issues” as defined in the *Family Law Act 1975* (Cth)
   2. a person authorised to make health decisions for the student under the *Children Youth and Families Act 2005* (Vic).
   3. An adult student
2. If neither of the people describe in (1) are available, an **informal carer** may sign this form. An informal carer is a relative or other responsible adult with whom the student lives, and who has day-to-day care of the student. Informal carers should provide to the school a signed ‘Informal Carer’ statutory declaration. Parent(s) can contact the school for assistance in obtaining a copy of this document.
3. If a principal has determined the student is a **mature minor** for the purpose of making this specific decision, the student may sign the form. The principal makes this decision consistently with the Mature Minor policy on Schools Policy Advisory Guide (SPAG).

attachment 2: template letter to parent(s)

Dear [parent/guardian/carer]

*Cc: NDIS funded therapist*

Request for NDIS funded therapist to provide therapy to your child on school premises

Thank you for asking me to consider the request that [insert name of NDIS funded therapist], NDIS funded therapist, provide support to [insert student name] on school premises.

You and the NDIS therapist have provided me with specific details about the reasons for this request, and how the proposed therapy would occur. I understand that the NDIS funded therapist proposes to provide [insert type of services] at school [insert frequency i.e. weekly/daily/monthly].

I am writing to provide you with my response to the request.

Factors relevant to my decision

As school principal, I am responsible for ensuring that all visitors to school premises do so compatibly with the school’s duty of care to all students, staff and visitors.

When deciding whether to allow an NDIS funded therapist to support a student on school premises, I must consider various relevant factors. These include:

* the school’s ability to adequately fulfil its **duty of care** to all students and meet Child Safe Standards;
* the school’s responsibilities under the **Reportable Conduct Scheme**;
* the **purpose** ofthe request - for example, whether the proposed therapy is to provide benefits that would normally be accessed outside of school;
* the **relative benefits** of the therapy when compared to any anticipated disruption to student learning or the needs of other students and other programs at the school;
* the **flexibility** of the student’s learning program;
* our **school’s specific circumstances**, including the location and suitability of an area at school where the proposed therapy could occur; the model and make-up of classroom teaching arrangements;
* the **individual** **circumstances** of the student and the student’s family and social circumstances; and
* if the **school council** supports allowing an NDIS funded therapist on school grounds.

I must also assess the NDIS therapist’s suitability to work with children. This means I must ensure that the NDIS therapist has appropriate Working with Children Checks and relevant professional registrations.

My decision

The primary purpose of schooling is to provide educational programs to students during school hours. However, the Department of Education and Training (**Department**) is committed to supporting NDIS participants and their families, to obtain the best possible benefit from NDIS opportunities. Accordingly, I endeavour to accommodate students and their parent(s) to exercise choice and control regarding NDIS supports, wherever it is practical and in the student’s best interests to do so.

I have assessed the above relevant matters and carefully considered all the relevant information provided to me in support of the request.

I have decided to [grant/not grant] the request. My reasons for this decision are as follows:

* [provide information regarding the factors that influenced your decision, by reference to the relevant dot point criteria above]:
* [provide information regarding the factors that influenced your decision, by reference to the relevant dot point criteria above]:

Importantly, my decision does not affect any support that the school is currently providing to your child that are necessary to access their education.

***[If the request is granted for therapy to occur during school hours, include the following paragraphs under ‘Next Steps’]***

Next Steps – Licence, Information Sharing Agreement and Meeting at school

The school requires all NDIS funded therapists to enter into the following prior to providing therapy at school:

* a licence agreement; and
* an information sharing agreement (attached to the licensing agreement),

The licence agreement deals with issues such as insurance and supervision and licence fees.

The information sharing agreement sets out the information about your child which the school and the NDIS funded therapist will share, to ensure your child is optimally supported.

I would like to invite you to attend a meeting [insert time, date and place] with the NDIS therapist and [insert relevant school leadership team member].

At this meeting we will confirm the arrangements for the proposed NDIS therapy at school. We will discuss the terms of the licence agreement and information sharing agreement in further detail.

***[If the request is granted for therapy to occur after school hours, include the following paragraphs under ‘Next Steps’]***

Next Steps – Licence, Information Sharing Agreement and Meeting at school

In granting this approval for NDIS funded therapy to take place on school premises outside of school supervision hours it is important that you understand:

* that the therapy is not organised or managed by the school or the school council and is not a school activity
* that school staff and the school council are not responsible for the supervision of students attending the therapy outside school supervision hours.

However, the school does require all NDIS funded therapists to enter into the following prior to providing therapy at school:

* a licence agreement; and
* an information sharing agreement (attached to the licensing agreement),

The licence agreement deals with issues such as insurance and supervision and licence fees.

The information sharing agreement sets out the information about your child which the school and the NDIS funded therapist will share, to ensure your child is optimally supported.

I would like to invite you to attend a meeting [insert time, date and place] with the NDIS therapist and [insert relevant school leadership team member].

At this meeting we will confirm the arrangements for the proposed NDIS therapy at school. We will discuss the terms of the licence agreement and information sharing agreement in further detail.

Should you have any queries regarding this decision, please do not hesitate to contact me.

Yours sincerely,

[insert name]

Principal

Attachment 3A: School council licence

School Council Licence

Between

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

and

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

Background

1. The Licensee wishes to use the Licensed Area for the Permitted Use specified in Item 11.
2. 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**

# Grant of Licence

### 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.

### The parties agree that:

#### this Licence will not confer a right of exclusive occupation of the Licensed Area to the Licensee;

#### the School Council may at any time exercise all rights as 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

#### the right to exclusive possession of the Licensed Area will remain with the Minister through the School Council.

# Representatives

### The School Council and the Licensee each appoint the person listed in Item 13 as their respective representatives who will be responsible for communications under this Licence on behalf of the School Council.

### Either party may replace its representative by giving Notice to the other party.

### 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.

### The Licensee must comply with any instruction or direction given by the School Council’s Representative.

# Licence Fee

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

### 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

### at the times and in the manner set out in Item 7.

# Rates and Taxes and Outgoings

### The Licensee must pay any Rates and Taxes for the Licensed Area.

### The party or parties specified in Item 8 must pay the Outgoings for the Licensed Area.

# Security Deposit

### To secure the performance of the Licensee under this Licence the Licensee must pay the Security Deposit listed in Item 14 to the School Council on or before the Commencement Date.

### If the Licensee breaches any of the Licensee’s obligations under this Licence and the School Council or Department incurs any Costs, Loss, damage or Liability (or acquires any other entitlement to payment from the Licensee), the School Council may, if the default remains unremedied 10 Business Days after Notice of default has been given to the Licensee, draw on the Security Deposit without further Notice to the Licensee to make good such Costs, Loss, damage or Liability.

### If the School Council draws on the Security Deposit, the Licensee must replace the amount drawn down within 10 Business Days to maintain the Security Deposit at the required level.

### Subject to any right the School Council has to draw on the Security Deposit, the School Council must return the Security Deposit to the Licensee when each of the following have been satisfied:

#### 60 days have elapsed since the expiry of this Licence;

#### the Licensee has vacated the Licensed Area in accordance with this Licence including satisfying all of its reinstatement obligations; and

#### the Licensee has no outstanding obligations under this Licence or subsisting breach of this Licence or any actual or potential liability for any breach or non performance of any of the Licensee’s obligations under this Licence.

# Use of Licensed Area

### If Dates and/or Days of Use are listed in Item 9 and/or Hours of Use are listed in Item 10, the Licensee may only use the Licensed Area during the Term on those dates, days and/or hours (as applicable).

### 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.

### The Licensee:

#### must only use and occupy the Licensed Area;

#### 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;

#### 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

#### 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.

# Compliance with Laws

### The Licensee must at its own expense in all respects observe and comply with all Laws that apply to this Licence and all directions, notices and Requirements of any Government Agency relating to its development, construction, use and occupation of the Licensed Area, and any other use or development which the Licensee may undertake on the Licensed Area.

### The Licensee must keep in force and available for inspection by the School Council upon request, all licences, permits and registrations required for the carrying on of any business use or other activity conducted by the Licensee in or upon the Licensed Area.

# Improvements and Fit Outs

### The Licensee acknowledges that:

#### subject to clause 17, at the end of this Licence, all improvements and fit outs financed and constructed on the Licensed Area by the Licensee will be owned by the School Council; and

#### until the Licence comes to an end, all improvements and fit outs constructed by the Licensee on the Licensed Area will be owned and be the responsibility of the Licensee.

### The Licensee must not and must not permit any other person to carry out any improvements on the Land without the School Council’s prior written consent, which consent will be at the absolute discretion of the School Council.

### In seeking the School Council’s consent the Licensee must submit any plans and specifications of the proposed improvements or fit outs on the Licensed Area for the approval of the School Council.

# Licensee’s Obligations

The Licensee must:

### only use the Licensed Area for the Permitted Use;

### not use the Licensed Area for any illegal purpose;

### ensure the Licensed Area is kept secure, clean and free from debris and rubbish;

### not do anything in or near the Licensed Area or the Land which is noxious, offensive or a nuisance and not cause any injury or nuisance to neighbours or other occupiers of, or surrounding, the Licensed Area;

### not keep or use chemicals, inflammable liquids, acids or other hazardous things on the Licensed Area except for the Permitted Use, or create fire hazards;

### not overload the floor of the Licensed Area;

### comply with all Department, School and School Council policies and/or guidelines which deal with safety or health of persons on the Licensed Area or otherwise under its control;

### not erect, display, affix or exhibit on or at the Licensed Area any signs except for signs that comply with all Laws and then only after obtaining the School Council’s written approval and necessary planning and building permits from the relevant Government Agency;

### observe fire precautions;

### at all times exercise due care, skill and judgement and act with the utmost good faith;

### 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.

# Repairs

### Except for fair wear and tear, the Licensee must keep the Licensed Area clean and in the same condition as at the start of this Licence and properly repaired and maintained.

### The Licensee must promptly repair damage to the Licensed Area to the extent caused or contributed to by the Licensee.

### If the Licensee fails to properly repair any such damage it is responsible for 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.

### If the School Council supplies any services to the Licensed Area, such as air conditioning and elevators, the School Council must do all it reasonably can to ensure that they are working efficiently during the School Council's normal hours of operation. However, if any of such services do not work efficiently, the School Council is not liable to compensate the Licensee.

# School Council’s Reservations and Exercise of Rights

### The School Council reserves the right for the School Council and its Associates to:

#### view the state of repair of the Licensed Area;

#### carry out any works that may be required to comply with any applicable Law or Requirement;

#### show the Licensed Area to prospective licensees, lessees or purchasers;

#### create any registered or unregistered easement or other right over the Land or Licensed Area, as long as it does not adversely affect the Licensee’s rights under this Licence; and

#### undertake any of the Licensee’s obligations under this Licence which the Licensee fails to undertake in accordance with this Licence and/or within a reasonable time and, the Licensee must immediately reimburse the School Council the costs to the School Council in undertaking such obligations; and

#### enter the Land and the Licensed Area for the purposes set out in this clause or for any other lawful purpose.

### Except in an emergency, the School Council must:

#### give the Licensee reasonable notice of the School Council’s intended exercise of the rights set out in this clause;

#### only exercise the rights set out in this clause, at reasonable times; and

#### minimise interference to the Licensee when exercising the rights set out in this clause.

# Requirement for Working with Children and Police Checks

### The Licensee must ensure that all persons engaged or used by it to work at the Licensed Premises and/or carry out the Permitted Use under this Licence:

#### if required by the Working with Children Act, have undertaken a satisfactory working with children check;

#### if required by the School Council, have undertaken a satisfactory police records check; and

#### have 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.

### The Licensee must ensure the terms and conditions of employment of any staff or of engagement of any contractor for the purpose of carrying out work at the Licensed Premises and/or any person that carries out the Permitted Use (including persons carrying out the Permitted Use under an sublicense or assignment pursuant to clause 18) under this Licence are consistent with the above obligations.

# Reporting

### At the request of the School Council, the Licensee must provide to the School Council within a reasonable period any information and/or documentation it holds pertaining to this Licence.

### The Licensee must immediately report by Notice to the School Council:

#### any damage to, or accident in, the Licensed Area; and

#### of any notice or report it has received in relation to the Licensed Area and provide a copy of such notice or report.

# Insurance, Release and Indemnity

## Insurance

### The Licensee must keep the insurance set out in Item 12 in force during the Term.

### 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.

### Within 10 Business Days of the Commencement Date of this Licence, and immediately upon the request by the School Council from time to time, the Licensee must provide the School Council with evidence of the Licensee’s insurance required under this Licence.

### Clauses 14.1(a), 14.1(c), 14.2 and 14.3 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.

## 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.

## Indemnity

### Subject to clause 14.3(b), the Licensee must indemnify and keep indemnified the Department, the School Council and its Associates from and against all Claims that the Licensee or its Associates suffer or incur in respect of or arising from:

#### any negligent act or negligent omission of the Licensee in connection with this Licence;

#### 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;

#### 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; or

#### the Licensee's breach of this Licence.

### The Licensee will not be liable under the indemnity in clause 14.3(a) to the extent that a Claim or Liability results from:

#### any fraudulent, negligent or deliberate act or omission of the Department, the School Council or its Associates;

#### any breach of this Licence by the Department, the School Council or its Associates; or

#### the condition of the Licensed Area or the Land before the Commencement Date.

### The indemnity given by the Licensee under this clause 14.3 is a continuing obligation, separate and independent from the other obligations of the Licensee, and survives expiry or termination of this Licence.

# Termination Events

## 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.

## Grounds for Termination by School Council

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

### 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;

### the Licensee (including its employees, agents or sub-contractors or assignees) 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 9, 12 and the Special Conditions in Item 15);

### the Licensee or any of its employees, agents or sub-contractors are guilty of fraud, dishonesty, criminal conduct or any other serious misconduct;

### the Licensee (including its employees, agents or sub-contractors or assignees) 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 employees, agents or sub-contractors or assignees) 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;

### 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.

## Termination without cause

* + 1. The School Council may terminate this Licence without cause by giving the Licensee not less than 30 days Notice.
    2. Where this Licence is terminated by the School Council pursuant to clause 15.3(a):
       1. the Licensee must cease all work as soon as practicable following receipt of Notice and take all appropriate action to mitigate any loss and prevent additional costs being incurred; and
       2. the School Council will not be liable for any other payment whatsoever to the Licensee resulting from the termination under this clause 15.3**Error! Reference source not found.**, including but not limited to any compensation or damages.

## By Agreement

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

## School closure or amalgamation

The School Council may terminate this Licence with 3 months' Notice to the Licensee in the event that the School closes down or amalgamates with another school.

# Removal of Licensee's Property on Re‑entry

The School Council may on re‑entry remove from the Licensed Area any property of the Licensee including any fixtures, fittings or chattels which are not the School Council's property and place them outside the Licensed Area or store them at the Licensee's cost. The School Council will not be liable for any loss or damage caused and the Licensee indemnifies and agrees to keep indemnified the School Council in respect of any actions, proceedings and claims made against the School Council by third parties in this respect. If the School Council does not remove any of the Licensee's property on any re‑entry then such items will become the property of the School Council immediately upon such re‑entry being effected.

# Licensee’s Obligations on the Expiry or End of Licence

### 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:

#### clean and free from rubbish; and

#### in a condition consistent with the Licensee's performance and observance of all relevant covenants relating to the Licensed Area under this Licence.

### Unless the:

#### Licensee has been granted a new licence in respect of the Licensed Area; or

#### School Council directs in writing to the Licensee that any of the improvements made on the Licensed Area by the Licensee under this Licence are to remain on the Licensed Area and are not to be demolished in which case clause 8(a) will apply,

the Licensee at its cost must:

#### demolish and remove all such improvements made under this Licence in a proper and workmanlike manner in compliance with the applicable Law and Requirements and to the satisfaction of the School Council; and

#### remove all of its property in a proper and skilful manner in compliance with the applicable Law and Requirements and to the satisfaction of the School Council.

### Until the Licensee has demolished all relevant improvements and removed its property, the Licensee must continue to pay the Licence Money in full.

### The ending 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.

# Assignment and Sublicensing

The Licensee must not dispose of, deal with 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.

# 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:

### under the terms and conditions of this Licence with any changes necessary to make this Licence to a monthly licence; and

### 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.

# Disputes

### A party claiming that a dispute or disagreement has arisen under this Licence may give the other party a Dispute Notice.

### A Dispute Notice may be withdrawn at any time by the party that gave the Dispute Notice.

### 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.

### If the parties have not resolved the dispute within 20 Business Days of the date of issue of the Dispute Notice, the parties agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) in accordance with ACDC's guidelines, before having recourse to expert determination or litigation.

### If the parties fail to settle any dispute in accordance with clause 20(c), either party may refer the dispute for expert determination.

### If a dispute is referred for expert determination the Expert will be requested by the party giving the Dispute Notice.

### The Expert:

#### will fix and inform the School Council and Licensee of a time for the parties to present their respective positions to the Expert. Unless otherwise agreed between the parties, the parties must present their respective positions to the Expert no later than 5 Business Days after the Expert’s appointment;

#### must make a determination or finding in respect of the dispute within 10 Business Days after the parties have presented their respective positions. Any determination of a dispute by the Expert will include a determination as to the award of costs and will be binding on all parties; and

#### will act as an expert and not an arbitrator.

### The School Council and Licensee will continue to perform their respective obligations under this Licence pending the resolution of a dispute under this clause.

### The School Council and Licensee will not oppose any application for interlocutory relief pending resolution of a dispute by the Expert under this clause.

# Interest

### The Licensee must pay interest on any money payable by it under this Licence for the interval between the due date and the date of actual payment on demand or at times notified by the School Council calculated on daily balances.

### The rate of interest to be applied to each daily balance is 2% per annum above the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

# Confidentiality

### Subject to clause 22(b), the Licensee must keep confidential:

#### the terms and conditions of this Licence; and

#### any information provided to the Licensee by the School Council in connection with this Licence, including but not limited to:

##### personal information relating to students of the School;

##### personal and business information relating to the School Council or the School or its employees, respectively; and

#### information treated by the School Council or the School as confidential.

### The Licensee may make disclosures as it, acting reasonably, considers necessary to:

#### its professional advisers, bankers, financial advisers, financiers, investors and potential investors if those persons undertake to keep information disclosed confidential;

#### comply with Laws; and

#### any of its employees to whom it deems necessary to disclose the information if that employee undertakes to keep the information confidential.

### The Licensee's obligations under this clause 22 are continuing obligations, separate and independent from the other obligations of the Licensee and survive the expiry or termination of this Licence.

# Privacy

The Licensee acknowledges that it will be bound by the Information Privacy Principles, any applicable Code of Practice and the Health Privacy Principles with respect to any act done in connection with this Licence in the same way and to the same extent as the School Council would have been bound had the act or practice been done or engaged in by the School Council.

# Notices

### A Notice must:

#### be in writing;

#### signed by or on behalf of the party giving it; and

#### delivered by:

##### handing it to the addressee in person;

##### hand delivering it to the address of the addressee;

##### sending it by post (airmail if posted to or from a place outside Australia) to the address of the addressee;

##### sending it by facsimile to the facsimile number of the addressee or, if the addressee notifies another address or facsimile number, then to that address or facsimile number; or

##### emailing it to the email address of the addressee, provided in Item 13.

### 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:

#### in the case of hand delivery, on delivery to the addressee or to the address of the addressee;

#### in the case of post, on the second (seventh if posted to or from a place outside Australia) Business Day after posting;

#### in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and

#### in the case of email, at the time the sender receives a transmission report which indicates the email was delivered to the addressee

### If any Notice or document is delivered or deemed to be delivered:

#### after 5.00 pm in the place of receipt; or

#### 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 day which is not a Saturday, Sunday or public holiday in that place.

# Special Conditions

Any special condition set out in Item 15:

### binds the parties; and

### if there is an inconsistency between a special condition and any other provision of this Licence, the special condition prevails.

# GST

### In this clause, expressions set out in italics have the same meaning as those expressions in the GST Act.

### An amount payable under this Licence by a party to the other party, in respect of a *supply* which is a *taxable supply*, represents the GST exclusive value of the *supply*.

### The party who receives a *taxable supply* under this Licence from the *supplier* must, upon receipt of a *tax invoice* from the *supplier*, pay GST to the *supplier* in addition to the GST exclusive value of the *supply*.

### Any penalty or interest payable as a result of late payment of any GST payable under this Licence is payable by the party who is the cause of the late payment.

### If the *supplier* is entitled to an *input tax credit* for any GST recoverable from the other party under this Licence, the amount of GST payable by the other party is to be reduced by the amount of the *input tax credit* which the *supplier* has received or is entitled to receive.

# Conflict of Interest

### 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.

### 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.

# General

## Amendment

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

## 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.

## 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.

## 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.

## Rights cumulative

Except as expressly stated otherwise in this Licence, the rights of a party under this Licence are cumulative and are in addition to any other rights of that party.

## 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.

## 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.

## Counterparts

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

## Entire understanding

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

## 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 28.10, the Licensee must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

## 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.

## Survival

The expiry or termination of this Licence does not affect:

### the School Council's rights for a breach of this Licence by the Licensee before the expiry or termination; and

### the Licensee's obligation to make a payment under this Licence for periods before the expiry or termination.

# Definitions and Interpretation

## Definitions

In this Licence, unless the context otherwise requires:

**Associates** means any officer, employee, agent, contractor, subcontractor, consultant, advisor, invitee, licensee 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.

**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 *Privacy and Data Protection Act 2014* (Vic).

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

**Corporations Act** means the *Corporations Act 2001* (Cth)

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

**Department** means the Department of Education and Early Childhood Development 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.

**Expert** means an expert appointed by the President of the Law Institute of Victoria.

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

**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.

**GST** means the Goods and Services Tax as defined in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

**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 *Privacy and Data Protection Act 2014 (Vic)*.

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

**Insolvency Event** means if the Licensee:

### stops or suspends payment of all or a class of its debts;

### is insolvent within the meaning of section 95A(2) of the Corporations Act;

### has an administrator appointed over all or any of its assets or undertakings or a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking;

### has an application or order made, proceedings commenced, a resolution passed, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or

### has any step taken to enforce security over or a distress, execution or other similar process levied or served out against the whole or any of its assets or undertakings,

or any event occurs which, under the Laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

**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:

### principles of law or equity established by decisions of courts within the Commonwealth of Australia;

### 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)*;

### the Constitution of the Commonwealth;

### binding requirements and mandatory approvals (including conditions) of the Commonwealth, the State of Victoria or a Government Agency which have the force of law;

### guidelines, policies and requirements under the NDIS in force from time to time (including but not limited to the NDIA [Terms of Business](http://www.ndis.gov.au/providers/registering-provider/terms-business), Guide to Suitability and the Quality and Safeguards Working Arrangements); and

### 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.

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

**Licence Money** means the Licence Fee, Outgoings, Rates and Taxes and all other money payable by the Licensee to the School Council under this Licence.

**Licensed Area** means the area as described in Item 3 and shown hatched on the Plan, including all improvements in such area existing at the Commencement Date and that may be made to, installed or constructed in that area under this Licence.

**Licensee** means the licensee specified in Item 2 and includes, where appropriate, its employees or agents or other authorised persons.

**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.

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

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

**Outgoings** means all charges made for the supply and use of gas, electricity, water and excess water, telecommunications and other similar services on the Licensed Area including, without limitation, utilities exclusively used in or charged against the Licensed Area

**Permitted Use** means the use of the Licensed Area as specified in Item 11.

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

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

**Rates and Taxes** means all existing and future rates (including any special rates or levies), taxes (including land tax on a single holding basis), duties, charges, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the Licensed Area or in connection with the Licensed Area.

**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, the employees or agents of the School Council or other authorised persons.

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

**Security Deposit** means the amount specified in Item 14.

**Supplier** means the party who gives a *taxable supply* under this Licence (where the expression in italics has the meaning given in the GST Act).

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

**Working with Children Act** means the *Working With Children Act 2005*.

## Interpretation

Unless expressed to the contrary, in this Licence:

### words in the singular include the plural and vice versa;

### any gender includes the other genders;

### if a word or phrase is defined its other grammatical forms have corresponding meanings;

### 'includes' means includes without limitation;

### headings are for guidance only and are to be ignored in interpreting this Licence;

### 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;

### a reference to:

#### a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

#### a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;

#### any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

#### 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

#### “$”, “dollars” or “AUD” is a reference to the lawful currency of the Commonwealth of Australia; and

### 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.

Executed as a deed.

**School Council**

**Date:**

<Insert date that School Council signs>

|  |  |  |
| --- | --- | --- |
| **The common seal of** the **School Council** was affixed by order of the School Council in the presence of the President of the School Council and its Appointee: |  | <Affix seal here> |
| **Signature of President** |  | **Signature of Appointee** |
| **Name of President (print)** |  | **Name of Appointee (print)** |

**Licensee**

**Date:**

<insert date that Licensee signs>

PLEASE SELECT **ONE** OF THE FOLLOWING OPTIONS:

***OPTION 1:*** <Use this signing clause when the Licensee is a company incorporated in Australia, delete if Licensee is not a company>

|  |  |  |
| --- | --- | --- |
| **Executed** by the **Licensee** in accordance with s 127 of the *Corporations Act 2001* |  |  |
| **Signature of director** |  | **Signature of director/company secretary** |
| **Name of director (print)** |  | **Name of director/company secretary (print)** |

***OPTION 2:<***Use this signing clause when the Licensee is an incorporated association, delete if Licensee is not>

|  |  |  |
| --- | --- | --- |
| **Executed** bythe **Licensee** in accordance with the *Associations Incorporation Reform Act 2012* |  |  |
| **Signature of authorised person** |  | **Signature of authorised person** |
| **Name of authorised person (print)** |  | **Name of authorised person (print)** |
| **Position of authority (print)** |  | **Position of authority (print)** |

***OPTION 3****:*<Use this signing clause when the Licensee is an individual, delete if the Licensee is not>

|  |  |  |
| --- | --- | --- |
| **Signed** by **the Licensee** in the presence of: |  |  |
| **Signature of witness** |  | **Signature of Licensee** |
| **Name of witness (print)** |  |  |

1. Licence Details

|  |  |  |
| --- | --- | --- |
|  | **School Council’s Name**  <Insert name of School Council, ABN and address> |  |
|  | **Licensee’s Name**  <Insert registered name of Licensee (including ACN (if a company) or registered association number (if an incorporated association), and address> |  |
|  | **Licensed Area**  <Insert description of part of Land which is to be licensed to the Licensee> |  |
|  | **Land**  <Insert full address of the school/Licensed Area> |  |
|  | **Commencement Date**  <Insert the date the Licence is to commence> |  |
|  | **Expiry Date**  <Insert the date that the Licence is to expire – this date should not be more than three years from the Commencement Date unless legal advice has been sought> |  |
|  | **Licence Fee**  <Insert details of any licence fee payable.  The licence fee and payment period should be a nominal amount **unless** the school incurs a charge as a direct result of the therapy being delivered as per this agreement.  Charges that are identified as being a direct result of the therapy *may* be charged back to the therapist.  For example:  Year 1:  $10.00 per month (GST inclusive);  Year 2:  $15.00 per month (GST inclusive); and  Year 3:  $20.00 per month (GST inclusive)  Amend and delete payment amount and frequency as relevant> | $ (GST inclusive/exclusive)  per week/month/annum  payable weekly/monthly/annually in advance |
|  | **Party responsible for Outgoings:**  <Insert Licensee or School Council as relevant> |  |
|  | **Dates and/or Days of Use**  <Insert specific dates and/or days during the Term the Licensee may use the Licensed Area. If this is unlimited, insert “Not applicable”> |  |
|  | **Hours of Use**  *<*Insert hours of the day during the Term the Licensee may use the Licensed Area. If this is unlimited, insert “Not applicable”> |  |
|  | **Permitted Use**  <Describe the Licensee’s permitted use of the Licensed Area> |  |
|  | **Insurance** | **Public Liability Insurance**  $10 million per each event.  **Professional Indemnity Insurance**  $5 million per each event |
|  | **School Council Representative and Address for Service** | Authorised Officer: Address: Tel: Fax: Email: |
|  | **Licensee Representative and Address for Service** | Authorised Officer: Address: Tel: Fax: Email: |
|  | **Security Deposit**  <Insert amount of safety deposit (if any). If a security deposit is not required, insert “Nil”> |  |
|  | **Special conditions**  <If special conditions are needed, delete the words ‘Not applicable’ and insert details > | See Special Conditions set out in Annexure B (which includes Attachment 1 to Annexure B) |

Annexure A Plan

<insert or attach a clear plan showing the area to be licensed shown in hatched lines>

Annexure B Special Conditions

1. **Provision Services**

#### When delivering the Services from the Licensed Area, the Licensee must, for the Term of the Agreement:

#### ensure that it and its employees, agents and sub-contractors obtain, maintain and furnish proof upon the School Council’s request of all necessary, licences, approvals, qualifications and experience to deliver the Services;

#### ensure that it and its employees, agents and sub-contractors comply at all times with requirements under the NDIS (including, but not limited to requirements under the Guide to Suitability, NDIA Terms of Business and the relevant State/Territory Quality and Safeguard Working Arrangements from time to time);

#### 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;

#### act in good faith and in the best interests of the Department and the School Council; and

#### provide any and all equipment necessary for the performance of the Services.

1. **Access to premises**

#### When entering the premises of the School Council, the Licensee must and must ensure that its employees, agents and sub-contractors 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).

1. **School Council’s Right to Refuse Access to Premises**

#### The Principal has the right to request that the Licensee and its employees, agents and sub-contractors 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 employees, agents and sub-contractors:

#### 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 Guide to Suitability, NDIA Terms of Business or the applicable State/Territory Quality and Safeguard Working Arrangements from time to time);

#### does not behave in a safe or professional manner; or

#### within 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.

1. **Supervision by the Principal**

#### The Licensee must comply with all reasonable instructions, directions and requests of the Principal in relation to the use of the Licensed Area.

#### The Licensee must, in accordance with the Information Sharing Agreement, engage in discussions with the Principal or a staff member nominated by the Principal (including a SSSO or Primary Welfare Officer) about the Licensee’s case files, and the Services provided to a Student, and the other matters specified in the Information Sharing Agreement, to enable the Department to educate or support the student or fulfil legal obligations.

#### The Principal may, at any time for reasons of safety, support and supervision of a Student and the security of the Licensee, appoint a staff member or staff members to be in attendance during consultations between a Student and the Licensee.

#### The School Council may appoint personnel to assist in the coordination and administration of the Services.

#### The Licensee will be responsible for ensuring that the necessary consent from Students and their parent(s), guardians and carers has been obtained prior to the commencement of the Services.

#### The consent obtained under Special Condition 4(e) 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.

#### The Licensee must provide the School Council with a copy of the signed consent form prior to providing services to the relevant Student.

1. **Confidentiality and privacy**

#### The parties will enter into an Information Sharing Agreement in respect to each Student by using the form provided in Attachment 2.

#### Subject to any reservation of consent by any Student, the Licensee will disclose and make available to the Principal, or any staff member nominated by the Principal, (in accordance with the Information Sharing Agreement) specific information obtained from Student/s to enable the Principal and School Council to satisfy their legal responsibilities, including but not limited to:

##### a Student’s disability or medical condition in relation to which the school may be required to make reasonable adjustments under anti-discrimination law;

##### any matter which may be relevant to the School’s obligations under occupational health and safety laws;

##### any matter which may be relevant to the School's ability to meet its duty of care obligations to students;

##### 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;

##### 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

##### 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).

#### Subject to any reservation of consent by any Student, the School Council will allow the Licensee to access Client Confidential Information it holds about the Students to the extent necessary to enable the Licensee to provide the Services.

#### The Licensee must only use and reproduce Client Confidential Information to deliver the Services and to satisfy their professional obligations and ethical duties.

#### All Client Confidential Information will remain the property of the Department or the School Council.

#### Notwithstanding clause 5 (e) the Licensee must return to the School Council all Client Confidential Information and subject to copies of the Client Confidential Information being retained by Licensee to satisfy their professional and legal responsibilities.

#### 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 Agreement as may be required to comply with its obligations under the *Freedom of Information Act 1982* (Vic).

#### The Licensee acknowledges that it will be bound by the Information Privacy Principles, any applicable Code of Practice and the Health Privacy Principles with respect to any act done in connection with this Agreement in the same way and to the same extent as the Department or the School Council would have been bound had the act or practice been done or engaged in by the Department or the School Council.

1. **Compliance**

#### The Licensee agrees that they are bound:

#### to provide support to Students consistent with the NDIA Terms of Business, Guide to Suitability and the applicable Quality and Safeguards Working Arrangements and other relevant policies and procedures applicable from time to time under the NDIS; and

#### 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, including the *Responding to requests for NDIS funded therapy in schools – Guidelines for Principals,* as updated from time to time.

1. **Liaison**

#### This Agreement will be administered jointly by the parties in order to ensure its efficient operation and performance and to review and evaluate the effectiveness of the Services.

1. **Interpretation**

#### In these Special Conditions, unless the context otherwise requires:

**Client Confidential Information** means any ‘personal information’ within the meaning of the *Privacy and Data Protection Act 2014* (Vic) 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, School Council as confidential, which is disclosed, made available, communicated or delivered to the Licensee, but excludes information:

#### which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions;

#### which the Licensee can demonstrate was in its possession prior to the date of the Agreement;

#### which the Licensee can demonstrate was independently developed by the Licensee; or

#### which is lawfully obtained by the Licensee from another person entitled to disclose such information.

**Licensee** means the person identified in Item 2 of Schedule 1 of this Agreement who is supplying the Services under these Special Conditions.

**Primary Welfare Officer** means a staff member appointed by the Principal pursuant 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 11 of Schedule 1 of this Agreement.

**SSSO** mean a Student Support Services Officer 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** means any student enrolled at the school during the term of the Agreement.

Annexure B – Attachment 1 – Consent Form/s

Signed copy to be attached

Annexure B – Attachment 2 – Information Sharing Agreement

**NDIS / SCHOOL INFORMATION SHARING AGREEMENT**

**NOTES FOR PRINCIPALS:**

This Information-Sharing Agreement applies when a principal has allowed an NDIS funded therapist to support a student on school premises, consistently with the *Responding to requests for NDIS funded therapy in schools: Guidelines for Principals*.

NDIS funded therapists must share with the school specific, relevant information about the student with the school (**the student information**). The specific student information that NDIS therapists must share is set out below.

Parent(s) must give consent to the NDIS funded therapist providing this student information to the school through the Parent Consent Form attached to the Request Form (this is done at the time the request is initially made).

With some limited exceptions [see (1a) and (2) below], principals (and / or their nominees) must decide exactly *how* and *when* the NDIS therapist must provide that student information to the school. The principal must set this out in the formal **Information-sharing Agreement** – set out at **page 2**. This must be completed and signed by the principal and the NDIS funded therapist.

The Information-sharing agreement sets out various options for *how* and *when* the NDIS therapist must provide student information to the school. However, each principal must tailor the agreement as appropriate to the specific circumstances. This means that the principal must decide **how** the NDIS therapist must provide the student information to the school (e.g. verbally, in writing, through email) and how often that must occur.

If you have any queries about the Information-sharing agreement, please contact Legal Division or the NDIS Reform Branch for assistance.

**INFORMATION-SHARING AGREEMENT between the NDIS therapist and the School**

This **Information-sharing Agreement** is made pursuant to a principal’s decision to allow [NDIS funded therapist] to provide support / therapy to [insert name of student] at [insert school name] on school premises.

This Information‑sharing Agreement is also made pursuant to, and must be read consistently with

* the Parent Consent Form (**Consent form)**, signed by the parent/guardian/carer on…………………. [insert date] (attached to the Request Form); and
* the **Licensing Agreement** between [Company / Incorporated Association/ Private therapist] and [insert name of school] (**the School**), signed by the parties on……………… [insert date].

1. As required by the Licensing Agreement (which I, or my employer, have signed), I agree to provide student information to the School, in the ways and at the times set out below:  
   1. **Any specific information** that the Principal requests - at any time; and

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Method of Communication** | **Frequency of communication *(Tick if required)*** | | | | |
| **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 …………………………………….. [insert school staff member/s name] |  |  |  |  |  |
| Emailing a short summary of the therapy provided to …………………………………….. [insert school staff member/s name] |  |  |  |  |  |
| Other  …………………………………………………………..  (please specify) |  |  |  |  |  |

* 1. Information about **the student’s disability and their needs** - in the way/s and at the times specified in this table:

1. I agree 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 that the student:
   1. has emotional, wellbeing or self-harm issues;
   2. displays aggressive or violent behaviours; and
   3. is a victim or perpetrator of bullying, assault or age-inappropriate sexualised behaviours.
2. Additionally, when requested by the Principal, I agree to attend Student Support Group meetings, and other meetings, related to the Student.

Signed ……………………………………………NDIS Funded Therapist Date ………………

Signed ……………………………………………School Principal Date ………………

Attachment 3B: Guide to completing the template School Council Licence Agreement – NDIS

Before completing the Licence, please ensure you have read and understood the *Responding to request for NDIS funded therapy in schools: Guidelines for Principals*. This Guide to completing the Licence Agreement is to be read in conjunction with the Guidelines.

Principals must also ensure they have the consent of the School Council to enter the Licence Agreement. If you require further information about this, please contact the Legal Division at [legal.services@edumail.vic.gov.au](mailto:legal.services@edumail.vic.gov.au).

**DESCRIPTION OF LICENCE**

This template licence agreement should be used by School Councils who wish to licence an area of the school (which is not required for ordinary school purposes) to a Company / Incorporated Association /Private therapist:

* on a medium to long term basis (a maximum three year term is recommended); and
* for educational, recreational, sporting or cultural activities for students, the local community or young persons.

**WHEN NOT TO USE**

This template licence should **not** be used**:**

* for short term (ie one day) arrangements (where a hire agreement is more appropriate); or
* where a more specific template agreement is available for use from the Legal Division’s eduGate site – for example, there are licences to cover the operation of outside school hours care, preschools and polling places.

**KEY POINTS**

The template licence comprises three parts:

* **Agreed Terms:** this section of the licence should not be altered unless legal advice has been obtained.
* **Schedule 1: Special Conditions:** this section must be completed by the Principal / School Council to reflect the conditions upon which the School Council has agreed to licence an area of the school to a third party. Instructions for completion of this section are set out in this document.
* **Execution Page:** this section will need to be amended to include details of the Licensee (the NDIS funded therapist). Instructions for completion of this section are set out in this document.

**DUTY OF CARE**

The School Council should ensure that it is fully aware of its continuing legal obligations regarding duty of care towards students, staff and visitors to the licensed area, which may extend prior to, during and following the use authorised by the licence. For further information, refer to the *Responding to requests for NDIS funded therapy in schools: Guidelines for Principals* or the School Policy and Advisory Guide, in particular, Duty of Care.

**If you require advice on specific circumstances, please contact the Legal Division or the NDIS Reform Branch.**

GUIDE TO COMPLETION – Licence Agreement

|  |  |  |
| --- | --- | --- |
| Clause number | Clause title | Effect of clause |
|  | Grant of licence | This clause gives the therapist the right to use a particular part of the school (the ‘Licensed Area’) to provide services to students. |
|  | Representatives | This clause provides for a nominated School Council representative to be responsible for communicating with the therapist. Importantly, it also provides that the therapist must comply with any directions given by the School Council representative. |
|  | Licence Fee | This clause provides that the therapist must pay a fee for the right to access the school and use the Licensed Area. |
|  | Rates and Taxes and Outgoings | This clause requires the therapist to pay any rates or taxes associated with the Licensed Area and gives the School Council the option to elect, whether the School Council or the therapist will be responsible for paying outgoings (gas, water, power etc.) associated with the Licensed Area. See also Schedule 1, Item 8 below. |
|  | Security Deposit | This clause provides that the therapist must pay a security deposit to use the Licensed Area. The security deposit can be used by the School Council or Department to cover any damage to the school, or other costs, caused by the therapists use of the Licensed Area. |
|  | Use of the Licensed Area | This clause provides that the therapist may only use the Licensed Area at the times and on the date agreed by the School Council (and set out in Items 9 and 10 of Schedule 1 to the Licence). |
|  | Compliance with laws | This clause requires the therapist to comply with all laws, and to maintain the appropriate registration, in relation to the performance of therapy at the school. |
|  | Improvements and fitouts | This clause provides that all ‘improvements’ to the Licensed Area (for example, if the therapist installs handrails etc in the Licensed Area) then these improvements become the property of the School Council.  The therapist cannot make any ‘improvements’ to the Licensed Area without the school’s prior written consent. |
|  | Licensee’s Obligations | This clause sets out the therapist’s obligations in respect of the Licensed Area, including that it may only use the Licensed Area for the Permitted Use described in Item 11 of Schedule 1and must comply with all school, Department and School Council policies when doing so. |
|  | Repairs | This clause provides that the therapist is responsible for repairing any damage caused to the Licensed Area. |
|  | School Council’s Reservation and Exercise of Rights | This clause provides that the School Council retains the right to carry out works on the licensed area and inspect it, at reasonable times. |
|  | Requirement for Working with Children and Police Checks | This clause provides that the therapist, any other persons they engage to perform work, or any person to whom the licence is assigned or sublicensed (in accordance with clause 19) must have a satisfactory Working with Children Check and a police check. |
|  | Reporting | This clause provides that the therapist must immediately report an accident or damage to the Licensed Area to the School Council, and must provide any information or documents relating to the license to the School Council upon request. |
|  | Insurance, Release and Indemnity | This clause provides that:   * the therapist must hold current public liability insurance during the term of the licence; * the Department and the School Council cannot be held liable for any accident or loss occurring in or in relation to the therapist’s use of the Licensed Area; and * the therapist agrees to take on the obligation to pay for any loss or damage that might be incurred by the Department or the School Council in connection with the licence. |
|  | Termination Events | This clause provides that the licence can be terminated:   * at the discretion of the School Council, if the Licensed Area is damaged or unfit for use; * immediately by the School Council issuing a Notice to the therapist in specific circumstances (see clauses 15.2(a) to (e)); * upon 30 days Notice by the School Council for any reason; * by written agreement of the parties; or * if the school closes down or amalgamates with another school. |
|  | Removal of Licensee’s property on Re-entry | This clause provides that the School Council can remove or store any property the therapist leaves at the school after the licence expires, at the cost of the therapist (or if the school prefers to keep the property left by the therapist, it becomes the schools property). |
|  | Licensee’s obligations on the Expiry or End of the Licence | This clause requires that the Licenced Area is returned clean and without rubbish in it at the cessation of the licence, and gives the School Council the right to retain any improvements made to the Licenced Area, should it wish to. |
|  | Assignment and Sublicensing | This clause provides that the Licensed Area cannot be subleased or assigned by the therapist to another party, without the prior written consent of the School Council. |
|  | Holding over | This clause provides that if the therapist continues to provide services at the school after the licence expires, it does so on a ‘month to month’ basis in accordance with the terms of this licence. |
|  | Disputes | This clause provides a procedure to resolve disputes between the therapist and the school about the licence agreement (including mediation and expert determination). The therapist may continue providing therapy in accordance with the licence, pending the resolution of a dispute. |
|  | Interest | This clause provides that the therapist must pay interest if they are late paying monies due under the licence agreement. The clause sets out how any interest will be calculated. |
|  | Confidentiality | This clause provides that the therapist must keep confidential:   * the terms of the licence agreement; * Student’s personal information; * personal and business information relating to the School Council or the school or its employees; and * information treated by the School Council or the school as confidential, * except if sharing the information is reasonably necessary to comply with laws, to seek professional advice, or to share with the therapist’s employees (provided they have also undertaken to keep the information confidential. |
|  | Privacy | This clause provides that the therapist is bound by the Information Privacy Principles, any applicable Code of Practice and the Health Privacy Principles. |
|  | Notices | This clause provides the requirements for issuing a Notice in accordance with the licence agreement, including the requirements for delivery by hand, post, fax and email. |
|  | Special Conditions | This clause provides that the Special Conditions described below are binding (please see the separate table of Special Conditions below). |
|  | GST | This clause provides that if that if any of the payments under the licence agreement attract GST, this must be paid by the party making the payment. |
|  | Conflict of Interest | This clause provides a warranty by the therapist that they and their employees do not have, and won’t take any action, during the term of the licence agreement that would give rise to, a conflict of interest in respect of their duties under the licence. |
|  | General | This clause sets out terms that assist with the general operation of the licence, including that:   * the licence agreement may only be varied by agreement in writing; and * the School Council may ‘set off’ monies owed to them by the therapist against any amount they owe to the therapist under the licence. * If you have any queries about this section, please contact Legal Division. |
|  | Definitions and Interpretation | This clause sets out the definitions of terms used in the licence agreement. |
| - | Execution clause | This clause sets out three possible signing clauses for therapists. Schools should select one option, and delete the others, in accordance with the guidance below:  Option 1: Use this option where the therapist operates / is entering the licence as a company.  Option 2: Use this option where the therapist operates / is entering the licence as an incorporated association.  Option 3: Use the option when the therapist is an individual / sole trader.  Once the licence is completed, the licensee should sign two copies of the licence and then return both copies to the School Council for signing. The President of the School Council should sign the licences.  One copy of the licence which has been signed by both parties should be provided to the licensee, and the School Council should retain the other to be kept in a safe place. |
| Schedule 1 | - | This Schedule is where the details of the licence (the therapists name, the Licensed Area, the licence Commencement and Expiry dates, etc) should be documented. The majority of the information required is self- explanatory, however please see some further guidance below. Please contact Legal Division is you require any further assistance.  **Item 1** – Complete details of the School Council including the full name of the School Council (i.e. not a reference to the school), ABN and address.  **Item 2** – Complete details of the Licensee, including full name, ABN and registered address or place of business. Please note that the only time that an ABN will not be completed is if the licensee is an individual who does not carry out a business. All other times a ABN is required.  **Item 3** - Insert a description of the area of the school to be licenced to the third party. Please be as specific as possible. If the area has a name or room number it should be inserted.  **Item 4** – Insert a description of the school land (e.g. Spotswood Primary School – 600 Melbourne Road, Spotswood, Victoria 3015.  **Item 5** – Insert the date that the licence will start.  **Item 6** - Insert the date that the licence will end.  **Item 7** – Insert the licence fee to be paid to the School Council. The amount of the licence fee and how it is paid should be clearly stated, including whether it includes or excludes GST. For example, $100 per month (GST exc.) payable monthly in advance by way of electronic transfer to [insert nominated bank account]. If you want to increase the fee payable during the term of the licence, you will need to ensure that this is reflected in this Item.  **Item 8** – Insert the party who will pay the outgoings. This provides an opportunity for School Councils to pass on the costs of the outgoings to the Licensee. If School Council wants to pass on these costs, it will need to ensure that these costs can be adequately proportioned (for example by area) or billed separately to the licensee.  **Item 9** – If the Licensee only uses the area on specific dates and/or days, you need to set out those dates and/or days. If the Licensee’s use of the licensed areas is not limited to specific dates or days, insert “Not Applicable”.  **Item 10** - If the Licensee only uses the area on specific times, you need to set out the specific hours of the day. If the Licensee’s use of the licensed areas is not limited to specific times, insert “Not Applicable”.  **Item 11** – Insert details of the proposed use of the licensed area. For example, to provide NDIS funded therapy to a Student of the school.  **Item 12** – Insert details of the insurance which the School Council requires the Licensee to obtain. A requirement that the Licensee hold public liability insurance of $10m per event and professional indemnity insurance of $5m per event has been included. Further information regarding insurance requirements can be found in the Department’s publication “Insurance Arrangements Guidelines for School” available on Edugate.  **Item 13** – Insert details of the person who will be the School Council Representative (usually the Principal as Executive Officer, however you should check with School Council to confirm the Representative for the licence before completing this information) and include details of the person who will be the licensee representative.  **Item 14** – If the School Council requires the licensee to pay a security deposit (a payment to secure the licensee’s obligations under the licence) insert the amount to be paid. If not, insert “Nil”.  **Item 15** – Special Conditions will be included in Annexure B (see below) |
| Annexure A - Plan | - | This is where the school should insert or attach a plan of the area to be used by the therapist, in accordance with the licence agreement (the Licensed Area). It is important that the plan sets clear boundaries for the Licensed Area. The area to be licensed should be identified by being shown as cross-hatched on the plan. |
| Annexure B – Special Conditions | - | Special conditions set out specific matters which are agreed upon with the licensee that are not otherwise covered in the general terms and conditions on the licence. The Special Conditions set out specific requirements in respect to the NDIS funded therapist in respect to the provision of the services, access to the school (including the Principal’s right to refuse access in certain circumstances), supervision by the Principal and requirements regarding confidentiality and privacy (including when and what information can be provided to the School Council and what information can be provided by the School Council to the NDIS funded therapist).  These Special Conditions have been specifically drafted to take into consideration the Principal’s and School Council’s duty of care obligations and compliance with legal obligations in respect to privacy of the students. Please contact Legal Division before making any changes to the Special Conditions. |
| Annexure B- Attachment 1 – Consent Form |  | Special Condition 4 requires that the NDIS funded therapist must obtain parental consent, using the Consent Form template, for the NDIS funded therapist to provide the services at the school and to disclose information to the school in certain circumstances.  A copy of the signed Consent Form should be provided at Annexure B - Attachment 1.  In accordance with the Guidelines for Principals: Responding to request for NDIS funded therapy in schools, the Licensee must provide the School Council with a signed Consent Form with the Request Form when requesting to the Principal / School Council to consider allowing the therapist on school grounds to provide therapy to a student. |
| Annexure B – Attachment 2 – Information Sharing Agreement |  | This is the form that must be used as the separate Information Sharing Agreement between the Principal and the therapist. The purpose of the Information Sharing Agreement is to set out exactly how and when NDIS funded therapists must share specific information (referred to in the Consent Form) about Students who are receiving NDIS therapy on school grounds.  Please contact the Legal Division if you require assistance in respect to completing the Information Sharing Agreement. The Information Sharing Agreement must be entered into at the same time as the Licence. |
| Signing |  | Once the licence is completed, the licensee and Principal should sign two copies of the Information Sharing Agreement.  One copy of the Information Sharing Agreement which has been signed by both parties should be provided to the licensee, and the Principal should retain the other to be kept in a safe place. |

1. See Decision making by Mature Minors in SPAG under ‘M’ and at: [www.education.vic.gov.au/school/principals/spag/safety/Pages/matureminor.aspx](http://www.education.vic.gov.au/school/principals/spag/safety/Pages/matureminor.aspx) [↑](#footnote-ref-2)
2. [1] The *Equal Opportunity Act 2010* (Vic)*, Disability Discrimination Act 1992* (Cth) and *Disability Standards for Education 2005* (Cth) [↑](#footnote-ref-3)