



## PLS Early Childhood Wellbeing Program User Licence

Welcome and thanks for choosing Positive Living Skills.

Please take a few moments to read the Positive Living Skills Early Childhood Wellbeing Program User Licence (**Agreement**). The Agreement sets out the **terms and conditions** for the use of the Positive Living Skills Early Childhood Wellbeing Program.

By pressing **SUBMIT**, you:

- are entering in this binding legal Agreement on behalf of the educational institution that you have specified in the sign-up details (**Licensee**);
- warrant to PLS that you are authorised to represent, and enter into this Agreement on behalf of, the Licensee; and
- will be deemed to be Authorised Personnel of the Licensee (as defined in this Agreement).

**If you are not authorised to enter into this binding legal Agreement on behalf of the Licensee then you must not press SUBMIT.**

This Agreement is between PLS LEARNING SOLUTIONS AUSTRALASIA PTY LTD A.C.N.161 740 870 of Ground Floor, 100 Walker Street, North Sydney NSW 2060 (**PLS**) and the **Licensee**.

## 1 DEFINITIONS

1.1 In this Agreement:

**Agreement** means this Positive Living Skills Early Childhood Wellbeing Program Licence

**Authorised Personnel** means such of the Licensee's employees whom the Licensee has authorised to deliver the Program on behalf of the Licensee.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia.

**Business Hours** means 8am to 6pm in Sydney, New South Wales, Australia.

**Confidential Information** means:

- the Program; and
- any information owned by or under the control of PLS, which is designated by PLS as confidential or which a person would reasonably assume, by its nature (and/or the circumstances of its disclosure) to be confidential.

**Data Center** means the third-party operated data center at which virtual servers, on which the Program is hosted, are located.

**Effective Date** means the earliest of the Licensee enters into this Agreement, being the date on which its Authorised Personnel presses SUBMIT.

**Improvements** means any modifications to or adaptations of the Program, or any derivative works of the Program, made by or at the instruction of the Licensee.

**Insolvency Event** means, in relation to the Licensee, that the Licensee:

- is in liquidation or in provisional liquidation or has had a liquidator appointed;
- is under administration, has had a controller, receiver or receiver and manager or analogous person appointed to it or any of its property;
- is taken to have failed to comply with a statutory demand or is unable to pay its debts; or
- has entered into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.
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**Intellectual Property Rights** means all present and future, intellectual and industrial property rights conferred by statute, at common law or in equity wherever those rights might arise, including (without limitation) copyright, patent rights, patent applications, designs, technical or commercial know how, trade marks, circuit layouts, rights in relation to the Program, and all other results of intellectual effort in the scientific, industrial, literary or artistic fields whether or not registered or capable of registration.

**IP Claim** means any actual, suspected or threatened claim or proceeding alleging that:

(a) the whole or any part of a document or item, or its use, infringes, or would infringe, the Intellectual Property Rights of any person other than PLS or the Licensee; or

(b) any Intellectual Property Right in any document or item is invalid or is owned by someone other than PLS.

IP Infringement means any actual, suspected or threatened infringement of any Intellectual Property Rights in the Program.

**Licence Fee** means the fees set out on PLS' website in relation to the Program.

**Licence** means the licence to use the Program granted under this Agreement.

**Privacy Laws** mean:

- (a) the Privacy Act 1988 (Cth) including the Australian Privacy Principles contained in Schedule 1 of that Act;
- (b) the Spam Act 2003 (Cth);
- (c) any approved privacy codes that apply to either of the parties; and
- (d) all other applicable laws that require a person to observe privacy or confidentiality obligations in respect of personal information and sensitive information.

**Program** means the Positive Living Skills Early Childhood Wellbeing Program consists of educational content in digital and/or tangible format, including words and images, whether interactive or static.

**Term** means term of this Agreement as set out in clause 2.3

## 2. INTRODUCTION

2.1 This Agreement governs the commercial arrangement between PLS and the Licensee under which the Licensee has the right, through its Authorised Personnel, to access and use the Program.

2.2 The Licensee warrants that it enters into this Agreement having had the opportunity to evaluate and satisfy itself about the features and operation of the Program and the terms on which PLS makes the Program available to the Licensee.

2.3 This Agreement commences on the Effective Date and continues until the first anniversary of the Effective Date. On each anniversary of the Effective Date, this Agreement will be renewed and continue for a further period of one year unless the Licensee gives PLS no less than 30 days' written notice of its intent to terminate this Agreement, and such termination will take effect on the immediately following anniversary of the Effective Date.

2.4 This Agreement may not be terminated by notice given under clause 2.3 prior to the first anniversary of the Effective Date.

## 3. AVAILABILITY OF PROGRAM

3.1 The Program is hosted on virtual servers located at and managed through the Data Centers.

3.2 PLS:

- does not warrant that the availability of the Program and the Licensee's use of the Program will be uninterrupted or error-free; and
- is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities.

3.3 The Licensee acknowledges that the Program may be subject to limitations, delays and other problems inherent in the use of communications facilities.

3.4 PLS will effect and maintain a Risk Management Plan to facilitate restoration of the availability of the Program in the event of a significant disruption or disaster but the availability of the Program is under the ultimate control of the Data Centers and 100% availability of the Program cannot be guaranteed.

3.4 The Licensee must also effect and maintain a Risk Management Plan to enable the Licensee to manage situations in which the Program is or becomes wholly or partially unavailable.

3.5 From time to time, without notice, access to or use of all or part of the Program may be disrupted or limited. PLS will use its best endeavours to restore access to the Program as soon as practicable.

3.6 From time to time, PLS may conduct preventative and remedial maintenance on the Program and in respect of the infrastructure it deploys in the provision of the Program (**Scheduled Maintenance**).

3.7 PLS will endeavour to carry out all Scheduled Maintenance outside of Business Hours and to give reasonable notice of any planned downtime for the Program. In the event of an emergency, PLS may carry out maintenance during Business Hours and without first notifying the Licensee.

3.8 Subject to PLS' obligations under this Agreement in respect of Privacy Laws and confidentiality and compliance with other relevant Laws, PLS reserves the right to monitor the Licensee's (and its Authorised Users') use of the Program to enable PLS to perform its obligations and exercise its rights under this Agreement.

3.9 The Program may evolve over time. PLS may, at its discretion, upgrade, amend, add to or remove features from, redesign, improve or otherwise alter the Program provided that in doing so PLS does not materially alter the underlying features and purpose of the Program and otherwise continues to comply with its obligations under this Agreement. PLS will give the Licensee reasonable prior notice of any material changes to the Program.

## 4. USE OF PROGRAM

4.1 In consideration for the payment of the Licence Fee, PLS grants to the Licensee a non-exclusive, non-transferable and non-sublicensable right, through its Authorised Personnel, to use the Program:

- during the Term;
- in Australia (and nowhere else in the World);
- solely for the purpose of enabling the Licensee and any Authorised Personnel to deliver the Program to students of the Licensee in an educational setting.

4.2 The Licensee must only access and use the Program for its business use in accordance with this Agreement and any policies published by PLS on its website or provided to the Licensee.

4.3 Unless otherwise permitted by Law or this Agreement, the Licensee must not during the Term:

- resell, reframe, distribute or on-sell the Program;
- include the Program in any service bureau or outsourcing or managed service offering;
- transfer, sub-license or assign its rights under this Agreement to any third party unless PLS gives its prior written consent (not to be unreasonably withheld);
- modify or adapt or create derivative works of the Program;
- build a competitive service;
- copy any features, functions or graphics of the Program (except for the purpose of delivering the Program in accordance with this Agreement);
- disseminate, or allow others to disseminate, any materials comprising the Program;
- share any reports, advice or other information provided by PLS in connection with the Program; or
- use the Program to access services other than the functions the Licensee is entitled to use.

4.4 Specified resources used within the Program are designed to be shared by children or by an educator with a child's family. The Licensee is expressly authorised to share those specified resources which are expressly marked for the purpose of sharing with a child's family.

4.5 The Licensee and each Authorised User is responsible for the accuracy, quality and origins of the data it uploads to the Program. The Licensee and each Authorised User must not provide or upload data (or permit any data to be provided or uploaded) to the Program unless it is the owner of that data or has the authority to provide or upload the data.

4.6 The Licensee must comply with all Privacy Laws when it is using the Program.

4.7 The Licensee acknowledges and agrees that it is responsible for the following:

- determining the Authorised Personnel that will have access to the Program and the level of access;
- notifying PLS, in writing, of the name, email address and telephone number of each Authorised Personnel;
- ensuring that passwords for access to the Program are kept secure and confidential
- controlling the level of access given to Authorised Personnel;
- resolving any issues that Authorised Personnel have with their level of access;
- revoking or adjusting the level of the access of any Authorised Personnel;
- the use to which Authorised Personnel put the Program;
- providing all other computer hardware and software by which the Program will be accessed including internet browser software as specified by PLS; and
- providing sufficient (having regard to the nature of the Licensee's business) security for the computer network in conjunction with which the Program is used.

4.8 Without prejudice to its other rights, PLS reserves the right to promptly disable such passwords and all related access to the Program to the Licensee or any Authorised Personnel if it suspects or discovers a breach of this Agreement by the Licensee or the Authorised Personnel or there is, in the reasonable opinion of PLS, a risk of harm occurring to the Program.

4.9 The Licensee must:

1. ensure that each Authorised User expressly consents to the collection and use of their personal information by PLS; and
2. ensure that each person whose personal information is uploaded by the Client or an Authorised Personnel to the Program expressly consents to the collection and use of their personal information by PLS.

4.10 PLS may use data, insights and aggregated data provided by Authorised Users (about that Authorised User) for internal improvements to the Program and to perform its obligations under this Agreement. PLS does not use data about any other person.

## 5. INTELLECTUAL PROPERTY

5.1 All right, title and interest (including Intellectual Property Rights) in and to the Program, will remain with or vest in PLS.

5.2 Nothing in this agreement will be deemed to convey to the Licensee any right, title or interest in and to the Program, other than as licensee.

5.3 If the Licensee makes, or has made on its behalf, any Improvements:

- it must disclose the Improvements to PLS as soon as reasonably practicable;
- by this agreement, it assigns to PLS absolutely all right, title and interest, including all Intellectual Property Rights in and to the Improvements so that all right, title and interest, including all Intellectual Property Rights, in and to them vest automatically on creation in PLS; and
- Improvements will be deemed to be part of the Program and therefore are licensed to the Licensee under the terms of this Agreement.

5.4 The Licensee must not alter, remove or obscure any trademark or copyright symbol or legend or other proprietary mark on the Program.

5.5 The Licensee must implement precautions to prevent the unauthorised disclosure, copying and/or distribution of the Program by any person and must immediately notify PLS of any breach or suspected breach of this clause

## 6. IP Claims

6.1 If a claim is made by a third party against the Licensee that the supply of the Program infringes the Intellectual Property Rights of that third party, the Licensee must give written notice of that claim to PLS

6.2 If any part of the Program becomes the subject of a third-party claim or litigation regarding infringement, violation or misappropriation of Intellectual Property Rights, PLS will, in its sole discretion and at its sole cost and expense:

- modify the Program to make it non-infringing or cure any claimed violation or misappropriation of a third party's intellectual property rights, provided that such modification or cure does not materially adversely impact the features of the Program;
- procure for the Licensee the right to continue using the Program; or
- replace the Program with substantially equivalent materials that are non-infringing or that are free of the claimed misuse of such third-party intellectual property rights.

6.3 PLS may modify the Licensee's use of the Program (or any part of it) (without any liability), or in response to a claim by any person for Intellectual Property Rights infringement in connection with the supply of the Program (or any part of it).

## 7. FEES

7.1 The Licence Fee is expressed on a GST exclusive basis unless otherwise expressly stated.

7.2 In consideration for the grant of the Licence under this Agreement, the Licensee must pay the Licence Fees.

7.3 Payment of the Licence Fee must be made by credit or debit card through PLS's third party service provider (e.g. Stripe and/or Paypal). By agreeing to be bound by this Agreement, the Licensee also agrees to be bound by the terms and conditions of those third party service providers. The terms and conditions of those third party service providers may be modified by those third party service providers from time to time without the consent of PLS.

7.4 The Licence Fee may be paid:

- as a lump sum payment, to be paid on the Effective Date; or
- in monthly instalments, as set out on the website, to be paid on the Effective Date and the anniversary day of each calendar month during the Term.

7.5 If the Licensee elects to pay the Licence Fee in monthly instalments, the Licensee must:

- authorising PLS (or a third party payment service provider) to debit the credit card or debit card of the Licensee in respect of any of the Licensee's payment obligations under this Agreement; and
- reimburse PLS for any charges incurred by PLS as a result of any payment being unable to be processed or being rejected.

7.6 PLS will be entitled to debit the credit card or debit card of the Licensee in respect of any invoice rendered under this Agreement within 10 Business Days of the date PLS provides that invoice to the Licensee

7.7 PLS will provide the Licensee with a tax invoice for the Licence Fees:

- if the Licence Fee is paid as a lump sum, within 3 Business Days of such payment being made; and
- if the Licence Fee is paid in monthly instalments, within 3 Business Days of the date on which each instalment of the Licence Fee becomes due and payable.

7.8 Each invoice issued by PLS to the Licensee must:

- show the relevant amount of the Licence Fee; and
- be addressed to the Licensee.

7.9 The Licence Fees are non-cancellable and non-refundable, subject to the Licensee's rights under any non-excludable terms.

7.10 PLS reserves the right to terminate or suspend the Licensee's account and/or access to the Program at any time if a payment which is due for payment has not been received by PLS within 30 days of the date on which that payment becomes due.

7.11 The Licensee must, in addition to any other amounts specified in this Agreement, reimburse on demand to PLS any charge incurred by PLS relating to a rejection by a bank or financial institution of the Licensee's payment to PLS

## **8. INFRINGEMENTS AND CLAIMS**

8.1 The Licensee must promptly notify PLS in writing, giving full particulars of all relevant circumstances, of any IP Infringement or IP Claim of which it becomes aware.

8.2 The Licensee must provide such assistance, perform such acts and execute such documents, at PLS's expense, as reasonably requested by PLS in relation to any IP Infringement or IP Claim.

## **9. WARRANTIES**

9.1 The Licensee represents and warrants that:

- it will not, and will not permit any other person to, use the Program other than in accordance with the terms and conditions of this Agreement; and
- it will not represent that it is the owner or assignee of the Intellectual Property Rights in the Program; or has any rights in respect of the Program, other than as licensee.

9.2 PLS does not warrant that:

1. any statutory rights are or will be valid;
2. the use, marketing or sale of the Program is not or will not be an infringement of the rights of third parties; or
3. that the Program will have any particular performance characteristics or attributes or that any particular outcomes will be achieved from use of the Program.

## **10. LIMITATION OF LIABILITY**

10.1 Terms, conditions, warranties and guarantees implied by law, which cannot be excluded, restricted or modified apply to this Agreement to the extent required by that law.

10.2 Except for liability in relation to any non-excludable term, the Program is provided on an "as is" basis, and without any warranty or condition, express or implied, including any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement of third party Intellectual Property Rights to the extent allowed by law.

10.3 To the extent permitted by law, PLS's sole liability for breach of contract, breach of statutory duty, negligence or other tort is limited, at its option, to:

- the supplying of the Program again; or
- the payment of the cost of having the Program supplied again.

10.4 The Licensee does not rely on any representation, warranty or other provision made by PLS or on its behalf which is not expressly stated in this Agreement.

10.5 PLS is not liable for loss or corruption of data belonging to the Licensee, its Authorised Personnel or any student of the Licensee, loss of revenue, loss of goodwill loss of anticipated sales, loss of savings, loss of business opportunity, interruption to business, wasted management/administrative time. This exclusion of liability includes loss or damage the Licensee might suffer as a result of failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third-party conduct, or theft, destruction, alteration or unauthorised access to records.

10.6 To the maximum extent permitted by law, the aggregate liability of PLS to the Licensee under or in relation to this Agreement shall be limited to the amount of the Licence Fees actually received by PLS from the Licensee during the 12-month period immediately prior to the act or omission which gave rise to any liability.

10.7 The Licensee acknowledges and agrees that it is their sole responsibility and obligation to ensure that their Authorised Personnel have the appropriate training and qualifications to deliver the Program.

## **11. INDEMNITY**

11.1 The Licensee releases and indemnifies PLS, its officers, employees, consultants and agents from and against all actions, claims, proceedings or demands (including those brought by third parties) which may be brought against PLS, whether on their own or jointly with the Licensee and whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property) arising out of or in connection with the use of the Program by or on behalf of the Licensee, including as a result of or in connection with:

- a breach of the Licensee's warranties or obligations contained in this Agreement;
- a breach by any Authorised Personnel of any of the Licensee's warranties or obligations contained in this Agreement

- failure of any Authorised Personnel, officer, employee, consultant or agent of the Licensee to use reasonable care in carrying out the Licensee's obligations under this Agreement;
- death of or injury to persons or property damage arising out of the use, marketing or sale of the Program ; or
- breach of intellectual property rights of third parties arising out of the use, marketing or sale of the Program ,
- and from and against all damages, reasonable costs and expenses incurred in defending or settling any such claim, proceeding or demand.

## 12. CONFIDENTIAL INFORMATION

12.1 The Licensee must protect Confidential Information using the same degree of care that it exercises with respect to its own information of like importance.

12.2 The Licensee may use Confidential Information only for the purpose of exploiting the Program in accordance with the term of this Agreement, (the Permitted Purpose)

12.3 Confidential Information may be disclosed by the Licensee only to the Licensee's officers, employees or contractors who are obligated to the Licensee under similar confidentiality restrictions to those contained in this agreement and only for the Permitted Purpose.

12.4 The obligations set out in this clause 12 do not apply to information which:

- is already in the public domain;
- becomes available to the public by any means other than a breach of any obligation of confidentiality;
- is received by the receiving party from an independent third party who is lawfully in possession and has the power to disclose the information;
- is required to be disclosed by law.
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12.5 The obligations under this clause 12 survive termination of this agreement.

## 13. PRIVACY

13.1 When you use the Program, the Licensee and each Authorised Representative may be required to provide PLS with personal information. PLS's use and disclosure of that information is governed by its privacy policy which can be found here: <https://www.positivelivingskills.com.au/privacy-policy>

13.2 PLS' privacy policy is incorporated by reference into this Agreement.

13.3 PLS is permitted to identify the Licensee, by name and by the Licensee's address, as a user of the Program on PLS's website and in PLS's marketing material. PLS does not identify individual Authorised Personnel on its website or in its marketing material.

## 14. TERMINATION AND SUSPENSION

14.1 PLS may terminate this Agreement immediately upon written notice if:

- the Licensee commits a non-remediable breach of this Agreement; or
- the Licensee fails to cure any remediable breach of this Agreement within 14 days of being notified in writing of such breach; or
- an Insolvency Event occurs in relation to the Licensee.

14.2 The termination of this Agreement is without prejudice to the accrued rights of the parties, and any provision of this Agreement which relates to or governs the acts of the parties subsequent to such termination will remain in full force and effect

14.3 The Licensee may terminate this Agreement by notice in writing to PLS (such notice to take effect immediately) if one or more of the following events occurs:

- PLS is in systemic breach of its general obligations under this Agreement and has failed to remedy after three or more breach notices within 14 days of written notice requiring it to do so (or such longer period as the Licensee may specify in such notice); or
- an Insolvency Event occurs in relation to PLS.

14.4 PLS may suspend the Licensee's (or any of its Authorised Personnel's) access to the Program if PLS is entitled to terminate this Agreement. PLS will give the Licensee at least 3 days' prior written notice before suspending access to the Program.

14.5 If the Licensee's (or any Authorised Personnel's) right, to access the Program, is suspended, the Licensee must continue to pay the Licence Fees due to PLS under this Agreement during the period of suspension.

14.6 On termination of this Agreement, the Licensee must cease to use the Program.

14.7 The Licensee will remain liable to pay to PLS and PLS is entitled to recover from the Client all Licensee Fees, including any Licensee Fee in relation to the remainder of the Term.

## 15. NOTICES

15.1 Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this agreement must be in legible writing and in English addressed as shown at the beginning of this Agreement.

15.2 Any notice or other communication under this Agreement is regarded as being given by the sender and received by the addressee:

- if by delivery in person, when delivered to the addressee;
- if by email, at noon (addressee's time) on the Business Day following the day on which it is sent, provided that the sender has not received a message to the effect that email was not delivered or that the recipient is 'out of office'.

## 16. GENERAL

16.1 The Licensee must not assign its rights under this agreement without the prior written consent of PLS.

16.2 This Agreement may only be amended, novated, or replaced by another document signed by or on behalf of both parties.

16.3 Each party must do anything (including executing any document) and must ensure that its employees and agents do anything (including executing any document), that the other party may reasonably require to give full effect to this Agreement.

16.4 A right may only be waived in writing, signed by the party giving the waiver.

16.5 This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.

16.6 Nothing in this Agreement is intended by the parties to constitute the Licensee an employee, agent, partner, joint venturer, or representative of PLS, and the Licensee shall not have any authority to enter into or incur, and must not enter into or incur, any obligation on behalf of PLS.

16.7 This Agreement is not to be interpreted against the interests of a party merely because that party proposed the agreement or some provision of it or because that party relies on a provision of the agreement to protect itself.

16.8 This Agreement is governed by the law in force in the State of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales, Australia and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it may have to claim that those courts are an inconvenient forum.

I agree to the terms of the licence