

School Council Hire Agreement



Between

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

and

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

Background

The Hirer wishes to use the Hired Area for the Permitted Use.

The School Council has agreed to hire the Hired Area to the Hirer in accordance with the terms and conditions set out in this Agreement.

Agreed terms

Hire of Hired Area

- (a) The School Council grants the Hirer a right to use the Hired Area, subject to the terms and conditions of this Agreement.
- (b) The parties agree that:
 - this Agreement does not confer a right of exclusive occupation of the Hired Area to the Hirer; and
 - the School Council may, at any time, exercise rights on behalf of the Minister as owner of the Hired Area including the right to use, possess and enjoy the whole or any part of the Hired Area (provided that such rights will not prevent the Hirer's right to use the Hired Area under this Agreement).

Use of Hired Area

The Hirer:

- (c) may only use the Hired Area on the date and time listed in Item 8;
- (d) must not use or allow the Hired Area to be used for any purpose other than the Permitted Use;
- (e) acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the School Council regarding the suitability of the Hired Area for the conduct of the Permitted Use otherwise than as expressly contained in this Agreement, or for any other use; and
- (f) must provide the School Council with any information reasonably requested by the School Council relating to this Agreement, including but not limited to the use of the Hired Area by the Hirer.

Hire Fee

The Hirer must pay the Hire Fee to the School Council within 14 days of receipt of the School Council's invoice.

Security Deposit

- (a) To secure the performance of the Hirer under this Agreement the Hirer must pay the Security Deposit to the School Council on or before the Commencement Date.
- (b) If the Hirer breaches any of the Hirer's obligations under this Agreement and the School Council incurs any Losses (or acquires any other entitlement to payment from the Hirer), the School Council may, if the default remains unremedied 10 Business Days after Default Notice has been given to the Hirer, draw on the Security Deposit without further Notice to the Hirer to make good such Loss.
- (c) If the School Council draws on the Security Deposit, the Hirer must replace the amount drawn down within 10 Business Days to maintain the Security Deposit at the level specified in Item 6.
- (d) Subject to any right the School Council has to draw on the Security Deposit, the School Council must return the Security Deposit to the Hirer when each of the following have been satisfied:
 - (i) 60 days have elapsed since the expiry or termination of this Agreement;
 - (ii) the Hirer has vacated the Hired Area in accordance with this Agreement, including satisfying all of its reinstatement obligations; and
 - (iii) the Hirer has no outstanding obligations under this Agreement or subsisting breach of this Agreement or any actual or potential liability for any breach or non-performance of any of the Hirer's obligations under this Agreement.

Cancellation or Postponement by Hirer

If, for any reason, the Hirer is unable to use the Hired Area on any date or time of use specified in Item 8 then the Hirer

must immediately notify the School Council in writing. The Hire Fee will remain payable unless:

- (e) the Hirer gives the School Council at least 7 days prior written Notice to the relevant date or time of use under Item 8; or
- (f) the Hired Area is re-hired for that same period.

Cancellation or Postponement by School Council

- (g) If, for any reason, the School Council is unable to provide the Hired Area to the Hirer at the date and/or time of use specified in Item 8, then the School Council will give the Hirer Notice of:

cancellation whereby, if the Hirer has paid the Hire Fee (whether in part or in full), then the School Council will refund to the Hirer that part (or whole) of the Hire Fee paid by the Hirer, which the School Council, acting reasonably, represents the unused portion of that amount: or

postponement, whereby the School Council and the Hirer will act reasonably to seek to postpone the use of the Hired Area to a mutually agreed alternate time and/or date. If no agreement can be reached, the School Council will refund to the Hirer that part (or whole) of the Hire Fee paid by the Hirer, which the School Council, acting reasonably, represents the unused portion of that amount.

- (h) Other than the refund of Hire Fee (if any) payable under clause 0 or 0, the Hirer will not be entitled to any other payment and/or compensation for the School Council's cancellation or postponement under this clause

2. Termination by School Council

- (a) The School Council may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Hirer reasonable written notice.
- (b) If the Agreement is terminated pursuant to clause 2(a), the School Council will pay the Hirer the unavoidable and substantiated costs incurred by the Hirer as a direct result of the termination, excluding any loss of profit, and the School Council has no other liability to the Hirer in relation to that termination.
- (c) When the School Council issues a notice under clause 17.1(a), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of this Agreement.

Hirer's Obligations

The Hirer must:

- (d) at its own cost in all respects observe and comply with all Laws that apply to this Agreement and all directions, notices and Requirements of any Government Agency relating to its use and occupation of the Hired Area;
- (e) keep available for inspection by the School Council upon request, all licences, permits and registrations required for the carrying on of any activity by the Hirer in or upon the Hired Area;

- (f) not install any fixtures or fittings;
- (g) not use the Hired Area for any illegal purpose;
- (h) ensure the Hired Area is kept secure, clean and free from debris and rubbish;
- (i) not do anything in or near the Hired 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 Hired Area;
- (j) not keep or use chemicals, inflammable liquids, acids or other hazardous things on the Hired Area except for the Permitted Use, or create fire hazards;
- (k) not overload the floor of the Hired Area;
- (l) comply with all Department, School and School Council policies and/or guidelines which deal with safety or health of persons on the Hired Area or otherwise under its control;
- (m) not erect, display, affix or exhibit on or at the Hired Area any signs except for signs that comply with all Laws and then only after obtaining the School Council's written approval and all necessary planning and building permits from the relevant Government Agency;
- (n) observe fire precautions;
- (o) at all times exercise due care, skill and judgement and act with the utmost good faith; and
- (p) ensure that all external doors and windows are secured and locked and all lights extinguished daily at the end of its use of the Hired Area.

Repairs and Damage to the Hired Area

- (q) The Hirer must keep the Hired Area clean and in the same condition as at the Commencement Date and properly repaired and maintained.
- (r) If the Hired Area is damaged, the Hirer must promptly repair such damage to the extent that it is caused or contributed to by the Hirer.
- (s) If the Hirer fails to properly repair any damage it is responsible for in accordance with clause 2(r)2(r) within a reasonable time then the School Council may do so and the Hirer must immediately reimburse the School Council the cost of such repairs.

Representatives

- (t) The School Council and the Hirer each appoint the person listed as such in Item 10 as their respective representative (**Representatives**) who will be responsible for communications under this Agreement.
- (u) Either party may replace its representative by giving Notice to the other party.
- (v) The Hirer must comply with any instruction or direction given by the School Council's representative.

Insurance, Release and Indemnity

Insurance

- (w) The Hirer must obtain and maintain the insurances set out in Item 9 in force during the Agreement.

- (x) The Hirer 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.
- (y) Within 10 Business Days of the Commencement Date, and immediately upon request by the School Council from time to time, the Hirer must provide the School Council with evidence of the currency of any insurance the Hirer is required to maintain under this Agreement.
- (z) Clauses 0(w), 2(y), 0 and 0 do not apply if the Hirer 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 Hirer will occupy, use and keep the Hired Area at the risk of the Hirer and releases, to the fullest extent permitted by Law, 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 Hired Area, except to the extent that any accident, damage, injury or Loss is caused by the negligent or unlawful act omission or default of the School Council.

Indemnity

- (aa) Subject to clause 2(cc), the Hirer at all times indemnifies and will continue to indemnify, hold harmless and defend the Department, the School Council and their respective Associates (in this clause, each an **Indemnified Party**) against any Losses which any Indemnified Party suffers or incurs as a result of any demand, suit, action, claim or proceeding against an Indemnified Party where the Losses arise as a direct or indirect result of any of the following:
 - (i) personal injury, including sickness and death;
 - (ii) property damage;
 - (iii) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (iv) fraudulent acts or omissions of the Hirer or its Associates;
 - (v) any wilful misconduct or unlawful act or omission by the Hirer or its Associates; or
 - (vi) any third party claim arising out of a breach of this Agreement by the Hirer or its Associates (including breach of warranty) or any negligent act or omission of the Hirer or its Associates.
- (bb) To the extent that the indemnity in this clause refers to persons other than the School Council, the School Council holds this clause on trust for those other persons.
- (cc) The Hirer will not be liable under the indemnity in clause 2(aa) to the extent that the Loss results from:
 - (i) any fraudulent, negligent or deliberate act or omission of an Indemnified Party;
 - (ii) any breach of this Agreement by an Indemnified Party; or

- (iii) the condition of the Hired Area or the Land before the Commencement Date.

Default and Termination

2.2 Insolvency Event

The School Council may immediately terminate this Licence by Notice to the Licensee if the Licensee suffers an Insolvency Event.

2.3 Default

If:

- (a) the Hirer has failed to pay the Hire Fee on the due date set out in clause 0; or
- (b) the Hirer fails to perform or observe its obligations (whether express or implied) under this Agreement; or

then, without limiting any other right of the School Council, the School Council may, by Notice in writing to the Hirer:

- (c) remedy the breach or default at the cost of the Hirer; and/or
- (d) terminate this Agreement,

and the School Council's exercise of any right under this clause 0 is without prejudice to any other right, remedy or liability which it has or may have for any other non-payment or non-performance by the Hirer under this Agreement.

Consequences of expiry or termination of Agreement

- (e) At the expiration or the earlier termination of this Agreement, the Hirer must remove all its property from the Hired Area and ensure that the Hired Area is in a condition consistent with the requirements in this Agreement.
- (f) The expiry or termination of this Agreement does not affect:
 - the School Council's rights in relation to a breach of this Agreement by the Hirer before the expiry or termination; and/or
 - the Hirer's obligation to make a payment under this Agreement for periods before the expiry or termination.

Notices

A Notice must be in writing, signed by or on behalf of the party giving it and delivered to the Representative of the other party set out in Item 10.

Negation of Warranties

- (g) The Hirer acknowledges that it has entered into this Agreement solely on the basis of the terms and conditions in this Agreement and that no warranties, representations or promises have been made by the School Council or its agents.
- (h) Without limiting clause 2.3(g) the Hirer acknowledges that:
 - no warranties have been given by the School Council that the Hired Area is suitable for the Permitted Use; and

subject to the terms and conditions of this Agreement, the Hirer must do all things necessary to enable the Hired Area to be used for the Permitted Use.

GST

2.4 Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

2.5 Consideration is inclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are inclusive of GST. If GST is imposed on any supply made under or in accordance with this Agreement which is not expressed to be inclusive of GST, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

2.6 Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

2.7 Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Agreement, the Hirer must recalculate the amount payable on account of GST under clause 2.5 to take account of the adjustment event. The Hirer must issue an adjustment note to the School Council within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Hirer to the School Council, or by the School Council to the Hirer, as the case may be.

2.8 Other taxes

Subject to the other provisions of this Agreement, the Hire Fee includes all taxes (other than GST), duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with this Agreement, to the extent applicable.

Requirement for Working with Children and Police Checks

- (a) The Hirer must (and must ensure that all persons engaged or used by it to work at the Hired Area and/or carry out the Permitted Use under this Agreement, including its Associates):

have undertaken a satisfactory working with children check if required pursuant to the *Working With Children Act 2005* (Vic) or as otherwise requested by the School Council;

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.

- (b) The Hirer 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 Hired Area and/or carrying out the Permitted Use under this Agreement are consistent with the above obligations.

3. Child Safe Standards

- (a) The parties acknowledge and agree that Victorian government schools are committed to:
- (i) creating child safe environments;
 - (ii) protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with their legal obligations, including Child Safety Laws.
- (b) This clause only applies to the extent that the Hirer (and its Associates) are engaged in Child-connected work.
- (c) The Hirer acknowledges that the School Council and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.
- (d) If the Hirer is an Applicable Entity, it warrants to the School Council that it:
- (i) is compliant and will continue to comply with Child Safety Laws; and
 - (ii) will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Hirer (or its Associates).
- (e) The Hirer (and its Associates) must:
- (i) if applicable (whether or not the Hirer must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and
 - (ii) comply with any reasonable direction by the School Council in respect to compliance by the School Council, School Staff and/or the Hirer with any Child Safety Laws or any relevant School Council Child Safety Policies.
- (f) The School Council may terminate this Agreement immediately if, in the School's Council's reasonable opinion, it determines at any time that:

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

General

Amendment

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

Severability

Any provision of this Agreement 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.

Set off

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

Governing law and jurisdiction

This Agreement 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.

Assignment of rights

The Hirer must not assign any right under this Agreement without the prior written consent of the School Council.

Publicity

The Hirer must not make any public announcement or media release in respect of any aspect of this Agreement without the prior written approval by the School Council. Without limitation, if permission to publish is granted pursuant this clause 0, the Hirer must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

3.2 Entire understanding

- (a) This Agreement is comprised of the following documents:
 - (i) the Special Conditions;
 - (ii) clauses 0 to 0 (inclusive);
 - (iii) Schedule 1 to this Licence (other than the Special Conditions); and
 - (iv) any other documents or representations referred to in this Licence or incorporated by reference.
- (b) In the event and to the extent of any inconsistency between the documents listed in clause 3.2(a), the provisions of the earlier mentioned document will

prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

- (c) This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

Definitions and Interpretation

Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this agreement and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

Associates means, in respect of a party, any officer, employee, agent, delegate, contractor, subcontractor, consultant, advisor, invitee, licensee or servant of that party to the extent that such person or entity is performing an act or a function directly related to the Agreement.

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

Child-connected work has the meaning given to it in section 4 of the Ministerial Order.

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

Commencement Date means the date the last party signs this Agreement.

Default Notice has the meaning given to that term in clause 1.1(b).

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

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.

Hired Area means part of the Land shown hatched on the Plan and as described in Item 3.

Hire Fee means the amount specified in Item 5.

Insolvency Event means if the Hirer:

- (a) being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of the School Council, precludes or adversely affects the Hirer's ability to carry out its obligations and duties under this Agreement; or

- (b) 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.

Item means an item of 0.

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

Law means:

- (a) the law in force in the State and the Commonwealth of Australia, including common law, legislation and subordinate legislation; and
- (b) ordinances, regulations and by-laws of relevant Government Agencies.

Loss means any liability, loss, damage, claim, action or expense (including all legal costs determined on a full indemnity basis) of any kind whatsoever.

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

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

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

Permitted Use means the permitted use of the Hired Area as specified in Item 7.

Plan means the plan attached as Annexure A.

Representative means the representative defined in clause 0 and Item 10.

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 School Council then the School Council must be given a copy.

Schedule means any schedule(s) to this Agreement.

School means the school that the School Council represents and within which the Hired Area is located.

School Council Child Safety Policies means any relevant School Council policies, codes, guidelines or associated documents that in any way relate to child safety, including any policies, codes, guidelines or associated documents that the School produces for the purpose of meeting its minimum child safety standards pursuant to section 5 of the Ministerial Order.

School Council's Representative means the School Council's representative nominated pursuant to clause 0 from time to time.

School Staff has the meaning given to it in section 4 of the Ministerial Order.

Security Deposit means the security deposit referred to in clause 0 and specified in Item 6.

Special Conditions means the special conditions (if any) contained in Item 11.

Interpretation

Unless expressed to the contrary, in this Agreement:

- (c) 'includes' means includes without limitation;
- (d) 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;
- (e) 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;
 - if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

Executed as an agreement.

School Council

Date:

<Insert date that School Council signs>

Signature of Principal or designated School Council Representative		Signature of Witness
Name (print)		Name of Witness (print)

Hirer

Date:

<Insert date that Hirer signs>

<Use this signing clause when the Licensee is a company incorporated in Australia with more than one director, delete if Licensee is not a company or is a company incorporated in Australia with a sole director>

Executed by ACN		
in accordance with s 127 of the <i>Corporations Act 2001</i>		
Signature of director		Signature of director/company secretary
Name of director (print)		Name of director/company secretary (print)

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

Executed by Registered Association Number in accordance with the <i>Associations Incorporation Reform Act 2012</i>		
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)

<Use this signing clause when the Licensee is a company incorporated in Australia with a sole director, delete if Licensee is an individual or is a company incorporated in Australia with more than one director>

Executed by ACN	
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Signature of Sole Director and Company Secretary
Name of Sole Director and Company Secretary (print)

Signature of witness
Name of witness (print)

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

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

Details

Item 1	School Council's Name & Address <Insert name of School Council, ABN and address>	
Item 2	Hirer's Name & Address <Insert name of Hirer, ABN and address>	
Item 3	Hired Area <Insert a description of the part of the Land to be hired >	
Item 4	Land <Insert full address of the school (of which the Hired Area forms part)>	
Item 5	Hire Fee <Insert Hire fee payable by the Hirer and whether it is per annum, per month, per day etc >	
Item 6	Security Deposit <Insert amount of security deposit (if any). If a security deposit is not required, insert "Nil">	
Item 7	Permitted Use <Describe the Hirer's permitted use of the Hired Area >	
Item 8	Date and Time of Use <Insert the date and time the Hirer may use the Hired Area>	
Item 9	Insurance	Public Liability Insurance of \$10 million for each event.
Item 10	School Council Representative <Insert as applicable >	Authorised Officer: Address: Tel: Fax: Email:
	Hirer Representative	Authorised Officer: Address: Tel: Fax: Email:
Item 11	Special Conditions <If special conditions are needed, delete the words 'Not applicable' and insert details >	Not Applicable

Annexure A Plan

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

SCHOOL COUNCIL STALL HOLDER AGREEMENT

Details:

Item 11	School Council's Name & Address	<Insert name of School Council, ABN and address>
Item 12	Stall Holder's Name & Address	<Insert name of Stall Holder, ABN and address>
Item 13	Stall Area	<Insert a description of the part of the land to be hired >
Item 14	Hire Fee	<Insert Hire fee payable by the Stall Holder >
Item 15	Permitted Use	<Describe the Stall Holder's permitted use of the Stall Area>
Item 16	Date and Time of Use	<Insert the date and time the Stall Holder may use the Stall Area>
Item 17	Insurance	Public and Products Liability Insurance of \$10 million for each event.
Item 18	School Council Representative	Authorised Officer: Address: Tel: Fax: Email:
	Stall Holder Representative	Authorised Officer: Address: Tel: Fax: Email:
Item 19	Special Conditions	<If additional special conditions are needed, insert details. If not, insert "Nil" >

Terms and Conditions:

Hire of Stall Area

The School Council grants the Stall Holder a right to use the Stall Area, subject to the terms and conditions of this Agreement.

Hire Fee and Use of Stall Area

The Stall Holder:

- (f) must pay the Hire Fee to the School Council within 14 days of receipt of the School Council's invoice;
- (g) may only use the Stall Area on the date and time listed in Item 16;
- (h) must not use or allow the Stall Area to be used for any purpose other than the Permitted Use;
- (i) acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the School Council regarding the suitability of the Stall Area for the conduct of the Permitted Use otherwise than as expressly contained in this Agreement, or for any other use;

- (j) must, at its own cost and in all respects, observe and comply with all Laws that apply to this Agreement and all directions, notices and requirements (including lawful notices, orders or directions) of any government agency relating to its use and occupation of the Stall Area;
- (k) must keep available for inspection by the School Council upon request, all licences, permits and registrations required for the carrying on of any activity by the Stall Holder in or upon the Stall Area;
- (l) must ensure the Stall Area is kept secure, clean and free from debris and rubbish;
- (m) must not do anything in or near the Stall Area or its vicinity which is noxious, offensive or a nuisance and not cause any injury or nuisance to neighbours;
- (n) must comply with all Department policies and guidelines which deal with the safety or health of persons on the Stall Area or otherwise under its control;
- (o) must observe fire precautions;

- (p) must at all times exercise due care, skill and judgement and act with the utmost good faith;
- (q) must not install any signs, fixtures or fittings; and
- (r) will be responsible for the cost of any damage to the Stall Area, or its surrounding areas (including any building, fixture, fitting or equipment) if such damage is caused by or contributed to the Stall Holder or the Stall Holder's breach of this Agreement.

Cancellation or Postponement

- (s) If, for any reason, the Stall Holder is unable to use the Stall Area on any date or time of use specified in Item 16 then the Stall Holder must immediately notify the School Council in writing. The Hire Fee will remain payable unless:
 - the Stall Holder gives the School Council 7 days prior Notice to the relevant date or time of use under Item 16; or
 - the Stall Area is re-hired for that same period.
- (t) If, for any reason, the School Council is unable to provide the Stall Area to the Stall Holder at the date and/or time of use specified in Item 16, then the School Council will give the Stall Holder Notice of cancellation or postponement.
- (u) If the School Council provides Notice of cancellation or postponement and the Stall Holder has paid the Hire Fee (whether in part or in full), then the School Council will refund to the Stall Holder that part (or whole) of the Hire Fee paid by the Stall Holder which the School Council, acting reasonably, represents the unused portion of that amount. Other than the refund of Hire Fee (if any) payable under this clause, the Stall Holder will not be entitled to any other payment and/or compensation for the School Council's cancellation or postponement under this clause.

Representatives

- (v) The School Council and Stall Holder each nominate the person specified in Item 18 as their respective representative who will be responsible for communications under this Agreement.
- (w) Either party may replace its representative by giving Notice to the other party.
- (x) A Notice must be in writing, signed by or on behalf of the party giving it and delivered to the representative of the other party set out in Item 8.

Requirements for Working with Children and Police Checks

- (y) The Stall Holder must (and must ensure that all persons engaged or used by it to work at the Stall Area and/or carry out the Permitted Use under this Agreement, including its Associates):
 - have undertaken a satisfactory working with children check if required pursuant to the *Working With Children Act 2005* (Vic) or as otherwise requested by the School Council;
 - 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.

Child Safe Standards

- (z) The parties acknowledge and agree that Victorian government schools are committed to:
 - creating child safe environments;
 - protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with their legal obligations, including Child Safety Laws.
- (aa) This clause only applies to the extent that the Stall Holder (and its Associates) are engaged in Child-connected work.
- (bb) The Stall Holder acknowledges that the School Council and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.
- (cc) If the Stall Holder is an Applicable Entity, it warrants to the School Council that it:
 - is compliant and will continue to comply with Child Safety Laws; and
 - will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Stall Holder (or its Associates).
- (dd) The Stall Holder (and its Associates) must:
 - if applicable (whether or not the Stall Holder must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and
 - comply with any reasonable direction by the School Council in respect to compliance by the School Council, School Staff and/or the Stall Holder with any Child Safety Laws or any relevant School Council Child Safety Policies.
- (ee) The School Council may terminate this Agreement immediately if, in the School's Council's reasonable opinion, it determines at any time that:
 - there is a breach of any Child Safety Laws caused by, or in any way connected with, the Stall Holder or its Associates; or
 - the Stall Holder or any of its Associates are not suitable to engage in Child-connected work for the purposes of the School Council and School Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

Insurance, Release and Indemnity

Insurance

- (ff) The Stall Holder must obtain and maintain the insurance set out in Item 17 in force during the Term.
- (gg) The Stall Holder 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.

- (hh) Within 10 days of the date of this Agreement, and immediately upon request by the School Council from time to time, the Stall Holder must provide the School Council with evidence of the currency of any insurance the Stall Holder is required to maintain under this Agreement.
- (ii) Clauses 3.2(ff), 3.2(hh), 0 and 0 do not apply if the Stall Holder 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 Stall Holder will occupy, use and keep the Stall Area at the risk of the Stall Holder and releases, to the fullest extent permitted by Law, 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 Stall Area, except to the extent that any accident, damage, injury or Loss is caused by the negligent or unlawful act, omission or default of the School Council.

Indemnity

- (jj) Subject to clause 2(cc), the Stall Holder at all times indemnifies and will continue to indemnify, hold harmless and defend the Department, the School Council and their respective Associates (in this clause, each an **Indemnified Party**) against any Losses which any Indemnified Party suffers or incurs as a result of any demand, suit, action, claim or proceeding against an Indemnified Party where the Losses arise as a direct or indirect result of any of the following:
- personal injury, including sickness and death;
 - property damage;
 - a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - fraudulent acts or omissions of the Stall Holder or its Associates;
 - any wilful misconduct or unlawful act or omission by the Stall Holder or its Associates; or
 - any third party claim arising out of a breach of this Agreement by the Stall Holder or its Associates (including breach of warranty) or any negligent act or omission of the Stall Holder or its Associates.
- (kk) To the extent that the indemnity in this clause refers to persons other than the School Council, the School Council holds this clause on trust for those other persons.
- (ll) The Stall Holder will not be liable under the indemnity in clause 3.2(jj) to the extent that the Loss results from:
- any fraudulent, negligent or deliberate act or omission of an Indemnified Party;
 - any breach of this Agreement by an Indemnified Party; or
 - the condition of the Stall Area before the date of this Agreement.

Default and Termination

If the Stall Holder fails to pay the Hire Fee on the due date set out in clause 3.2(f) or fails to perform or observe its obligations (whether express or implied) under this Agreement, then, without limiting any other right of the School Council, the School Council may, by Notice in writing to the Stall Holder:

- (mm) remedy the breach or default at the cost of the Stall Holder; and/or
- (nn) terminate this Agreement.

Consequences of expiry or termination of Agreement

- (oo) At the expiration or the earlier termination of this Agreement, the Stall Holder must remove all its property from the Stall Area and ensure that the Stall Area is in a condition consistent with the requirements in this Agreement.
- (pp) The expiry or termination of this Agreement does not affect:
- the School Council's rights in relation to a breach of this Agreement by the Stall Holder before the expiry or termination; and/or
 - the Stall Holder's obligation to make a payment under this Agreement for periods before the expiry or termination.

GST

Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Consideration is inclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are inclusive of GST. If GST is imposed on any supply made under or in accordance with this Agreement which is not expressed to be inclusive of GST, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Agreement, the Stall Holder must recalculate the amount payable on account of GST under clause 0 to take account of the adjustment event. The Stall Holder must issue an adjustment note to the School Council within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Stall Holder to the School Council, or by the School Council to the Stall Holder, as the case may be.

Other taxes

Subject to the other provisions of this Agreement, the Hire Fee include all taxes (other than GST), duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with

them) that may be levied, assessed, charged or collected in connection with this Agreement, to the extent applicable.

General

- (qq) The School Council may set off against any sum owing to the Stall Holder under this Agreement any amount then owing by the Stall Holder to the School Council.
- (rr) This Agreement 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.
- (ss) This Agreement may only be varied or replaced by agreement in writing.
- (tt) This Agreement is comprised of the following documents:
the special conditions (if any) contained in Item 9;
clauses 0 to 0 (inclusive);
any other documents or representations referred to in this Agreement or incorporated by reference.
- (uu) In the event and to the extent of any inconsistency between the documents listed in clause 3.2(a), the provisions of the earlier mentioned document will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.
- (vv) This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.
- (ww) The Stall Holder must not assign any right under this Agreement without the prior written consent of the School Council.

Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this agreement and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

Associates means, in respect of a party, any officer, employee, agent, delegate, 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 this Agreement.

Hire Fee means the amount specified in Item 14.

Item means an item of the details section of this Agreement.

Law means:

- (xx) the law in force in the State and the Commonwealth of Australia, including common law, legislation and subordinate legislation; and

ordinances, regulations and by-laws of relevant government agencies.

Loss means any liability, loss, damage, claim, action or expense (including all legal costs determined on a full indemnity basis) of any kind whatsoever.

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

Permitted Use means the permitted use of the Stall Area as specified in Item 15.

School means the school that the School Council represents and within which the Stall Area is located.

School Council means the school council set out in Item 11 and includes, where appropriate, its Associates.

School Council Child Safety Policies means any relevant School Council policies, codes, guidelines or associated documents that in any way relate to child safety, including any policies, codes, guidelines or associated documents that the School produces for the purpose of meeting its minimum child safety standards pursuant to section 5 of the Ministerial Order.

School Staff has the meaning given to it in section 4 of the Ministerial Order.

Stall Area means part of the School described in Item 13.

Stall Holder means the person or entity set out in Item 12 and includes, where appropriate, its Associates.

Interpretation

Unless expressed to the contrary, in this Agreement:

(yy) 'includes' means includes without limitation;

(zz) 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; and

(aaa) 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; and

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

Executed as an agreement.

School Council

Date:

<Insert date that School Council signs>

Signature of Principal or designated School Council Representative		Signature of Witness
Name (print)		Name of Witness (print)

Stall Holder

Date:

<Insert date that Stall Holder signs>

<Use this signing clause when the Stall Holder is a company incorporated in Australia with more than one director, delete if Stall Holder is not a company or is a company incorporated in Australia with a sole director>

Executed by ACN		
in accordance with s 127 of the <i>Corporations Act 2001</i>		
Signature of director		Signature of director/company secretary
Name of director (print)		Name of director/company secretary (print)

<Use this signing clause when the Stall Holder is an incorporated association, delete if Licensee is not>

Executed by Registered Association Number		
in accordance with the <i>Associations Incorporation Reform Act 2012</i>		
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)

<Use this signing clause when the Stall Holder is a company incorporated in Australia with a sole director, delete if Stall Holder is an individual or is a company incorporated in Australia with more than one director>

Executed by ACN
Signature of Sole Director and Company Secretary
Name of Sole Director and Company Secretary (print)

Signature of witness
Name of witness (print)

<Use this signing clause when the Stall Holder is an individual, delete if the Stall Holder is not>

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

School Council Licence

Between

The School Council listed in Item 20 of Schedule 1 (**School Council**)

and

The Licensee listed in Item 21 of Schedule 1 (**Licensee**)

Background

The Licensee wishes to use the Licensed Area for the Permitted Use.

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

(bbb) 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.

(ccc) 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

(ddd) The School Council and the Licensee each appoint the person listed as such in Item 32 as their respective representatives who will be responsible for communications under this Licence.

(eee) Either party may replace its representative by giving Notice to the other party.

(fff) The School Council representative and the Licensee representative have authority to:

exercise all of the powers and functions of his or her party under this Licence other than the power to amend this Licence; and

bind his or her party in relation to any matter arising out of or in connection with this Licence.

(ggg) 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:

(hhh) at the School Council's address specified in Item 20 (or to any other address as the School Council notifies the Licensee by Notice from time to time); and

(iii) at the times and in the manner set out in Item 26 (or at such other times or in such other manner as the School Council notifies the Licensee by Notice from time to time).

Rates and Taxes and Outgoings

(jjj) The Licensee must pay any Rates and Taxes for the Licensed Area.

(kkk) The party or parties specified in Item 27 must pay the Outgoings for the Licensed Area.

(lll) If an amount the Licensee has to pay relates to an area greater than the Licensed Area, the Licensee only has to pay the pro rata proportion of the amount. The Licensee's pro rata proportion is calculated by reference to the area of the Licensed Area compared to the area to which the Rates and Taxes or Outgoings relate, or such other proportion as the School Council, acting reasonably, may determine.

Security Deposit

(mmm) To secure the performance of the Licensee under this Licence the Licensee must pay the Security Deposit to the School Council on or before the Commencement Date.

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

(ooo) 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 level specified in Item 14.

(ppp) 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 or termination 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

(qqq) The Licensee may only use the Licensed Area for the Permitted Use.

(rrr) The Licensee may only use the Licensed Area during the Term during the Hours of Use and on the Dates and/or Days of Use (as applicable).

(sss) 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.

(ttt) 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 in addition to those listed in clauses 0 to 0 solely for the purposes of the Licensee's use of the Licensed Area.

Compliance with Laws

(uuu) The Licensee must, at its own expense and 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.

(vvv) 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 within the terms of this Licence.

Improvements and Fit Outs

(www) The Licensee acknowledges that:

subject to clause 0, 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.

(xxx) The Licensee must not and must not permit any other person to carry out any improvements, fit outs or works of any kind on the Land without the School Council's prior written consent, which consent will be at the absolute discretion of the School Council.

(yyy) In seeking the School Council's consent under clause 3.2(xxx) 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:

(zzz) not use the Licensed Area for any illegal purpose;

(aaaa) ensure the Licensed Area is kept secure, clean and free from debris and rubbish;

(bbbb) 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;

(cccc) 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;

(dddd) not overload the floor of the Licensed Area;

(eeee) 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;

(ffff) 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 all necessary planning and building permits from the relevant Government Agency;

(gggg) observe fire precautions;

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

- (iii) 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.

4. Repairs

- (a) Except for fair wear and tear, the Licensee must keep the Licensed Area clean and in the same condition as at the Commencement Date and properly repaired and maintained.
- (b) If the Licensed Area is damaged, the Licensee must promptly repair such damage to the extent that it is caused or contributed to by the Licensee.
- (c) If the Licensee fails to properly repair any damage it is responsible for in accordance with clause 2(r) 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.
- (d) 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 Exercise of Rights

- (e) The Licensee acknowledges that the School Council and its Associates have the right to:
 - enter and view the state of repair of the Licensed Area;
 - carry out any works that may be desirable or 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; 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 Licence or for any other lawful purpose.
- (f) 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.

Environmental Matters

- (g) The Licensee acknowledges that:
 - (i) the Licensee will occupy the Licensed Area in its present condition and has entered into this Licence on that basis; and
 - (ii) the School Council is not obliged to:
 - (A) remove, encapsulate or otherwise treat any asbestos which may be present in or on the improvements or any fixtures, fittings or installation in, to or on the Licensed Area; or
 - (B) remove, empty, clean or take any action in relation to any underground storage tank or tanks or associated pipes, valves or appliances or any Contamination in, on, or under the Licensed Area.
- (h) The Licensee releases and discharges the Department, School Council and their Associates, successors and assigns, from and against all claims arising after the date of the Licensee's occupation of the Licensed Area under this Licence which the Licensee has, may have, or which may accrue in the future or which, but for the execution of this Licence, the Licensee would or might have had against the Department, the School Council or their Associates, successors and assigns as a result of the presence of any asbestos or Contamination in, on or under the Licensed Area.
- (i) The Licensee at all times indemnifies and will continue to indemnify, hold harmless and defend the Department, the School Council and their respective Associates, successors and assigns (in this clause, each an **Indemnified Party**) against any Losses which any Indemnified Party suffers or incurs as a result of any claim resulting or arising after the date of the Licensee's occupation of the Licensed Area, in respect of the presence of any asbestos or other Contaminant in, on or under the Licensed Area (including any Losses incurred in relation to any notice, direction or order issued or made under the *Environment Protection Act 1970* or any other Law relating to the protection of the environment).
- (j) To the extent that the indemnity in this clause refers to persons other than the School Council, the School Council holds this clause on trust for those other persons.
- (k) Clauses 0(h) and 4(i) do not apply in respect of any claim made by any person arising from exposure to asbestos or any Contaminant on the Licensed Area prior to the date of the Licensee's occupation of the Licensed Area.

5. Requirement for Working with Children and Police Checks

- (a) The Licensee must (and must ensure that all persons engaged or used by it to work at the Licensed Area and/or carry out the Permitted Use under this Licence, including its Associates):
 - have undertaken a satisfactory working with children check if required pursuant to the *Working With*

Children Act 2005 (Vic) or as otherwise requested by the School Council;

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.

- (b) 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 Area and/or carrying out the Permitted Use under this Licence are consistent with the above obligations.

Child Safe Standards

The parties acknowledge and agree that Victorian government schools are committed to:

creating child safe environments;

protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with their legal obligations, including Child Safety Laws.

This clause only applies to the extent that the Licensee (and its Associates) are engaged in Child-connected work.

The Licensee acknowledges that the School Council and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.

If the Licensee is an Applicable Entity, it warrants to the School Council that it:

is compliant and will continue to comply with Child Safety Laws; and

will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Licensee (or its Associates).

The Licensee (and its Associates) must:

if applicable (whether or not the Licensee must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and

comply with any reasonable direction by the School Council in respect to compliance by the School Council, School Staff and/or the Licensee with any Child Safety Laws or any relevant School Council Child Safety Policies.

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

there is a breach of any Child Safety Laws caused by, or in any way connected with, the Licensee or its Associates; or

the Licensee or any of its Associates are not suitable to engage in Child-connected work for the purposes of the School Council and School Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

6. Reporting

- (a) Within a reasonable period following a request of the School Council, the Licensee must provide to the School Council any information and/or documentation it holds pertaining to this Licence.
- (b) The Licensee must immediately report by Notice to the School Council any:
- damage to, or accident in, the Licensed Area; and
- notice or report it has received in relation to the Licensed Area and provide a copy of such notice or report.

7. Insurance, Release and Indemnity

Insurance

- (a) The Licensee must obtain and maintain the insurance set out in Item 31 in force during the Term.
- (b) The Licensee must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the School Council or any other person.
- (c) Within 10 Business Days of the Commencement Date, and immediately upon request by the School Council from time to time, the Licensee must provide the School Council with evidence of the currency of any insurance the Licensee is required to maintain under this Licence.
- (d) Clauses 00, 03.2(hh), 0 and 0 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 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 accident, damage, injury or Loss is caused by the negligent or unlawful act, omission or default of the School Council.

Indemnity

- (e) Subject to clause 2(cc), the Licensee at all times indemnifies and will continue to indemnify, hold harmless and defend the Department, the School Council and their respective Associates (in this clause, each an **Indemnified Party**) against any Losses which any Indemnified Party suffers or incurs as a result of any demand, suit, action, claim or proceeding

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

personal injury, including sickness and death;

property damage;

a breach of an obligation of confidence or privacy, whether under this Licence or otherwise;

fraudulent acts or omissions of the Licensee or its Associates;

any wilful misconduct or unlawful act or omission by the Licensee or its Associates; or

any third party claim arising out of a breach of this Licence by the Licensee or its Associates (including breach of warranty) or any negligent act or omission of the Licensee or its Associates.

(f) To the extent that the indemnity in this clause refers to persons other than the School Council, the School Council holds this clause on trust for those other persons.

(g) The Licensee will not be liable under the indemnity in clause 02(aa) to the extent that the Loss results from:
any fraudulent, negligent or deliberate act or omission of an Indemnified Party;
any breach of this Licence by an Indemnified Party; or
the condition of the Licensed Area or the Land before the Commencement Date.

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.

Related Agreement

The School Council may terminate this Licence where an agreement between the parties regarding the provision of services from the Licensed Area by the Licensee ends for any reason (whether by agreement, breach, expiry or otherwise), provided that, in respect of expiry of such agreement, the School Council may not terminate this Licence for a period of 3 months from the date of expiry of the agreement referred to if negotiations are then underway for the renewal of the agreement.

Insolvency Event

The School Council may immediately terminate this Licence by Notice to the Licensee if the Licensee suffers an Insolvency Event.

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.

Default

(h) Where the Licensee breaches any of its obligations under this Licence, the School Council may give the Licensee a Notice:

specifying the default; and

requiring the Licensee to:

take steps to rectify the default; or

pay reasonable compensation to the School Council (where the School Council, acting reasonably, considers that the default is not capable of remedy),

within the cure period stated in the Notice, which must be reasonable having regard to the nature of the default, (collectively, the **Default Notice**).

If the Licensee does not comply with the Default Notice within the time specified in the notice, the School Council may terminate this Licence by Notice to the Licensee and require that the Licensee immediately vacate the Licensed Area, but without relieving the Licensee from liability for any breach or non-observance of any of its covenants.

Removal of Licensee's Property

The School Council may, on expiry or termination of the Term, 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 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.

Consequences of expiry or termination of Licence

(i) At the expiration or the earlier termination of the Term, 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.

(j) 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 3.2(www) 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.

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

(l) The expiry or termination of this Licence does not prejudice or affect:

any rights or remedies the School Council has against the Licensee for any earlier breach by the Licensee of any of its obligations under this Licence; and

the Licensee's obligation to make a payment under this Licence for periods prior to expiry or termination, as the case may be.

(m) Clauses 0, 0, 0, 0, 19, 0, 0, 0, 0, 9, 0, 0, 0 and 0 survive the termination or expiry of this Licence and may be enforced at any time.

8. Assignment and Sublicensing

This Licence is personal to the Licensee. The Licensee must not dispose of, deal with, transfer, novate or assign its rights 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:

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

provided that such licence is terminable by either party on one month's Notice expiring at any time.

Disputes

- (c) A party claiming that a dispute or disagreement has arisen under this Licence may give the other party a Dispute Notice.
- (d) A Dispute Notice may be withdrawn at any time by the party that gave the Dispute Notice.

- (e) 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.
- (f) 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 litigation.
- (g) If the parties fail to settle any dispute in accordance with clause 8(f), either party may pursue its rights at Law.
- (h) The School Council and Licensee will continue to perform their respective obligations under this Licence pending the resolution of a dispute under this clause.
- (i) The School Council and Licensee will not oppose any application for interlocutory relief pending resolution of a dispute under this clause.

Interest

- (j) 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.
- (k) 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

School Council's Confidential Information

The Licensee will keep the Confidential Information confidential and secure and will (and will ensure that its Associates will):

use and reproduce Confidential Information only to the extent necessary to perform its obligations under this Licence; and

not disclose or otherwise make available Confidential Information other than to its Associates who have a need to know the information to enable the Licensee to perform its obligations under this Licence.

All Confidential Information will remain the property of the School Council.

The Licensee acknowledges that the School Council will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Licensee of this clause 0 and without the need on the part of the School Council to prove any special damage.

Disclosure of Licensee's information

Subject to clause 0, the School Council agrees to treat as confidential all information of or relating to the Licensee that is provided to it by or on behalf of the

Licensee and which is identified in writing by the Licensee as confidential.

The Licensee consents to the School Council publishing or otherwise making available information in relation to the Licensee and this Licence as may be required:

in order to comply with the requirements of the Contract Publishing System;

to other Victorian Government departments and agencies or Ministers of the State of Victoria in connection with this Licence;

to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Licensee;

by the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) (**Auditor-General**) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic) (**Ombudsman**);

to comply with Law, including the *Freedom of Information Act 1982* (Vic); or

to the IBAC.

9. Privacy and Data Protection

- (a) The Licensee acknowledges that it will be bound by the Information Privacy Principles, any applicable Code of Practice and the Health Privacy Principles (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Licensee in connection with this Licence in the same way and to the same extent as the Privacy Obligation would have applied to the School Council in respect of that act or practice had it been directly done or engaged in by the School Council.
- (b) The Licensee acknowledges that the School Council is bound by the Protective Data Security Standards. The Licensee will not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to a contravention by the School Council in respect of any Data collected, held, used, managed, disclosed or transferred by the Licensee on behalf of the School Council under or in connection with this Licence.

Notices

- (c) A Notice must be in writing, signed by or on behalf of the party giving it and may be sent by post, courier, facsimile or by electronic mail as follows:
- to the School Council: to the School Council Representative, at the address which is set out in Item 13 of Schedule 1; and
- to the Licensee: to the Licensee Representative, at the address which is set out in Item 13 of Schedule 1.
- (d) 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 delivery in person or by courier, on delivery at the address of the addressee;

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

in the case of delivery by 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 electronic mail, if the receiving party has agreed to receipt in that form under this Licence and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when receipt of the message is recorded on the sender's computer.

- (e) If any Notice 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.

GST

Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Consideration is exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Licence are exclusive of GST. If GST is imposed on any supply made under or in accordance with this Licence which is not expressed to be inclusive of GST, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Licence.

Reimbursement

If this Licence requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Licence, the Licensee must recalculate the amount payable on account of GST under clause 2.5 to take account of the adjustment event. The Licensee must issue an adjustment note to the School Council within 28 days of

becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Licensee to the School Council, or by the School Council to the Licensee, as the case may be.

Other taxes

Subject to the other provisions of this Licence, the Licence Fees include all taxes (other than GST), duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with this Licence, to the extent applicable.

Conflict of Interest

The Licensee warrants that it does not, and will ensure that its Associates do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interest under this Licence.

The Licensee must promptly inform the School Council of any matter which may give rise to an actual or potential conflict of interest and comply with any reasonable directions given by the School Council in terms of dealing with that conflict.

The Licensee acknowledges and agrees that failure to comply with this clause 0 will constitute a breach of a fundamental term of 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.

Costs

Except as expressly stated otherwise in this Licence, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under 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

- (f) This Licence is comprised of the following documents:
 - the Special Conditions;
 - clauses 0 to 0 (inclusive);
 - Schedule 1 to this Licence; and
 - any other documents or representations referred to in this Licence or incorporated by reference.
- (g) In the event and to the extent of any inconsistency between the documents listed in clause 3.2(a), the provisions of the earlier mentioned document will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.
- (h) This Licence contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Licence was executed.
- (i) Except as otherwise provided in clause 3.2(a):
 - all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Licence are merged in and superseded by this Licence and are of no effect; and
 - no oral explanation or information provided by any party to another:
 - affects the meaning or interpretation of this Licence; or
 - constitutes any collateral agreement, warranty or understanding between any of the parties.

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 0, the Licensee must, in all publications, promotional and advertising materials and

public announcements, acknowledge the contribution of the School Council.

Relationship of parties

Nothing in this Licence creates a relationship of landlord and tenant between the 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.

No inducements

- (j) The Licensee will not, and will ensure that its Associates will not, directly or indirectly, offer, promise, agree to pay, give, accept, or solicit anything of value (including to or from any third party) in order to secure any reward or improper benefit other than payment for the performance of its obligations under this Licence.
- (k) The School Council may terminate this Licence immediately on Notice to the Licensee if the Licensee or any of its Associates are found to have engaged in any conduct under clause 9(j) and recover the amount of any loss resulting from such termination as a debt due from the Licensee.

Definitions and Interpretation

Definitions

In this Licence, unless the context otherwise requires:

Applicable Entity has the meaning given to it under section 3 of the *Child Wellbeing and Safety Act 2005* (Vic).

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

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

Child-connected work has the meaning given to it in section 4 of the Ministerial Order.

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

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

Commencement Date means the commencement date of this Licence set out in Item 24.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, the School Council, including any information designated or treated by the School Council as confidential, in its sole and absolute discretion, which is disclosed, made available, communicated or delivered to the Licensee in connection with this Licence, but excludes information which:

- (l) is in or which subsequently enters the public domain other than as a result of a breach of an obligation of confidentiality;

- (m) the Licensee can demonstrate was in its possession prior to the date of this Licence;
- (n) the Licensee can demonstrate was independently developed by the Licensee;
- (o) is lawfully obtained by the Licensee on a non-confidential basis from another person who is not bound by a confidentiality agreement with the School Council or otherwise prohibited from disclosing the information to the Licensee; or
- (p) is disclosed pursuant to Law.

Confidential Information includes any information (regardless of its form) that is:

- (q) personal information (as that term is defined in the PDP Act) relating to students of the School or personnel of the School and/or School Council and either of their Associates;
- (r) business information relating to the School and/or School Council; and
- (s) all copies of the information, notes or other records referred to in paragraphs (f) and (g) above.

Contaminant or **Contamination** means anything (including a solid, a liquid, a gas, an odour, temperature, sound, vibration or radiation) which makes or may make the Licensed Area, the Land or the Environment:

- (t) unsafe or unfit for humans or animals;
- (u) degraded in any way including in its capacity to support plant life; or
- (v) materially diminished in value.

Contract Publishing System means the system of the Victorian Government for publication of details of contracts entered into by Victorian Government departments and some agencies, including any replacement or amended system.

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

Dates and/or Days of Use means the dates and/or days when the Licensee may use the Licensed Area for the Permitted Use, as specified in Item 9. If no dates and/or days are specified in Item 9, the Licensee may use the Licensed Area on any date and/or days during the Term as agreed to in writing by the parties (and subject to any Hours of Use).

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

Default Notice has the meaning given to that term in clause 7(h).

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

Environment means the physical factors of the surroundings of, human/non-human life forms, including without limitation the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social and aesthetic values of landscapes.

Expiry Date means the expiry date of this Licence set out in Item 25.

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

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

Hours of Use means the hours when the Licensee may use the Licensed Area for the Permitted Use, as specified in Item 10. If no hours are specified in Item 10, the Licensee may use the Licensed Area during hours within the Term as agreed to in writing by the parties (and subject to any Dates and/or Days of Use).

IBAC means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission.

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

Insolvency Event means if the Licensee:

- (w) stops or suspends payment of all or a class of its debts;
- (x) is insolvent within the meaning of section 95A(2) of the Corporations Act;
- (y) 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;
- (z) 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
- (aa) 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 0.

Land means the land of which the Licensed Area forms part, as described in Item 23 and includes all rights, easements and appurtenances usually enjoyed with that land.

Law means:

- (bb) principles of law or equity established by decisions of courts within the Commonwealth of Australia;
- (cc) 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);

- (dd) the Constitution of the Commonwealth;
- (ee) binding requirements and mandatory approvals (including conditions) of the Commonwealth, the State of Victoria or a Government Agency which have the force of law; and
- (ff) guidelines of the Commonwealth, the State of Victoria or a Government Agency which have the force of law.

Licence means this licence agreement and includes the schedules and any annexures to it or documents incorporated by reference.

Licence Fee means the licence fee specified in Item 26.

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 22 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's Representative means the Licensee's representative nominated pursuant to clause 2(t).

Loss means any liability, loss, damage, claim, action or expense (including all legal costs determined on a full indemnity basis) of any kind whatsoever.

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

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

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.

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

Permitted Use means the use of the Licensed Area as specified in Item 30.

Plan means the plan attached as Annexure A.

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, but does not include Outgoings or GST.

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 which the School Council represents.

School Council Child Safety Policies means any relevant School Council policies, codes, guidelines or associated documents that in any way relate to child safety, including any policies, codes, guidelines or associated documents that the School produces for the purpose of meeting its minimum child safety standards pursuant to section 5 of the Ministerial Order.

School Council's Representative means the School Council's representative nominated pursuant to clause 0 from time to time.

School Staff has the meaning given to it in section 4 of the Ministerial Order.

Security Deposit means the amount specified in Item 14.

Special Conditions means the special conditions (if any) contained in Item 15.

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.

Interpretation

Unless expressed to the contrary, in this Licence:

- (gg) words in the singular include the plural and vice versa;
- (hh) any gender includes the other genders;
- (ii) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (jj) 'includes' means includes without limitation;
- (kk) headings are for guidance only and are to be ignored in interpreting this Licence;

- (ll) 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;
- (mm) the obligations of the Licensee, if more than one person, under this Licence are joint and several and each person constituting the Licensee acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Licence, of the other as if those acts or omissions were its own;
- (nn) the rights of the Licensee, if more than one person, under this Licence, including the right to payment, jointly benefit each person constituting the Licensee (and not severally or jointly and severally); and
- (oo) 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;
 - a party or parties is a reference to the School Council and the Licensee (as the case requires); and
- (pp) 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>

Signature of Principal or designated School Council Representative	Signature of Witness
Name (print)	Name of Witness (print)

Licensee

Date:

<insert date that Licensee signs>

<Use this signing clause when the Licensee is a company incorporated in Australia with more than one director, delete if Licensee is not a company or is a company incorporated in Australia with a sole director>

Executed by ACN	
in accordance with s 127 of the <i>Corporations Act 2001</i>	
Signature of director	Signature of director/company secretary
Name of director (print)	Name of director/company secretary (print)

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

Executed by Registered Association Number in accordance with the <i>Associations Incorporation Reform Act 2012</i>	
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)

<Use this signing clause when the Licensee is a company incorporated in Australia with a sole director, delete if Licensee is an individual or is a company incorporated in Australia with more than one director>

Executed by ACN
Signature of Sole Director and Company Secretary
Name of Sole Director and Company Secretary (print)

Signature of witness
Name of witness (print)

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

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

Licence Details

Item 20	Principal or designated School Council Representative Name <Insert name of School Council, ABN and address>	
Item 21	Licensee's Name <Insert registered name of Licensee (including ACN (if a company) or registered association number (if an incorporated association), and address>	
Item 22	Licensed Area <Insert description of part of Land which is to be licensed to the Licensee>	
Item 23	Land <Insert full address of the school/Licensed Area>	
Item 24	Commencement Date <Insert the date the Licence is to commence>	
Item 25	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>	
Item 26	Licence Fee <Insert details of the licence fee payable. If the licence fee is to be increased during the term this should be way of a fixed amount. For example: Year 1: \$100.00 per month (GST inclusive); Year 2: \$110.00 per month (GST inclusive); and Year 3: \$120.00 per month (GST inclusive) Amend and delete payment frequency as relevant>	\$ (plus any GST, Rate and Taxes) per week/month/annum payable weekly/monthly/annually in advance
Item 27	Party responsible for Outgoings: <Insert Licensee or School Council as relevant>	
Item 28	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">	
Item 29	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">	
Item 30	Permitted Use <Describe the Licensee's permitted use of the Licensed Area>	
Item 31	Insurance	Public Liability Insurance \$10 million per event.
Item 32	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:
Item 33	Security Deposit <Insert amount of safety deposit (if any). If a security deposit is not required, insert "Nil">	
Item 34	Special Conditions <If special conditions are needed, delete the words 'Not applicable' and insert details >	Not Applicable