



KENSINGTON PRIMARY SCHOOL

School Council Licence Policy

RATIONALE

The School Council Licence Policy

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

and

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

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

Agreed terms

1. Grant of Licence

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

2. Representatives

- (a) The School Council and the Licensee each appoint the person listed in Item 13 as their respective representatives who will be responsible for communications under this Licence on behalf of the School Council.
- (b) Either party may replace its representative by giving Notice to the other party.

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

3. Licence Fee

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

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

4. Rates and Taxes and Outgoings

- (a) The Licensee must pay any Rates and Taxes for the Licensed Area.
- (b) The party or parties specified in Item 8 must pay the Outgoings for the Licensed Area.

5. Security Deposit

- (a) 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.
- (b) If the Licensee breaches any of the Licensee's obligations under this Licence and the School Council incurs any Costs, Loss, damage or Liability (or acquires any other entitlement to payment from the Licensee), the School Council may, if the default remains unremedied 10 Business Days after Notice of default has been given to the Licensee, draw on the Security Deposit without further Notice to the Licensee to make good such Costs, Loss, damage or Liability.
- (c) If the School Council draws on the Security Deposit, the Licensee must replace the amount drawn down within 10 Business Days to maintain the Security Deposit at the required level.
- (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 Licensee when each of the following have been satisfied:
 - (i) *60 days have elapsed since the expiry of this Licence;*
 - (ii) *the Licensee has vacated the Licensed Area in accordance with this Licence including satisfying all of its reinstatement obligations; and*
 - (iii) *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.*

6. Use of Licensed Area

- (a) If Dates and/or Days of Use are listed in Item 9 and/or Hours of Use are listed in Item 10, the Licensee may only use the Licensed Area during the Term on those dates, days and/or hours (as applicable).
- (b) The Licensee acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the School Council regarding the suitability of the Licensed Area for the conduct of the Permitted Use otherwise than as expressly contained in this Licence, or for any other use.
- (c) The Licensee:
 - (i) *must only use and occupy the Licensed Area;*
 - (ii) *may access other parts of the School in common with others and being solely those parts of the School required for the purpose of accessing the Licensed Area;*

- (iii) *acknowledges that if the Licensed Area includes external areas (for example, playgrounds and ovals), School amenities, kitchen facilities, carparks and/or staff facilities, these areas will be used and occupied together with other occupiers of the School; and*
- (iv) *acknowledges that the School Council may grant its consent, which consent will be at the absolute discretion of the School Council, for the Licensee to use other areas of the School for the purposes of the Licensee's use of the Licensed Area.*

7. Compliance with Laws

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

8. Improvements and Fit Outs

- (a) The Licensee acknowledges that:
 - (i) *subject to clause 18, 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*
 - (ii) *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.*
- (b) The Licensee must not and must not permit any other person to carry out any improvements on the Land without the School Council's prior written consent, which consent will be at the absolute discretion of the School Council.
- (c) In seeking the School Council's consent the Licensee must submit any plans and specifications of the proposed improvements or fit outs on the Licensed Area for the approval of the School Council.

9. Licensee's Obligations

The Licensee must:

- (a) only use the Licensed Area for the Permitted Use;
- (b) not use the Licensed Area for any illegal purpose;

- (c) ensure the Licensed Area is kept secure, clean and free from debris and rubbish;
- (d) 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;
- (e) 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;
- (f) not overload the floor of the Licensed Area;
- (g) 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;
- (h) not erect, display, affix or exhibit on or at the Licensed Area any signs except for signs that comply with all Laws and then only after obtaining the School Council's written approval and necessary planning and building permits from the relevant Government Agency;
- (i) observe fire precautions;
- (j) at all times exercise due care, skill and judgement and act with the utmost good faith;
- (k) 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.
10. **Repairs**
- (a) Except for fair wear and tear, the Licensee must keep the Licensed Area clean and in the same condition as at the start of this Licence and properly repaired and maintained.
- (b) The Licensee must promptly repair damage to the Licensed Area to the extent caused or contributed to by the Licensee.
- (c) If the Licensee fails to properly repair any such damage it is responsible for under this clause within a reasonable time then the School Council may do so and the Licensee must immediately reimburse the School Council the cost of such repairs.
- (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.
11. **School Council's Reservations and Exercise of Rights**
- (a) The School Council reserves the right for the School Council and its Associates to:
- (i) *view the state of repair of the Licensed Area;*
- (ii) *carry out any works that may be required to comply with any applicable Law or Requirement;*
- (iii) *show the Licensed Area to prospective licensees, lessees or purchasers;*
- (iv) *create any registered or unregistered easement or other right over the Land or Licensed Area, as long as it does not adversely affect the Licensee's rights under this Licence; and*
- (v) *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*
- (vi) *enter the Land and the Licensed Area for the purposes set out in this clause or for any other lawful purpose.*
- (b) Except in an emergency, the School Council must:
- (i) *give the Licensee reasonable notice of the School Council's intended exercise of the rights set out in this clause;*
- (ii) *only exercise the rights set out in this clause, at reasonable times; and*
- (iii) *minimise interference to the Licensee when exercising the rights set out in this clause.*
12. **Requirement for Working with Children and Police Checks**
- (a) The Licensee must ensure that all persons engaged or used by it to work at the Licensed Premises and/or carry out the Permitted Use under this Licence:
- (i) *if required by the Working with Children Act, have undertaken a satisfactory working with children check;*
- (ii) *if required by the School Council, have undertaken a satisfactory police records check; and*
- (iii) *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 Premises and/or carry out the Permitted Use under this Licence are consistent with the above obligations.

- 13. Reporting**
- (a) At the request of the School Council, the Licensee must provide to the School Council within a reasonable period any information and/or documentation it holds pertaining to this Licence.
- (b) The Licensee must immediately report by Notice to the School Council:
- (i) *any damage to, or accident in, the Licensed Area; and*
- (ii) *of any notice or report it has received in relation to the Licensed Area and provide a copy of such notice or report.*
- (iii) *any loss of or damage to property of any kind to the extent it is caused by the act or omission of the Licensee in connection with this Licence; or*
- (iv) *the Licensee's breach of this Licence.*
- (b) The Licensee will not be liable under the indemnity in clause 14.3(a) to the extent that a Claim or Liability results from:
- (i) *any fraudulent, negligent or deliberate act or omission of the School Council or its Associates;*
- (ii) *any breach of this Licence by the School Council or its Associates; or*
- (iii) *the condition of the Licensed Area or the Land before the Commencement Date.*
- (c) The indemnity given by the Licensee under this clause 14.3 is a continuing obligation, separate and independent from the other obligations of the Licensee, and survives expiry or termination of this Licence.
- 14. Insurance, Release and Indemnity**
- 14.1 Insurance**
- (a) The Licensee must keep the insurance set out in Item 12 in force during the Term.
- (b) The Licensee must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the School Council or any other person.
- (c) Within 10 Business Days of the Commencement Date of this Licence, and immediately upon the request by the School Council from time to time, the Licensee must provide the School Council with evidence of the Licensee's insurance required under this Licence.
- (d) Clauses 14.1(a), 14.1(c), 14.2 and 14.3 do not apply if the Licensee is insured by VMIA or is a municipal council within the meaning of the *Local Government Act 1989 (Vic)* and is insured by Liability Mutual Insurance.
- 14.2 Release**
- The Licensee will occupy, use and keep the Licensed Area at the risk of the Licensee and releases, to the fullest extent permitted by Law, the School Council and its Associates from all Claims and demands of any kind for or resulting from any accident, damage, loss or injury occurring in or on the Licensed Area, except to the extent that any damage, injury or loss is caused by the negligent or unlawful act, omission or default of the School Council.
- 14.3 Indemnity**
- (a) Subject to clause 14.3(b), the Licensee must indemnify and keep indemnified the School Council and its Associates from and against all Claims that the Licensee or its Associates suffer or incur in respect of or arising from:
- (i) *any negligent act or negligent omission of the Licensee in connection with this Licence;*
- (ii) *any loss, injury, illness or damage to persons (including death) including any member of the public or any third party to the extent it is caused by the act or omission of the Licensee in connection with this Licence;*
- 15. Termination Events**
- 15.1 Damage, destruction, interruption or inaccessibility**
- In the event that the Licensed Area is damaged or destroyed or there is interruption to access to the Licensed Area so as to render the Licensed Area or any part of the Licensed Area wholly or substantially unfit for the Permitted Use and otherwise unfit for the occupation or use of the Licensee or inaccessible by any usual means of access, the School Council, in its absolute discretion may terminate this Licence by Notice to the Licensee.
- 15.2 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 whether by agreement, breach, expiry or otherwise except that 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.
- 15.3 By Agreement**
- The School Council and Licensee may terminate this Licence at any time by written agreement.
- 15.4 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.
- 16. Default**
- (a) Where the Licensee breaches any of its obligations under this Licence or an Insolvency Event occurs, the School Council may give the Licensee a Notice:
- (i) *specifying the default; and*

(ii) **requiring the Licensee to:**

- (A) take steps to rectify the default; or
- (B) pay reasonable compensation to the School Council (where the School Council reasonably considers that the default is not capable of remedy),

within a cure period stated in the Notice that is reasonable in the circumstances, (collectively, the "Default Notice").

- (b) **If the Licensee does not comply with the Default Notice within time, thereafter the School Council may re-enter the Licensed Area and terminate this Licence, but without relieving the Licensee from liability for any breach or non observance of any of its covenants.**

- (c) **The termination of this Licence for default does not affect:**

- (i) ***the School Council's rights arising out of a breach of this Licence by the Licensee before the termination; or***
- (ii) ***the Licensee's obligation to make a payment under this Licence for periods before the termination.***

17. Removal of Licensee's Property on Re-entry

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

18. Licensee's Obligations on the Expiry or End of Licence

- (a) **At the expiration or the earlier termination of this Licence, the Licensee must surrender and yield up the Licensed Area (and all keys, including card keys) to the School Council:**

- (i) ***clean and free from rubbish; and***
- (ii) ***in a condition consistent with the Licensee's performance and observance of all relevant covenants relating to the Licensed Area under this Licence.***

- (b) **Unless the:**

- (i) ***Licensee has been granted a new licence in respect of the Licensed Area; or***
- (ii) ***School Council directs in writing to the Licensee that any of the improvements made on the Licensed Area by the Licensee under this Licence are to remain on the Licensed***

Area and are not to be demolished in which case clause 8(a) will apply,

the Licensee at its cost must:

- (iii) ***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***
 - (iv) ***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.***
- (c) **Until the Licensee has demolished all relevant improvements and removed its property, the Licensee must continue to pay the Licence Money in full.**
- (d) **The ending of this Licence does not prejudice or affect any rights or remedies the School Council has against the Licensee, for any earlier breach by the Licensee of any of its obligations under this Licence.**

19. Assignment and Sublicensing

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

20. 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.**

21. Disputes

- (a) **A party claiming that a dispute or disagreement has arisen under this Licence may give the other party a Dispute Notice.**
- (b) **A Dispute Notice may be withdrawn at any time by the party that gave the Dispute Notice.**
- (c) **Within 10 Business Days of the date of issue of the Dispute Notice, the parties must enter into good faith discussions in an attempt to resolve the issues between them.**
- (d) **If the parties have not resolved the dispute within 20 Business Days of the date of issue of the Dispute Notice, the parties agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial**

Disputes Centre (ACDC) in accordance with ACDC's guidelines, before having recourse to expert determination or litigation.

- (e) If the parties fail to settle any dispute in accordance with clause 21(c), either party may refer the dispute for expert determination.
- (f) If a dispute is referred for expert determination the Expert will be requested by the party giving the Dispute Notice.
- (g) The Expert:
 - (i) *will fix and inform the School Council and Licensee of a time for the parties to present their respective positions to the Expert. Unless otherwise agreed between the parties, the parties must present their respective positions to the Expert no later than 5 Business Days after the Expert's appointment;*
 - (ii) *must make a determination or finding in respect of the dispute within 10 Business Days after the parties have presented their respective positions. Any determination of a dispute by the Expert will include a determination as to the award of costs and will be binding on all parties; and*
 - (iii) *will act as an expert and not an arbitrator.*
- (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 by the Expert under this clause.

22. Interest

- (a) 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.
- (b) 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)*.

23. Confidentiality

- (a) Subject to clause 23(b), the Licensee must keep confidential:
 - (i) *the terms and conditions of this Licence; and*
 - (ii) *any information provided to the Licensee by the School Council in connection with this Licence, including but not limited to:*
 - (A) personal information relating to students of the School;

- (B) personal and business information relating to the School Council or the School or its employees, respectively; and

(iii) *information treated by the School Council or the School as confidential.*

- (b) The Licensee may make disclosures as it, acting reasonably, considers necessary to:
 - (i) *its professional advisers, bankers, financial advisers, financiers, investors and potential investors if those persons undertake to keep information disclosed confidential;*
 - (ii) *comply with Laws; and*
 - (iii) *any of its employees to whom it deems necessary to disclose the information if that employee undertakes to keep the information confidential.*
- (c) The Licensee's obligations under this clause 23 are continuing obligations, separate and independent from the other obligations of the Licensee and survive the expiry or termination of this Licence.

24. Privacy

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

25. Notices

- (a) A Notice must:
 - (i) *be in writing;*
 - (ii) *signed by or on behalf of the party giving it; and*
 - (iii) *hand delivered to the address of the addressee or sent by post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee or, if the addressee notifies another address or facsimile number, then to that address or facsimile number.*
- (b) A Notice takes effect from the time it is received, unless a later time is specified in it. A Notice will be deemed to have been received by the addressee:
 - (i) *in the case of hand delivery, on delivery at the address of the addressee;*
 - (ii) *in the case of post, on the second (seventh if posted to or from a place outside Australia) Business Day after posting; and*
 - (iii) *in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates*

that the facsimile was sent in its entirety to the facsimile number of the recipient.

- (c) If any notice or document is delivered or deemed to be delivered:

- (i) *after 5.00 pm in the place of receipt; or*
 (ii) *on a day which is a Saturday, Sunday or public holiday in the place of receipt,*

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

26. Special Conditions

Any special condition set out in Item 15:

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

27. GST

- (a) In this clause, expressions set out in italics have the same meaning as those expressions in the GST Act.
 (b) An amount payable under this Licence by a party to the other party, in respect of a *supply* which is a *taxable supply*, represents the GST exclusive value of the *supply*.
 (c) The party who receives a *taxable supply* under this Licence from the *supplier* must, upon receipt of a *tax invoice* from the *supplier*, pay GST to the *supplier* in addition to the GST exclusive value of the *supply*.
 (d) Any penalty or interest payable as a result of late payment of any GST payable under this Licence is payable by the party who is the cause of the late payment.
 (e) If the *supplier* is entitled to an *input tax credit* for any GST recoverable from the other party under this Licence, the amount of GST payable by the other party is to be reduced by the amount of the *input tax credit* which the *supplier* has received or is entitled to receive.

28. Conflict of Interest

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

29. General

29.1 Amendment

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

29.2 Waiver and exercise of rights

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

29.3 Other Costs

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

29.4 Severability

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

29.5 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.

29.6 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.

29.7 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.

29.8 Counterparts

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

29.9 Entire understanding

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

29.10 Publicity

The Licensee must not make any public announcement or media release in respect of any aspect of this Licence without the prior written approval by the School Council. Without limitation, if permission to publish is granted pursuant this clause 29.10, the Licensee must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

29.11 Relationship of parties

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

29.12 Survival

The expiry or termination of this Licence does not affect:

- (a) **the School Council's rights for a breach of this Licence by the Licensee before the expiry or termination; and**
- (b) **the Licensee's obligation to make a payment under this Licence for periods before the expiry or termination.**

30. Definitions and Interpretation

30.1 Definitions

In this Licence, unless the context otherwise requires:

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

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

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

Code of Practice means a code of practice as defined in, and approved under, the *Information Privacy Act 2000 (Vic)*.

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

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

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

Department means the Department of Education and Early Childhood Development in the State of Victoria.

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

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

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

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

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

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

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

Information Privacy Principles means the information privacy principles set out in the *Information Privacy Act 2000 (Vic)*.

Insolvency Event means if the Licensee:

- (a) stops or suspends payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A(2) of the Corporations Act;
- (c) 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;
- (d) 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
- (e) 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 4 and includes all rights, easements and appurtenances usually enjoyed with that land.

Law means:

- (f) principles of law or equity established by decisions of courts within the Commonwealth of Australia;
- (g) 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)*;
- (h) the Constitution of the Commonwealth;
- (i) 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
- (j) guidelines of the Commonwealth, the State of Victoria or a Government Agency which have the force of law.

Liability means any debt, obligation, Cost, expense, Loss, damage, compensation, charge or liability of any kind,

including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Licence means this licence agreement.

Licence Fee means the licence fee specified in Item 7.

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

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

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

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

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

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

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

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

Plan means the plan attached as Annexure A.

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

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

Schedule means any schedule(s) to this Licence.

School means the School administered by the School Council.

School Council means the School Council specified in Item 1 and, where appropriate, the employees or agents of the School Council or other authorised persons.

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

Security Deposit means the amount specified in Item 14.

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

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

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

30.2 Interpretation

Unless expressed to the contrary, in this Licence:

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

Executed as a deed.

School Council

Date:

<Insert date that School Council signs>

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

Licensee

Date:

<insert date that Licensee signs>

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

Executed by the Licensee in accordance with s 127 of the <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 the Licensee 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 an individual, delete if the Licensee is not>

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

Licence Details

Item 1	School Council's Name <Insert name of School Council, ABN and address>	
Item 2	Licensee's Name <Insert registered name of Licensee (including ACN (if a company) or registered association number (if an incorporated association), and address>	
Item 3	Licensed Area <Insert description of part of Land which is to be licensed to the Licensee>	
Item 4	Land <Insert full address of the school/Licensed Area>	
Item 5	Commencement Date <Insert the date the Licence is to commence>	
Item 6	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 7	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>	\$ (GST inclusive/exclusive) per week/month/annum payable weekly/monthly/annually in advance
Item 8	Party responsible for Outgoings: <Insert Licensee or School Council as relevant>	
Item 9	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 10	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 11	Permitted Use <Describe the Licensee's permitted use of the Licensed Area>	

Item 12	Insurance	Public Liability Insurance \$10 million per each event.
Item 13	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 14	Security Deposit <Insert amount of safety deposit (if any). If a security deposit is not required, insert "Nil">	
Item 15	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 licensed shown in hatched lines>

BROAD GUIDELINES:

IMPLEMENTATION:

EVALUATION:

This Policy was approved by School Council: