School Council Licence Agreement
Outside School Hours Care Service

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

Between

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

and

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

Background

This Licence sets out the terms under which the Licensee may use school facilities to provide an Outside School Hours Care (OSHC) service on a regular basis.

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 subject to the terms and conditions set out in this Licence.

C. This Licence recognises that building a positive working relationship between the Licensee and the School Council reflects both parties' roles and responsibilities towards the school community, including meeting the individual needs of children and their families, and relies on ongoing communication and information sharing between the Licensee and the School. Accordingly, the terms of this Licence facilitate an ongoing reporting relationship between the Licensee and the School Council, including quarterly meetings and specific circumstances where the Licensee must report compliance notices issued by the Victorian Regulatory Authority.

Agreed terms

1. Grant of Licence

(a) The School Council grants to 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 confer no 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 as such in Item 15 of Schedule 1 as their respective representatives who will be responsible for communications under this Licence.

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

(c) The School Council's Representative and the Licensee's Representative have authority to:

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

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

(d) The Licensee must comply with any instruction or direction given by the School Council's Representative.

3. Term

This Licence commences on the Commencement Date and ends on the Expiry Date, unless terminated earlier or extended in accordance with this Licence, including any holding over pursuant to clause 28.

4. Further Term

(a) The School Council may at its discretion extend this Licence for one or more Further Term(s) if:

(i) there is no unremedied breach of this Licence by the Licensee of which the School Council has given the Licensee notice;

(ii) the Licensee has not persistently committed breaches of this Licence of which the School Council has given the Licensee notice; and

(iii) the Licensee has made a written request for the renewal to the School Council, not earlier than six (6) months and not later than three (3) months before the Expiry Date.

(b) Each Further Term:

(i) commences on the date that the then current Term ends; and

(ii) will be on the same terms and conditions as this Licence (other than any changes to the Licence Fees applicable at a Review Date and excluding, in respect of the final Further Term, this clause 4).

5. Licence Fee

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

(a) at the School Council's address specified in Item 15 of Schedule 1 (or to any other address as the School Council notifies the Licensee by Notice from time to time); and

(b) without demand by the School Council at the times and in the manner set out in Item 7 of Schedule 1 (or at such other times or in such other manner as the School Council notifies the Licensee by Notice from time to time).

6. 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 of Schedule 1 must pay the Outgoings for the Licensed Area.

(c) 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.

7. Review of Licence Fee

(a) On each Review Date, the Licence Fee will increase by 3%.

(b) The Licensee must ensure that, on and from each Review Date, the Licence Fee it pays to the School Council is adjusted in accordance with clause 7(a).

8. 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 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.

(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 level specified in Item 16 of Schedule 1.

(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 criteria have been satisfied:

(i) 60 days have elapsed since the expiry or termination 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.

9. Use of Licensed Area

(a) The Licensee:

(i) must only use and occupy the Licensed Area;

(ii) 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);

(iii) 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;

(iv) 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;

(v) 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 9(a)(i) to 9(a)(iii) solely for the purposes of the Licensee's use of the Licensed Area;

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

(vii) must observe fire precautions, including taking any fire precautionary measures required by Law;

(viii) must ensure that all external doors and windows are secured and locked and all lights, heating and/or cooling is extinguished daily at the end of its use of the Licensed Area;

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

(x) 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.

(b) The Licensee must not:

(i) use or allow the Licensed Area to be used for any purpose other than the Permitted Use;

(ii) 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 approval (which approval is at the absolute discretion of the School Council) and all necessary planning and building permits from the relevant Government Agency;

(iii) install any fixtures or fittings, except those necessary for the Permitted Use, without the School Council's written consent (which consent is at the absolute discretion of the School Council);

(iv) keep or use chemicals, inflammable liquids, acids or other hazardous things on the Licensed Area except for the Permitted Use, or create fire hazards;

(v) 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 the, or surrounding the, Licensed Area; or

(vi) overload the floor of the Licensed Area.

10. Licensee's Obligations

Operation of Education and Care Service

(a) The Licensee must:

(i) conduct the Permitted Use in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent,

expert and experienced provider of an Education and Care Service;

(ii) carry on the Permitted Use to the reasonable satisfaction of, and in accordance with the requirements of, the School Council;

(iii) ensure that all its Associates engaged by the Licensee in connection with the Permitted Use are suitably qualified and experienced, and act to the best of their skill and ability and in accordance with the accepted professional standards for persons having those qualifications and experience;

(iv) act in good faith and in the best interests of the School Council;

(v) ensure that the Permitted Use is compliant with the National Quality Standard;

(vi) provide a reasonable selection and quantity of nutritional and wholesome foodstuffs which comply with the requirements of publications issued by the Department from time to time (or its successor) and the reasonable requirements of the School Council; and

(vii) not provide any foodstuffs which the School Council has previously required the Licensee not to provide.

Education and Care Service Fees

(b) The Licensee:

(i) may charge the Education and Care Service Fees; and

(ii) must not vary the Education and Care Service Fees except in accordance with the mechanism set out in Item 2 of Schedule 2.

Family Violence Risk Assessment and Risk Management Framework (MARAM)

(c) If the Licensee is a Framework Organisation or an Agency under the FVP Act it warrants to the School Council that:

(i) it will Align its relevant policies, procedures, practice guidance and tools with the Approved Framework as amended from time to time; and

(ii) it will maintain Alignment of its relevant policies, procedures, practice guidance and tools with the Approved Framework during the Term of this Licence.

11. Compliance with Laws

The Licensee must:

(a) 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 the 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) 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;

(c) strictly observe and comply with the *Occupational Health and Safety Act 2004* (Vic) and any other Law relating to the Permitted Use; and

(d) not use the Licensed Area for any illegal purpose.

12. Repairs

(a) Except for fair wear and tear, the Licensee must keep the Licensed Area clean and in the same condition as it was 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 12(b) within a reasonable time then the School Council may do so and the Licensee must reimburse the School Council the cost of such repairs on demand.

(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.

13. Improvements and Fit Outs

(a) The Licensee acknowledges that:

(i) subject to clause 27, 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, fit outs or works of any kind on the Licensed Area 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 under clause 13(b) 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.

(d) The School Council may give consent under clause 13(b) subject to any conditions the School Council sees fit, which may include the Licensee satisfying the following requirements:

(i) in carrying out any improvements or fit outs to the Licensed Area the Licensee must comply with all reasonable directions of the School Council in accordance with the consent given by the School Council and such directions may include requirements and approvals in relation to materials and contractors or tradespeople to be used for the improvements or fit outs;

(ii) any improvements or fit outs will be at the cost of the Licensee;

(iii) any improvements or fit outs must be executed promptly and continuously in a proper and workmanlike manner, in accordance with all Laws and Requirements and strictly in accordance with the consent given by the School Council;

(iv) the Licensee must pay, on demand, all costs incurred by the School Council in considering and inspecting the improvements and its supervision, including the costs of architects, engineers or other building consultants reasonably engaged by or on behalf of the School Council;

(v) the Licensee must obtain and keep current and comply with all necessary approvals or permits from all Government Agencies necessary to enable any improvements or fit outs to be lawfully effected, and must on request by the School Council produce for inspection by the School Council copies of all such approvals and permits;

(vi) within 30 days of completion of the improvements or fit outs, the Licensee must obtain and produce to the School Council, any unconditional certificates of compliance or of satisfactory completion issued by relevant Government Agencies and a certificate by a consultant approved by the School Council that the improvements or fit outs have been carried out in accordance with all of the plans and specifications approved by the School Council;

(vii) the improvements or fit outs must be completed within the time period (if any) specified by the School Council, acting reasonably;

(viii) in carrying out any improvement or fit out works the Licensee and/or any third party engaged to undertake the whole, or any part, of the improvements or fit outs, must ensure that they have all necessary and adequate insurance relating to the works in undertaking the improvements or fit outs; and

(ix) the Licensee must note the interest of the State of Victoria, the Minister for Education and the School Council on all insurance policies effected under clause 13(d)(viii) and must immediately provide evidence of all such insurance policies to the School Council.

14. School Council's Exercise of Rights

(a) The Licensee acknowledges that the School Council and the School Council's Associates have the right to:

(i) enter and view the state of repair of the Licensed Area;

(ii) carry out any works that may be desirable or required to comply with any applicable Law or Requirement or this Licence;

(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;

(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 reimburse the School Council the costs to the School Council in undertaking such obligations on demand; and

(vi) enter the Land and the Licensed Area for the purposes set out in this Licence 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.

15. Environmental Matters

(a) 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.

(b) 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.

(c) The Licensee at all times indemnifies and will continue to indemnify, hold harmless and defend to the fullest extent permissible by Law, 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 2017* or any other Law relating to the protection of the environment).

(d) 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.

(e) Clauses 1.1(b) and 15(c) 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.

16. 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):

(i) have undertaken a satisfactory working with children check if required pursuant to the *Worker Screening Act 2020* (Vic) or as otherwise requested by the School Council;

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

17. Child Safe Standards

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

(i) creating child safe environments; and

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

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

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

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

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

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

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

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

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

(f) The School Council may terminate this Licence immediately if, in the School'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 Licensee or its Associates; or

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

18. Reporting

The Licensee must:

(a) on the Commencement Date, provide the School Council with a current and certified copy of:

(i) any approvals required under applicable Laws to conduct the Permitted Use from the Licensed Area, if the School Council is not the applicant and holder of such approvals; and

(ii) any licences or approvals required under applicable Laws for the Licensee to operate an Education and Care Service;

(b) immediately report by Notice to the School Council any:

(i) damage to, or accident in, the Licensed Area; and

(ii) notice or report it has received in relation to the Licensed Area and provide a copy of such notice or report;

(c) immediately inform the School Council by Notice if:

(i) an approval required under applicable Laws to conduct the Permitted Use from the Licensed Area, where the School Council is not the applicant and holder of such an approval, is suspended, cancelled, terminated or expires; or

(ii) a licence or approval required under applicable Laws for the Licensee to operate an Education and Care Service is suspended, cancelled, terminated or expires;

(d) immediately inform, and provide a current and certified copy to, the School Council by Notice of any new, or any revocation or variation of any existing, condition or restriction in:

(i) an approval required under applicable Laws to conduct the Permitted Use from the Licensed Area, where the School Council is not the applicant and holder of such an approval; or

(ii) a licence or approval required under applicable Laws for the Licensee to operate an Education and Care Service;

(e) comply with the reporting requirements specified in Schedule 3; and

(f) keep the School Council informed of all matters of which it ought reasonably be made aware, and provide such information in relation to Permitted Use as may reasonably be required by the School Council.

19. Release of Information

The Licensee authorises the School Council to contact any competent authority, including the Victorian Regulatory Authority, in relation to the Licensee's conducting of the Permitted Use and for that competent authority to release to the School Council, without any other approval, any information held by the competent authority in relation to the Licensee.

20. Meetings

The Licensee's Representative must meet with the School Council's Representative and/or OSHC subcommittee (where the School Council has established an OSHC subcommittee) every three (3) months or as otherwise reasonably required by the School Council to discuss the Permitted Use and any other matters relating to this Licence. The Licensee must provide the information listed in Schedule 4 at each meeting.

21. Insurance, Release and Indemnity

Insurance

(a) The Licensee must:

(i) obtain and maintain the insurance set out in Item 14 of Schedule 1 for the duration of the Term.

(ii) 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.

(iii) Within 10 Business Days of the Commencement Date, and upon each renewal of the insurance, the Licensee must provide the School Council with evidence of the currency of any insurance the Licensee is required to maintain under this Licence.

(b) Clause 21(a) does 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

(c) 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

(d) Subject to clause 1.1(f) the Licensee at all times indemnifies and will continue to indemnify, hold harmless and defend to the fullest extent permissible by Law, 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 Licence or otherwise;

(iv) fraudulent acts or omissions of the Licensee or its Associates;

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

(vi) 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.

(e) 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.

(f) The Licensee will not be liable under the indemnity in clause 1.1(d) 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 Licence by an Indemnified Party; or

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

22. Default Notice

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

(i) specifying the default; and

(ii) requiring the Licensee to take steps to rectify the default within seven days of the date of the Notice (or earlier if the School Council reasonably requires), which must be reasonable having regard to the nature of the default,

(collectively, the **Default Notice**).

(b) If the Licensee fails to comply with a Default Notice within the time specified in the Default Notice, the School Council may pay the monies and/or do the things that are required to comply with the Default Notice, and:

(i) for the purpose of doing any such thing, the School Council may enter and remain on the Licensed Area; and

(ii) the School Council may recover on demand from the Licensee the amount paid and the Cost to the School Council and to any other person incurred together with all incidental expenses,

without prejudice to any other right or remedy which the School Council has or may have for any non-payment or non-performance by the Licensee (including any rights under clause 23).

23. Termination Events

23.1 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.

23.2 Approvals

(a) This Licence may be immediately terminated by either party if:

(i) an approval required under applicable Laws to conduct an Education and Care Service in the Licensed Area; or

(ii) a licence or approval required under applicable Laws for the Licensee to operate an Education and Care Service,

is suspended, cancelled, terminated or expires.

(b) The Licensee cannot exercise its right to terminate under this clause where the Licensee has caused or materially contributed to the event giving rise to the right of termination.

23.3 Insolvency Event

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

23.4 By Agreement

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

23.5 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.

23.6 National Quality Standard

The School Council may terminate this Licence on three months' Notice to the Licensee if the Licensee receives:

(a) a 'Significant Improvement Required' National Quality Standard service rating; or

(b) two consecutive 'Working Towards National Quality Standard' service ratings.

23.7 Default

(a) If

(i) the Licensee breaches a material provision of this Licence, or commits a breach of this Licence that in the reasonable opinion of the School Council cannot be remedied; or

(ii) the Licensee does not comply with a Default Notice issued by the School Council under clause 1.1(a) within the time specified in the Default 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 obligations.

(b) In addition to the School Council's rights under clause (a), if the School Council terminates this Licence because of the Licensee's failure to comply with a Default Notice within the time specified in the Default Notice, the School Council may sue the Licensee for damages for loss of the benefit of performance of this Licence for the balance of the Term, but must use reasonable endeavours to mitigate its loss.

23.8 Prevailing Community Standards

In addition to the School Council's rights under clause 23, the School Council may terminate this Licence immediately by Notice to the Licensee if the Licensee commits any act or does anything that is contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or brings the reputation of the Licensee into disrepute and as a consequence the School Council believes that the School's continued association with the Licensee will be prejudicial or otherwise detrimental to the reputation of the School.

23.9 Termination for Convenience

The School Council may terminate this Licence without cause by giving the Licensee 3 months' Notice. If the School Council terminates the Licence pursuant to this clause 23.9, the School Council will pay the unavoidable and

substantiated costs incurred by the Licensee as a direct result of the termination, excluding any loss of profit. The Licensee must immediately comply with any directions given in the Notice and do all that is possible to mitigate its losses arising from the termination of the Licence.

24. 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.

25. Re-Entry by School Council not to Constitute Forfeiture

If the Licensee vacates the Licensed Area during the Term (whether or not the Licensee ceases to pay the Licence Fee) then, in the absence of:

(a) a written notice by the School Council accepting a surrender of the Licensee's interest under this Licence; or

(b) a formal notice of forfeiture or re-entry being served on the Licensee by the School Council,

neither acceptance of the keys nor entry into the Licensed Area by the School Council or by any person on the School Council's behalf:

(c) for the purpose of inspection;

(d) for the purpose of showing the Licensed Area to prospective licensees; or

(e) the advertising of the Licensed Area for reletting,

will constitute a re-entry or forfeiture or waiver of the School Council's rights to recover in full all amounts (including Licence Fees) payable by the Licensee under this Licence and this Licence is deemed to continue in full force and effect until the date from which a new licensee or tenant actually commences to occupy the Licensed Area or the date on which the Term ends, whichever occurs first, and any entry by the School Council until that date is deemed an entry with the permission of the Licensee. If a new licensee or tenant occupies the Licensed Area during the Term, the Licensee must pay the School Council the difference (if any) between the Licence Fee and the licence fee or rent paid by the new licensee or tenant until the end of the Term.

26. Interest

(a) The Licensee must pay interest on any money payable by it under this Licence from the due date until the amount is paid 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).

27. Consequences of expiry or termination of Licence

(a) 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:

(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 or lease 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 1.1(a) will apply,

(c) the Licensee at its cost must:

(i) 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 including landscaping, vegetation and drainage as required by the School Council; and

(ii) remove all of its property in a proper and workmanlike manner in compliance with the applicable Law and Requirements and to the satisfaction of the School Council.

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

(e) The Licensee must not cause or contribute to any damage to the Licensed Area or the Land while demolishing or removing any of the improvements or its property. If the Licensee does so, it must make good that damage and leave the Licensed Area and the Land in a condition that is acceptable to the School Council (acting reasonably) and to all Government Agencies.

(f) If the Licensee fails to comply with clause 27(e) within a reasonable time, the School Council may make good that damage at the cost of and as agent for the Licensee. The School Council can recover the reasonable costs of doing so from the Licensee which is payable by the Licensee on demand by the School Council.

(g) If the Licensee fails to remove the improvements in accordance with this clause or if the School Council re-enters the Licensed Area, the School Council may at its own option (and without prejudice to any other rights it may have):

(i) demolish and remove the improvements;

(ii) treat the improvements as if the Licensee had abandoned its interest in them and they have become the property of the School Council, and deal with them in such manner as the School Council thinks fit without being liable in any way to account to the Licensee for them; and

(iii) without being guilty of any manner of trespass, cause any of the Licensee's property to be removed and stored in such manner as is reasonable at the risk and at the cost of the Licensee and/or at the option of the School Council sell them as the attorney of the Licensee and appropriate the proceeds of sale in payment of any Licence Fee or other money owing by the Licensee to the School Council and pay any residue without interest to the Licensee.

(h) The Licensee must:

(i) indemnify and keep indemnified the School Council in respect of the reasonable cost of the removal and storage of the Licensee's property, the cost of demolishing and removing the improvements and also in respect of all claims which the School Council may suffer or incur at the suit of any person (other than the Licensee) claiming an interest in the Licensed Area or the Licensee's property by reason of the School Council acting in any manner permitted in this clause; and

(ii) pay to the School Council on demand any reasonable costs incurred by the School Council in exercising its rights pursuant to this clause, including any excess of costs over moneys received in disposal of the Licensee's property pursuant to the School Council's rights contained in clause 27(g) except to the extent caused by any negligent act or omission of the School Council.

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

(i) 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

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

(j) Clauses 8, 15, 21, 24, 25, 26, 27, 28, 30, 32, 34, and 36 survive the termination or expiry of this Licence and may be enforced at any time.

28. Holding Over

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

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

(a) 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, and payable monthly in advance,

provided that such licence is terminable by either party on one month's Notice expiring at any time, in addition to any other rights that the parties may have to terminate the licence in accordance with clause 23.

29. 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 is at the absolute discretion of the School Council, and if granted, may be granted subject to such conditions as the School Council see fit to impose.

30. Confidentiality

30.1 School Council's Confidential Information

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

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

(ii) 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.

(b) All Confidential Information will remain the property of the School Council.

(c) The Licensee acknowledges that the School Council will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Licensee of this clause 30.1 and without the need on the part of the School Council to prove any special damage.

30.2 Disclosure of Licensee's information

(a) Subject to clause 30.2(b), the School Council agrees to treat as confidential all information of or relating to the Licensee that is provided to it by or on behalf of the Licensee and which is identified in writing by the Licensee as confidential.

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

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

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

(iii) 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;

(iv) 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**);

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

(vi) to the IBAC.

31. 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 any dispute is unable to be resolved 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 Resolution Institute, Victorian Chapter, before having recourse to litigation.

(e) If the parties fail to settle any dispute in accordance with clause 1.1(d), either party may pursue its rights at Law.

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

(g) The School Council and Licensee will not oppose any application for interlocutory relief pending resolution of a dispute under this clause.

32. 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 those Privacy Obligations 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.

33. Notices

(a) A Notice must be in writing, signed by or on behalf of the party giving it and may be sent by post, courier or by electronic mail as follows:

(i) to the School Council: to the School Council's Representative, at the address which is set out in Item 15 of Schedule 1; and

(ii) to the Licensee: to the Licensee's Representative, at the address which is set out in Item 15 of Schedule 1.

(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 delivery in person or by courier, on delivery at the address of the addressee;

(ii) in the case of delivery by post, on the third Business Day after posting; and

(iii) in the case of electronic mail, if 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.

(c) If any Notice is delivered or deemed to be delivered:

(i) after 5.00 pm in the place of receipt; or

(ii) on a day which not a Business Day in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is a Business Day in that place.

34. GST

34.1 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).

34.2 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.

34.3 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.

34.4 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 34.2 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.

34.5 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.

35. Conflict of Interest

(a) 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.

(b) 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.

(c) The Licensee acknowledges and agrees that failure to comply with this clause 35 will constitute a breach of a fundamental term of this Licence.

36.1 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.

36.2 Amendment

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

36.3 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.

36.4 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.

36.5 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.

36.6 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.

36.7 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.

36.8 Counterparts

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

36.9 Entire understanding

(a) This Licence is comprised of the following documents:

(i) the Special Conditions (if any);

(ii) clauses 1 to 37 (inclusive);

(iii) Schedule 1 to 4 to this Licence; 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 36.9(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 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.

(d) Except as otherwise provided in clause 34.5(a):

(i) 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

(ii) no oral explanation or information provided by any party to another:

(A) affects the meaning or interpretation of this Licence; or

(B) constitutes any collateral agreement, warranty or understanding between any of the parties.

36.10 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 36.10 the Licensee must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

36.11 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.

36.12 No inducements

(a) 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.

(b) 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 34.5(a) and recover the amount of any loss resulting from such termination as a debt due from the Licensee.

36.13 Demand not required

Unless this Licence provides otherwise, the School Council need not make demand for any amount payable by the Licensee under this Licence.

36.14 Electronic execution

(a) Each party acknowledges and agrees to the signing of this Licence by electronic means. The parties agree to be legally bound by this Licence signed this way.

(b) This Licence constitutes an original document in an electronic format and will have the same legal effect, validity and enforceability as a document signed by signature affixed by hand.

37.1 Definitions

In this Licence, unless the context otherwise requires:

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

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

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

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

Associates means, 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 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, Victoria.

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

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

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 5 of Schedule 1.

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:

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

(b) the Licensee can demonstrate was in its possession prior to the date of this Licence;

(c) the Licensee can demonstrate was independently developed by the Licensee;

(d) 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

(e) is disclosed pursuant to Law.

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

(a) 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;

(b) business information relating to the School and/or School Council; and

(c) 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:

(a) unsafe or unfit for humans or animals;

(b) degraded in any way including in its capacity to support plant life; or

(c) 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 9of Schedule 1. If no dates and/or days are specified in Item 9 of Schedule 1, 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).

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

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

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.

Education and Care Service means a children's care service that is established to care for or educate school children outside school hours on school days, or on non-school or pupil-free days.

Education and Care Service Fees means any of the fees charged by the Licensee to parents or guardians using the Education and Care Service set out in Schedule 2.

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 6 of Schedule 1.

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

Further Term means the further term(s) set out in Item 12 of Schedule 1.

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

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

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

Hours of Use means the hours when the Licensee may use the Licensed Area for the Permitted Use, as specified in Item 10of Schedule 1. If no hours are specified in Item 10of Schedule 1, 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:

(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) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless the debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure or the statutory demand is set aside;

(d) has an administrator appointed over all or any of its assets or undertakings;

(e) has 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;

(f) 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

(g) 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.

Land means the land of which the Licensed Area forms part, as described in Item 4of Schedule 1, and includes all rights, easements and appurtenances usually enjoyed with that land.

Law means:

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

(b) statutes, regulations, by-laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, State of Victoria, any local government or a Government Agency, including the *Education and Care Services National Law Act 2010*

(c) the Constitution of the Commonwealth;

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

(e) 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 7of Schedule 1.

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 of Schedule 1 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 from time to time.

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 1359 (as amended or replaced from time to time).

National Quality Framework means the National Quality Framework implemented by the Australian Children's Education and Care Quality Authority.

National Quality Standard means the National Quality Standard prescribed to assess education and care services to determine rating levels for services.

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 11 of Schedule 1.

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 Land or in connection with the Land, 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 requirement is addressed or directed but if not addressed to the Licensee then the Licensee must be given a copy.

Review Date means the review date(s) specified in Item 13of Schedule 1 or, if no date is specified, on each anniversary of the Commencement Date.

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 the Ministerial Order.

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

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

Security Deposit means the security deposit referred to in clause 8 and specified in Item 16of Schedule 1.

Special Conditions means the special conditions (if any) contained in 22Item 17 of Schedule 1.

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.

Victorian Regulatory Authority means the Quality Assessment and Regulation Division of the Department of Education and Training, which is the authority responsible for administering the National Quality Framework in Victoria.

37.2 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) 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;

(h) 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

(i) 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;

(v) a party or parties is a reference to the School Council and the Licensee (as the case requires); and

(vi) "$", "dollars" or "AUD" is a reference to the lawful currency of the Commonwealth of Australia; and

(j) 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.

[**Note to user:** please ensure that all highlights are actioned and deleted. Please remove all other notes - including these instructions]

Executed as a deed.

Signed by a duly authorised officer of the **School Council** who by signing this Licence using an electronic signature acknowledges that, on signing using that method, the authorised officer is signing on behalf of the School Council which will be bound by the Licence:

.....	.....
Signature of authorised officer	Name of authorised officer (print)
.....	.....
Date	Position of authorised officer

[**Option 1:** use this signing clause when the Licensee is a **company** incorporated in Australia with more than one director and is signing through directors, or a director and company secretary. Delete if not used]

Signed by [**Licensee name**], ACN [**insert ACN**] in accordance with s127(1) of the *Corporations Act 2001* (Cth).

.....	.....
Signature of Director	Signature of Company Secretary/Director
.....	.....
Name of Director (print)	Name of Company Secretary/Director (print)
.....	
Date	

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

Signed by [**Licensee name**], Registered Association Number [**insert Number**] in accordance with the *Associations Incorporation Reform Act 2012* by its duly authorised officer who by singing this Licence using an electronic signature acknowledges that, on signing using that method, the authorised officer is signing on behalf of the Licensee which will be bound by the Licence.

.....	.....
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)
……	……
Date	Date

[**Option 3:** use this signing clause when the Licensee is a **company** incorporated in Australia with a sole director. Delete if not used]

Signed by [**Licensee name**], ACN [**insert ACN**]

……	……
Signature of Sole Director and Company Secretary	Signature of witness
……	……
Name of Sole Director and Company Secretary (print)	Name of witness (print)
……	
Date	

[**Option 4:** use this signing clause when the Licensee is an **individual** signing electronically. Delete if not used]

Signed by [**Licensee name**] who consents to entering into the Licence using an electronic signature and acknowledges that, on signing using that method, they are bound by the Licence.

……
Signature of Licensee

……
Date

Schedule 1 Licence Details

Item 1	**School Council's Name**	[Insert full 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 clear description of part of Land which is to be licensed to the Licensee] [For example: rooms 104 and 105] See Annexure A
Item 4	**Land**	[Insert full address of the school/Licensed Area]
Item 5	**Commencement Date**	[Insert the date the Licence is to commence in format of Day Month Year]
Item 6	**Expiry Date**	[Insert the date that the Licence is to expire. Two years may be extended if the School Council wishes.] Two years from Commencement Date
Item 7	**Licence Fee**	[Amend and delete as relevant. Must include how and when payment will be made. May be included as a Schedule] $ (plus any GST and Rates and Taxes) 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". If this is limited, include set up time if required]
Item 11	**Permitted Use**	Operation of an Education and Care Service consisting of an outside school hours children's service for students enrolled at the School or such other students approved by the School Council (in writing) in accordance with this Licence.
Item 12	**Further Term**	[Insert the number of further options/terms available to the Licensee. If the School does not want to grant any further terms, insert "Nil"] One Year
Item 13	**Licence Fee Review Date**	[Insert the date(s) that the Licence Fee will increase by 3% (ie, annually on the anniversary of the Commencement Date or on the exercise of a further term). If the School does not wish to increase the Licence Fee, insert "Not applicable"]

Item 14	**Insurance**	**Public Liability Insurance** $10 million per event. **Property Insurance** Insurance cover for the reinstatement or replacement value of the Licensee's own property against the destruction of or damage of such property which is housed, stored, kept or used in or at the Licensed Area. **WorkCover Insurance** Insurance in accordance with the requirements of the *Accident Compensation Act 1985* (Vic) and the *Accident Compensation (Work Cover Insurance) Act 1993 (Vic)* which provide the Associates of the Licensee (including equivalent cover for volunteers) with cover against personal injury or sickness arising from provided goods or services or working in or on the Licensed Area.
Item 15	**School Council's Representative and Address for Service** [Ideally the Principal rather than the School Council President]	Authorised Officer: Address: Tel: Email:
	Licensee's Representative and Address for Service	Authorised Officer: Address: Tel: Email:
Item 16	**Security Deposit**	[Insert amount of safety deposit (if any). If a security deposit is not required, insert "Nil"]
Item 17	**Special Conditions** [If the Licensee is a trustee of a trust or if other special conditions are needed, delete the words 'Not applicable' and insert details]	Not applicable OR **Trustee Provisions** If the Licensee has entered into this Licence as trustee of a trust ("Trust"), the Licensee: (a) enters into the Licence personally and in its capacity as trustee; (b) warrants that it has power under the trust deed of the Trust to enter into and observe its obligations under this Licence; (c) charges all rights of indemnity which it has, or will have from time to time, against the trust fund or trust property; (d) warrants that such rights of indemnity have not been excluded by the provisions of the trust deed or by any breach of trust or otherwise; and

		(e) warrants that it will not release or otherwise prejudice such rights of indemnity.

Schedule 2

1. Education and Care Service Fees

[update as required]

Standard Fees [insert not applicable as appropriate]				
Fee (per session, GST exclusive) [Note: amounts do not include any rebates or discounts]	**Before School Care**	**After School Care**	**Holiday Program / Vacation Care**	**Student Free Days**
Other Fees and Charges [insert if applicable and how calculated]				
Fee (GST exclusive)	**Late Cancellation Fees**	**Cancellation Fees**	**Late Booking Fees**	**Other Charges**

2. Procedure for Variation of Education and Care Service Fees

2.1 Increases

(a) The Licensee must submit in writing to the School Council any request to increase any of the Education and Care Service Fees set out in this Schedule 2. Such requests must include evidence to substantiate the basis of the proposed fee increase, for example, based on CPI increases or increases in labour award rates.

(b) The School Council may, at its sole discretion, accept or reject the increase request without providing any rationale for its decision. The Licensee may only increase the relevant Education and Care Service Fees in accordance with any approval provided from the School Council.

2.2 Decreases

The Licensee may decrease any of the Education and Care Service Fees at any time provided it has notified the School Council in writing of the intended decrease, including the effective date(s).

Schedule 3 Licensee's Reporting Obligations

1. Initial Reporting

Within 30 days of the Commencement Date, the Licensee must provide the School Council a written report containing the following:

(a) result of any National Quality Framework audits; and
(b) for all persons engaged or used by it to work at the Licensed Area and/or carry out the Permitted Use, the following details and documents:
    (i) name;
    (ii) qualifications; and
    (iii) copy of current assessment notice issued by the Department of Justice and Regulation.

2. Annual Reporting

The Licensee must, within 30 days of each anniversary of the Commencement Date, provide a copy of the report listed in Item 1 of this Schedule 3 to the School Council

3. Mandatory Reporting

The Licensee must notify the School Council in writing if any of the following events occur within two Business Days of the occurrence:

(a) the Licensee is charged with a criminal or regulatory offence, found guilty by court, cautioned, fined, or otherwise pursued by either the police, local authority or other regulatory body or subject to enforcement activity.
(b) incidents, injuries or issues that have impacted in the health, safety or wellbeing of any child;
(c) occupational health and safety matters; and
(d) any formal compliance directive issued to the Licensee by Victorian Regulatory Authority in connection with the Education and Care Service.

4. Other Reporting

The Licensee must, within ten Business Days of receiving a written request from the School Council, provide to the School Council a written report detailing the following:

(a) average utilisation rate for each session of education and care provided;
(b) details of children enrolled in the Education and Care Service including their attendance;
(c) copy of educator rosters;
(d) all complaints received since the Commencement Date, any action taken to resolve these complaints and the timeframes for resolution;
(e) child, parent and staff feedback;
(f) details/results relating to any National Quality Framework audit conducted in connection with the Education and Care Service; and
(g) any information and/or documentation it holds pertaining to this Licence

Schedule 4 Meeting Requirements

At each quarterly meeting with the School Council, the Licensee must provide information on the following for the preceding three month period,

(a) usage levels and vacancies
(b) all complaints, action taken to resolve complaints and the timeframe for resolution;
(c) child waiting lists;
(d) National Quality Standard assessment and rating reports;
(e) any breaches or non-compliance with the National Quality Framework requirements;
(f) programming changes;
(g) staffing;
(h) policy changes; and
(i) any incidents.

Annexure A Plan

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