



SCHOOL COUNCIL HIRE AGREEMENT



Between

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

and

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

Background

- A. The Hirer wishes to use the Hired Area for the Permitted Use.
- B. The School Council has agreed to hire the Hired Area to the Hirer in accordance with the terms and conditions set out in this Agreement.

Agreed terms

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

The Hirer:

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

The Hirer must pay the Hire Fee to the School Council within 14 days of receipt of the School Council's invoice.
4. **Security Deposit**
 - (a) To secure the performance of the Hirer under this Agreement the Hirer must pay the Security Deposit to the School Council on or before the Commencement Date.
 - (b) If the Hirer breaches any of the Hirer's obligations under this Agreement and the School Council incurs any Losses (or acquires any other entitlement to payment from the Hirer), the School Council may, if the default remains unremedied 10 Business Days after Default Notice has been given to the Hirer, draw on the Security Deposit without further Notice to the Hirer to make good such Loss.
 - (c) If the School Council draws on the Security Deposit, the Hirer must replace the amount drawn down within 10 Business Days to maintain the Security Deposit at the level specified in Item 6.
 - (d) Subject to any right the School Council has to draw on the Security Deposit, the School Council must return the Security Deposit to the Hirer when each of the following have been satisfied:
 - (i) 60 days have elapsed since the expiry or termination of this Agreement;

- (ii) the Hirer has vacated the Hired Area in accordance with this Agreement, including satisfying all of its reinstatement obligations; and
- (iii) the Hirer has no outstanding obligations under this Agreement or subsisting breach of this Agreement or any actual or potential liability for any breach or non-performance of any of the Hirer's obligations under this Agreement.

5. Cancellation or Postponement by Hirer

If, for any reason, the Hirer is unable to use the Hired Area on any date or time of use specified in Item 8 then the Hirer must immediately notify the School Council in writing. The Hire Fee will remain payable unless:

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

6. Cancellation or Postponement by School Council

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

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

(b) Other than the refund of Hire Fee (if any) payable under clause 6(a)(i) or 6(a)(ii), the Hirer will not be entitled to any other payment and/or compensation for the School Council's cancellation or postponement under this clause

7. Termination by School Council

- (a) The School Council may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Hirer reasonable written notice.
- (b) If the Agreement is terminated pursuant to clause 7(a), the School Council will pay the Hirer the unavoidable and substantiated costs incurred by the Hirer as a direct result of the termination, excluding any loss of profit, and the School Council has no other liability to the Hirer in relation to that termination.
- (c) When the School Council issues a notice under clause 17.1(a), the Supplier will immediately comply

with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of this Agreement.

8. Hirer's Obligations

The Hirer must:

- (a) at its own cost in all respects observe and comply with all Laws that apply to this Agreement and all directions, notices and Requirements of any Government Agency relating to its use and occupation of the Hired Area;
- (b) keep available for inspection by the School Council upon request, all licences, permits and registrations required for the carrying on of any activity by the Hirer in or upon the Hired Area;
- (c) not install any fixtures or fittings;
- (d) not use the Hired Area for any illegal purpose;
- (e) ensure the Hired Area is kept secure, clean and free from debris and rubbish;
- (f) not do anything in or near the Hired Area or the Land which is noxious, offensive or a nuisance and not cause any injury or nuisance to neighbours or other occupiers of, or surrounding, the Hired Area;
- (g) not keep or use chemicals, inflammable liquids, acids or other hazardous things on the Hired Area except for the Permitted Use, or create fire hazards;
- (h) not overload the floor of the Hired Area;
- (i) comply with all Department, School and School Council policies and/or guidelines which deal with safety or health of persons on the Hired Area or otherwise under its control;
- (j) not erect, display, affix or exhibit on or at the Hired Area any signs except for signs that comply with all Laws and then only after obtaining the School Council's written approval and all necessary planning and building permits from the relevant Government Agency;
- (k) observe fire precautions;
- (l) at all times exercise due care, skill and judgement and act with the utmost good faith; and
- (m) ensure that all external doors and windows are secured and locked and all lights extinguished daily at the end of its use of the Hired Area.

9. Repairs and Damage to the Hired Area

- (a) The Hirer must keep the Hired Area clean and in the same condition as at the Commencement Date and properly repaired and maintained.
- (b) If the Hired Area is damaged, the Hirer must promptly repair such damage to the extent that it is caused or contributed to by the Hirer.
- (c) If the Hirer fails to properly repair any damage it is responsible for in accordance with clause 9(b)9(b)

within a reasonable time then the School Council may do so and the Hirer must immediately reimburse the School Council the cost of such repairs.

10. Representatives

- (a) The School Council and the Hirer each appoint the person listed as such in Item 10 as their respective representative (**Representatives**) who will be responsible for communications under this Agreement.
- (b) Either party may replace its representative by giving Notice to the other party.
- (c) The Hirer must comply with any instruction or direction given by the School Council's representative.

11. Insurance, Release and Indemnity

11.1 Insurance

- (a) The Hirer must obtain and maintain the insurances set out in Item 9 in force during the Agreement.
- (b) The Hirer must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the School Council or any other person.
- (c) Within 10 Business Days of the Commencement Date, and immediately upon request by the School Council from time to time, the Hirer must provide the School Council with evidence of the currency of any insurance the Hirer is required to maintain under this Agreement.
- (d) Clauses 11.1(a), 11.1(c), 11.2 and 11.3 do not apply if the Hirer is insured by VMIA or is a municipal council within the meaning of the *Local Government Act 1989* (Vic) and is insured by Liability Mutual Insurance.

11.2 Release

The Hirer will occupy, use and keep the Hired Area at the risk of the Hirer and releases, to the fullest extent permitted by Law, the School Council and its Associates from all claims and demands of any kind for or resulting from any accident, damage, Loss or injury occurring in or on the Hired Area, except to the extent that any accident, damage, injury or Loss is caused by the negligent or unlawful act omission or default of the School Council.

11.3 Indemnity

- (a) Subject to clause 11.3(c), the Hirer at all times indemnifies and will continue to indemnify, hold harmless and defend the Department, the School Council and their respective Associates (in this clause, each an **Indemnified Party**) against any Losses which any Indemnified Party suffers or incurs as a result of any demand, suit, action, claim or proceeding against an Indemnified Party where the Losses arise as a direct or indirect result of any of the following:
 - (i) personal injury, including sickness and death;
 - (ii) property damage;

- (iii) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (iv) fraudulent acts or omissions of the Hirer or its Associates;
 - (v) any wilful misconduct or unlawful act or omission by the Hirer or its Associates; or
 - (vi) any third party claim arising out of a breach of this Agreement by the Hirer or its Associates (including breach of warranty) or any negligent act or omission of the Hirer or its Associates.
- (b) 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.
 - (c) The Hirer will not be liable under the indemnity in clause 11.3(a) to the extent that the Loss results from:
 - (i) any fraudulent, negligent or deliberate act or omission of an Indemnified Party;
 - (ii) any breach of this Agreement by an Indemnified Party; or
 - (iii) the condition of the Hired Area or the Land before the Commencement Date.

12. Default and Termination

12.1 Insolvency Event

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

12.2 Default

If:

- (a) the Hirer has failed to pay the Hire Fee on the due date set out in clause 3; or
 - (b) the Hirer fails to perform or observe its obligations (whether express or implied) under this Agreement; or
- then, without limiting any other right of the School Council, the School Council may, by Notice in writing to the Hirer:
- (c) remedy the breach or default at the cost of the Hirer; and/or
 - (d) terminate this Agreement,

and the School Council's exercise of any right under this clause 12 is without prejudice to any other right, remedy or liability which it has or may have for any other non-payment or non-performance by the Hirer under this Agreement.

13. Consequences of expiry or termination of Agreement

- (a) At the expiration or the earlier termination of this Agreement, the Hirer must remove all its property from the Hired Area and ensure that the Hired Area is in a condition consistent with the requirements in this Agreement.

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- (b) The expiry or termination of this Agreement does not affect:
- (i) the School Council's rights in relation to a breach of this Agreement by the Hirer before the expiry or termination; and/or
 - (ii) the Hirer's obligation to make a payment under this Agreement for periods before the expiry or termination.

14. Notices

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

15. Negation of Warranties

- (a) The Hirer acknowledges that it has entered into this Agreement solely on the basis of the terms and conditions in this Agreement and that no warranties, representations or promises have been made by the School Council or its agents.
- (b) Without limiting clause 15(a) the Hirer acknowledges that:
 - (i) no warranties have been given by the School Council that the Hired Area is suitable for the Permitted Use; and
 - (ii) subject to the terms and conditions of this Agreement, the Hirer must do all things necessary to enable the Hired Area to be used for the Permitted Use.

16. GST

16.1 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).

16.2 Consideration is inclusive of GST

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

16.3 Reimbursement

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

respect of the Reimbursable Expense plus any GST payable by the other party.

16.4 Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Agreement, the Hirer must recalculate the amount payable on account of GST under clause 16.2 to take account of the adjustment event. The Hirer must issue an adjustment note to the School Council within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Hirer to the School Council, or by the School Council to the Hirer, as the case may be.

16.5 Other taxes

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

17. Requirement for Working with Children and Police Checks

- (a) The Hirer must (and must ensure that all persons engaged or used by it to work at the Hired Area and/or carry out the Permitted Use under this Agreement, including its Associates):
 - (i) have undertaken a satisfactory working with children check if required pursuant to the *Working With Children Act 2005* (Vic) or as otherwise requested by the School Council;
 - (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 Hirer must ensure the terms and conditions of employment of any staff or of engagement of any contractor for the purpose of carrying out work at the Hired Area and/or carrying out the Permitted Use under this Agreement are consistent with the above obligations.

18. Child Safe Standards

- (a) The parties acknowledge and agree that Victorian government schools are committed to:
 - (i) creating child safe environments;
 - (ii) protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with

their legal obligations, including Child Safety Laws.

- (b) This clause only applies to the extent that the Hirer (and its Associates) are engaged in Child-connected work.
- (c) The Hirer acknowledges that the School Council and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.
- (d) If the Hirer is an Applicable Entity, it warrants to the School Council that it:
 - (i) is compliant and will continue to comply with Child Safety Laws; and
 - (ii) will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Hirer (or its Associates).
- (e) The Hirer (and its Associates) must:
 - (i) if applicable (whether or not the Hirer must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and
 - (ii) comply with any reasonable direction by the School Council in respect to compliance by the School Council, School Staff and/or the Hirer with any Child Safety Laws or any relevant School Council Child Safety Policies.
- (f) The School Council may terminate this Agreement immediately if, in the School's Council's reasonable opinion, it determines at any time that:
 - (i) there is a breach of any Child Safety Laws caused by, or in any way connected with, the Hirer or its Associates; or
 - (ii) the Hirer or any of its Associates are not suitable to engage in Child-connected work for the purposes of the School Council and School Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

19. General

19.1 Amendment

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

19.2 Severability

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

19.3 Set off

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

19.4 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.

19.5 Assignment of rights

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

19.6 Publicity

The Hirer must not make any public announcement or media release in respect of any aspect of this Agreement without the prior written approval by the School Council. Without limitation, if permission to publish is granted pursuant this clause 19.6, the Hirer must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

19.7 Entire understanding

- (a) This Agreement is comprised of the following documents:
 - (i) the Special Conditions;
 - (ii) clauses 1 to 20 (inclusive);
 - (iii) Schedule 1 to this Licence (other than the Special Conditions); and
 - (iv) any other documents or representations referred to in this Licence or incorporated by reference.
- (b) In the event and to the extent of any inconsistency between the documents listed in clause 19.7(a), the provisions of the earlier mentioned document will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.
- (c) This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

20. Definitions and Interpretation

20.1 Definitions

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

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

Default Notice has the meaning given to that term in clause 4(b).

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

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

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

Hire Fee means the amount specified in Item 5.

Insolvency Event means if the Hirer:

- (a) being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of the School Council, precludes or adversely affects the Hirer's ability to carry out its obligations and duties under this Agreement; or
- (b) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

Item means an item of Schedule 1.

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

Law means:

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

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

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

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

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

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

Plan means the plan attached as Annexure A.

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

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

Schedule means any schedule(s) to this Agreement.

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

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

School Council's Representative means the School Council's representative nominated pursuant to clause 10 from time to time.

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

Security Deposit means the security deposit referred to in clause 4 and specified in Item 6.

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

20.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) 'includes' means includes without limitation;
- (b) 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;

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- (c) 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) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

Executed as an agreement.

School Council

Date:

<Insert date that School Council signs>

Signature of President		Signature of Witness
Name of President (print)		Name of Witness (print)

Hirer

Date:

<Insert date that Hirer signs>

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

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

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

Executed by Registered Association Number in accordance with the <i>Associations Incorporation Reform Act 2012</i>		
Signature of authorised person		Signature of authorised person
Name of authorised person (print)		Name of authorised person (print)
Position of authority (print)		Position of authority (print)

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

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

Signature of witness
Name of witness (print)

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

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

Schedule 1 Details

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

Annexure A Plan

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