

Community Joint Use Agreement

The Melton City Council

The Minister for Education

The Kurunjang Primary School Council

Community Joint Use Agreement

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PARTIES

The Melton City Council of 232 High Street, Melton, Victoria, 3337 (**Community Partner**)

The Minister for Education of 2 Treasury Place, East Melbourne, Victoria, 3002 for and on behalf of the State of Victoria and the Department of Education and Early Childhood Development (**Minister**)

The Kurunjang Primary School Council of 37-45 Mowbray Crescent, Kurunjang, Victoria, 3337 (**School Council**)

OVERVIEW

- A. The School Council and the Community Partner wish to enter into an agreement for the construction or refurbishment and sharing of new or refurbished facilities.
- B. The Community Partner is a local government authority.
- C. The completed Facility will be located on land owned or managed by the Community Partner.
- D. The parties agree to carry out the Works to construct or refurbish the Facility and fund them as set out in this Agreement.
- E. When the Works are complete, the Community Partner agrees to grant a licence to the School Council and the Minister to use the Facility in accordance with the terms and conditions of this Agreement.

CLAUSES

SECTION A: DEFINITIONS AND INTERPRETATION

1 DEFINITIONS

In this Agreement, unless inconsistent with the context or subject matter:

Act means the *Education and Training Reform Act 2006* (Vic) as amended.

Adjustment Event has the meaning given to it in the GST Legislation.

Agreement means this Community Joint Use Agreement including any annexures and schedules.

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

Building Contract means the contract between the Constructing Party and the Contractor to carry out the Works, being a construct only contract in the form of Australian Standard General Conditions of Contract AS4000-1997.

Capital Works means works that are:

- (a) structural in nature; or
- (b) constitute a non-recurrent upgrade of the Facility; or
- (c) are replacement works which improve the Facility,

excluding the Works.

Capital Expenditure means expenditure on Capital Works.

Certificate of Practical Completion has the meaning given to that term under the Building Contract.

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).

Common Area means the part of the Facility outlined/coloured yellow on Plan B, as described in **Part A2** of the Schedule.

Community Hiring Party means the party responsible for hiring out the Facility (or a part of it) for community use outside School Hours, or any other times that the School Council is entitled to use the Facility, in accordance with clause 56 and as set out in **Part E4** of the Schedule.

Community Partner Area means the part of the Facility outlined/coloured blue on Plan B, as described in **Part A2** of the Schedule.

Community Partner's Hours means the times that the Community Partner is entitled to use the Facility, as set out in **Part E2** of the Schedule.

Constructing Party means the party responsible for entering into the Building Contract with the Contractor and for managing the construction phase, as set out in **Part B** of the Schedule.

Construction Contributions means the financial contributions of the Minister, the School Council and the Community Partner towards the cost of the Works, as set out in **Part B** of the Schedule.

Construction Costs means the estimated costs of the Works as at the Date of the Agreement, as set out in **Part B** of the Schedule.

Contractor means the contractor appointed under the Building Contract to carry out the Works.

Contamination means any solid, a liquid, a gas, an odour or any temperature, sound, vibration, radiation or hazardous material or thing which makes or may make the Land, the Facility, the School or the neighbouring premises:

- (a) polluted as defined in the *Environment Protection Act 1970* (Vic);
- (b) unfit or unsafe for habitation or occupation by humans or animals;
- (c) degraded in any way; or
- (d) non-compliant with any environmental Laws in force from time to time in the State of Victoria.

Date of Operation is the date on which operation or use of the Facility commences, as set out in **Part C** of the Schedule.

Date of Practical Completion means the date on which the Superintendent certifies that Practical Completion of the Works has been achieved.

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Date of the Agreement is the date on which the Minister signs this Agreement.

(b) common law; or

Date of the Announcement is the date on which the Minister announces the project as set out in Part C2 of the Schedule.

(c) equity.

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

Licence is the non-exclusive licence to use the Facility granted to the School Council under clause 48.1 of this Agreement.

Facility means the Facility described in Part A of the Schedule and shown on Plan B.

Licence Fee means the fee payable by the School Council under this Agreement for the use of the Facility, as set out in Part D3 of the Schedule.

Facility Operating Hours means the hours when the Facility is entitled to operate, as set out in Part E of the Schedule.

Licence Term means the period from the Date of Operation up to:

Final Certificate has the meaning given to that term under the Building Contract.

(a) the expiry of the Initial Term, if the Licence is not renewed; or

Further Term is the period up to which the Licence may be extended, from the expiry of the Initial Term, as set out in Part D of the Schedule.

(b) the expiry of the Further Term or such lesser period as may be agreed by the parties, if the Licence is renewed; or

GST means the tax payable on taxable supplies under GST Legislation.

(c) if this Agreement is terminated prior to the end of the Initial Term or the Further Term (as the case may be), the period up to and including the date of such termination.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Manager means the manager of the Facility from time to time appointed in accordance with clause 55.

Hirer means the person or entity hiring out the Facility (or a part of it) in accordance with clause 56 and its agents, servants, employees, contractors, invitees and anyone else for whom that person or entity is responsible.

Minister means the Minister responsible for the administration of the relevant provisions of the Act.

Initial Term means the first term of the Licence, as set out in Part D1 of the Schedule.

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

Input Tax Credit has the meaning given to that term in the GST Legislation.

Office Area means the part of the Facility outlined/coloured in green on Plan B, as described in Part A2 of the Schedule.

iTwoCX means the Department's web-based project management tool.

Permitted Use means the purposes for which the Facility can be used, as set out in Part E5 of the Schedule or as amended and agreed to by the Community Partner from time to time and notified in writing to the School Council.

Land means the land on which the School is situated, as outlined in red on Plan A.

Personnel means a party and its agents, servants, employees, contractors, invitees and anyone else for whom that party is responsible, and does not include a Hirer.

Law means:

- (a) any legislation and includes any subordinate legislation, ordinances, by-laws, regulations, rules, other statutory instruments issued and orders made under that legislation, whether Commonwealth, State or local;

Plan A means the plan of the Land annexed to this Agreement.

Plan B means the plan of the Facility annexed to this Agreement.

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Practical Completion has the meaning given to that term under the Building Contract.

Principal means the principal of the School or any other person acting from time to time as and with the authority of the principal of the School.

Proper Person means a person who is a proper person to be acting in that person's designated capacity in relation to a Facility within a Government School and occupied by school students.

Resolution Institute means the Victorian Chapter of the Resolution Institute or any appropriate successor organisation to the Victorian Chapter of the Resolution Institute.

School means the School specified in Part A of the Schedule.

School Council Area means the part of the Facility outlined/coloured pink on Plan B, as described in Part A2 of the Schedule.

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 Day means a day on which the School is open.

School Hours means, in respect of a School Day, the times set out in Part E1 of the Schedule.

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

Specifications means the plans and specifications relating to the Works contained in or referred to in the Building Contract.

Statutory Charges means any amount charged against the Facility by any Government Agency.

Superintendent means the superintendent appointed under the Building Contract.

Tax means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on net overall income.

Taxable Supply has the meaning given to that term in the GST Legislation.

Works means the construction and/or refurbishment works as described in the Specifications to be carried out under the Building Contract.

Variation has the meaning given to that term in the Building Contract.

2 INTERPRETATION

2.1 In this Agreement, unless inconsistent with the context or subject matter:

- (a) a reference to any legislation or legislative provision:
 - (i) includes any statutory modification or re-enactment of, or legislative provision substituted for that legislation or legislative provision; and
 - (ii) includes any subordinate legislation, ordinances, by laws, regulations, rules, other statutory instruments issued and orders made under that legislation or legislative provision;
- (b) any marginal notes or headings are included for convenience and do not affect the interpretation of this Agreement;
- (c) a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (d) the singular includes the plural and vice versa;
- (e) if any day specified by this Agreement falls on a Saturday, Sunday or a day appointed under the *Public Holidays Act 1993* (Vic) as a holiday for the whole day, that day will be the next day following the specified day which is not a Saturday, Sunday or day appointed under the *Public Holidays Act 1993* (Vic);
- (f) a reference to this Agreement includes all documents attached to it;
- (g) a reference to this Agreement or to any deed, agreement, document or instrument includes a reference to such documents as amended, novated, supplemented, varied, altered or replaced from time to time;

- (h) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (i) a reference to **dollars** or **\$** is reference to Australian currency; and
- (j) the word **include** in any form is not a word of limitation

SECTION B: OBJECTIVES

3 OBJECTIVES OF THE PARTIES

- 3.1 The parties acknowledge and agree that their objectives in entering into this Agreement are:
- (a) to provide for the construction and operation of the Facility for the benefit of the Community Partner, the School and the local community;
 - (b) to create a framework for the effective and mutually beneficial long term operation and use of the Facility by each party;
 - (c) to ensure the Facility is constructed and operated safely, and in accordance with the Act and all other relevant Laws; and
 - (d) to achieve these joint objectives through a culture of mutual respect, cooperation and good faith.
- 3.2 The parties must exercise all of their obligations under this Agreement in furtherance of these objectives.

SECTION C: GENERAL

4 APPROVALS TO ENTER INTO THE AGREEMENT

- 4.1 The Minister approves the School Council entering into this Agreement, pursuant to the Act.
- 4.2 The Community Partner confirms that it has obtained, at its own cost, all necessary approvals and consents required under the *Local Government Act 1989* (Vic) to enable it to enter into this Agreement and to comply with its obligations under this Agreement.

5 ACKNOWLEDGEMENT BY THE COMMUNITY PARTNER

- 5.1 The School Council acknowledges that:
- (a) it understands all risks, difficulties, contingencies and other matters relating to its use of the Facility under this Agreement; and
 - (b) in circumstances where the Works involve the extension or refurbishment of an existing facility located on land owned or managed by the Community Partner, it has examined that existing facility.

6 NO GRANT OF PROPRIETARY RIGHTS IN THE LAND

- 6.1 The rights conferred by this Agreement rest in contract only and do not grant to the School Council or the Minister any proprietary interest in the Facility or in the Land. The Community Partner is the owner or manager of the Land and the Facility.

7 ACTING ON BEHALF OF THE MINISTER

- 7.1 Any act, deed, document or thing to be made, done, executed or performed (excluding the execution of this Agreement) and right, duty or power (including the right to issue a notice or give any consent) of the Minister, to be exercised under this Agreement, may be made done on behalf of the Minister by any employee of the Department authorised to do so by the Minister.

8 NOVATION, ASSIGNMENT OR TRANSFER

- 8.1 The Community Partner must not novate, assign or transfer any or all of its rights or obligations under this Agreement without the written consent of the Minister. Such consent must not be unreasonably withheld and may be subject to the Minister's reasonable conditions.
- 8.2 The Minister and School Council must not novate, assign or transfer their rights or obligations under this Agreement without the written consent of the Community Partner. Such consent must not be unreasonably withheld and may be subject to the Community Partner's reasonable conditions.

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9 DISSOLUTION OF THE SCHOOL COUNCIL

9.1 The parties acknowledge and agree that any Law which dissolves the School Council will be deemed to have simultaneously effected a transfer to the Minister of the whole of the School Council's right, title, interest and obligations under this Agreement except where a new School Council is to be substituted, in which case the deemed transfer is to the new School Council.

10 CHANGE OF SCHOOL COUNCIL NAME

10.1 If the School Council changes its name, no transfer of its rights, title, interest and obligations occurs but the School Council must notify the Community Partner in writing of the change.

11 LEGAL COSTS

11.1 The parties (excluding the Minister) agree that the Department's legal costs in relation to preparing this Agreement shall be funded from the Construction Contributions or as agreed between by the School Council and the Community Partner as set out in **Part B4** of the Schedule.

12 NOTICES

Method of giving Notices

12.1 Any notice given under this Agreement must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) hand delivered; or
- (b) sent by prepaid and registered mail,

to the address set out in **Part G** of the Schedule, or, if a party gives notice of a change of address, to that changed address.

Time for Receipt

12.2 A notice delivered pursuant to this Agreement shall be deemed to have been received by the addressee:

- (a) in the case of delivery by hand, on the day of delivery; or
- (b) in the case of a posted letter, on the sixth (eleventh, if posted to or from a place outside Australia) day after posting;

unless the delivery is made on a non-business day, or after 4.00pm on a business day, in which case the communication will be deemed to be received on the next business day after that.

13 GOVERNING LAW

13.1 This Agreement is governed by the law of the State of Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

14 VARIATION OF THIS AGREEMENT

14.1 No addition to or variation of this Agreement is binding unless in writing signed by or on behalf of all parties.

15 WAIVER

15.1 A waiver or indulgence of a breach of any term or condition of this Agreement is only binding if given by written notice. A waiver of one breach of any term or condition of this Agreement operates neither as a continuing waiver, unless so expressed, nor as a waiver of another breach of the same or of any other term or condition of this Agreement.

16 CONFIDENTIALITY

16.1 Except as expressly provided in clause 16.3 below, the parties must treat as confidential the terms and conditions of this Agreement and all other information which comes into their possession as a result of or in the performance of this Agreement.

16.2 The School Council and the Community Partner:

- (a) must not without the permission of the Minister disclose such confidential information to an outside party; and
- (b) must not without the permission of the Minister disclose any details of the terms and conditions of this Agreement to an outside party.

16.3 The exceptions to the parties' obligations in clause 16.1 are where:

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- (a) the disclosure is required in order for the relevant party to perform its obligations under this Agreement;
- (b) the disclosure is required by Law or government policy, portfolio responsibilities or constitutional duty for the purposes of informing the relevant Minister, the Crown, the Victorian Auditor-General or Parliament;
- (c) the information is already in the public domain (unless it is in the public domain because of a breach of confidence); or
- (d) the disclosure is otherwise consented to by all the parties.

17 CONFLICT OF INTEREST

- 17.1 The Community Partner warrants that, to the best of its knowledge and belief after due inquiry as at the date that the Community Partner signs the Agreement, it has no duties or interests that create or might reasonably be anticipated to create a conflict with its duties and obligations under this Agreement.
- 17.2 The Community Partner must notify the School Council and Minister in writing if at any time after the date that the Community Partner signs the Agreement it becomes aware of any actual or potential conflict of interest and must comply with any reasonable direction of the Minister to manage any risk in connection with such conflict.

18 ENTIRE AGREEMENT

- 18.1 This Agreement contains the entire agreement between the parties and supersedes any other communications or representations or earlier written or verbal agreements made in connection with the subject matter of this Agreement.

19 COUNTERPARTS

- 19.1 This Agreement may be executed in counterparts. If this document is executed in counterparts, each counterpart is an original and all of the counterparts together constitute the same document.

20 GST

- 20.1 Where a party to this Agreement (the Supplier) makes a Taxable Supply under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement to

another party to this Agreement (the Recipient) and the consideration otherwise payable for the Taxable Supply does not include GST, the Supplier shall be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Recipient the amount of any GST on the Taxable Supply.

- 20.2 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the Taxable Supply (taking into account any Adjustment Events that occur in relation to the Taxable Supply), an adjustment will be made. If the amount paid by the Recipient exceeds the GST on the Taxable Supply, the Supplier must refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the Taxable Supply, the Recipient must pay the deficiency to the Supplier.

- 20.3 Where a party to this Agreement is entitled, under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credits available in respect of those costs.

- 20.4 A party is not obliged to pay any amount in respect of GST to the other party unless and until a valid tax invoice (being an invoice that complies with the GST Legislation) has been issued in respect of that GST.

SECTION D: OVERARCHING REQUIREMENTS

21 MUTUAL OBLIGATION TO FACILITATE COMPLIANCE WITH THIS AGREEMENT AND THE LAW

- 21.1 Each party must do all things reasonably necessary to assist any other party to discharge any obligations that party may have under this Agreement and any relevant Law.

22 SCHOOL COUNCIL'S GENERAL OBLIGATIONS AND PROHIBITIONS IN RESPECT OF THE LAND AND THE FACILITY

- 22.1 The School Council must:

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- (a) perform all its activities under this Agreement safely so as to protect persons and property;
 - (b) use the Land and the Facility in an appropriate manner;
 - (c) keep the Facility, and the Land tidy and free from rubbish caused by the School Council or its Personnel, to the satisfaction of the Community Partner;
 - (d) at its own cost, comply with all relevant Laws in relation to the School Council's rights and obligations under this Agreement;
 - (e) comply with all relevant policies or guidelines created by the Community Partner, as notified by the Community Partner in writing to the Principal;
 - (f) at its cost, comply with any direction given by the Community Partner in relation to the School Council's rights and obligations under this Agreement, if the Community Partner considers there is a risk to people or damage to property;
 - (g) obey all reasonable rules from time to time made by the Community Partner with regard to the management of the Land and the Facility;
 - (h) enter or leave the Facility only by the route and park its motor vehicles in the area nominated by the Community Partner, unless this Agreement outlines specific arrangements;
 - (i) observe fire precautions;
 - (j) if applicable, ensure that all external doors and windows at the Facility are secured and locked after the School Council's use or access of the Facility; and
 - (k) at all times exercise due care, skill and judgement and act in good faith.
- 22.2 The School Council must not:
- (a) use or permit the Facility to be used other than for a Permitted Use;
 - (b) alter the Facility without the written approval of the Community Partner, such approval not to be unreasonably withheld, and
- subject to the School Council being responsible for the cost of the alteration unless otherwise agreed between the parties;
 - (c) allow the use of advertising at the Facility without the written approval of the Community Partner;
 - (d) cause or permit any Contamination;
 - (e) cause or permit any disturbance or nuisance to people at or entering the Facility or to the owners or occupiers of neighbouring premises, except to the extent reasonably necessary to enjoy it's rights and carry out the School Council's obligations under this Agreement.
 - (f) cause or permit any damage, injury or danger to people at or entering the Facility or to the owners or occupiers of neighbouring premises.
- 22.3 To the extent applicable, the School Council must ensure that its Personnel comply with the obligations and prohibitions contained in this clause.
- 22.4 Nothing in this clause 22 shall oblige the School Council or the Minister to carry out Capital Works or otherwise incur Capital Expenditure, except as provided for by clause 58 of this Agreement.
- 23 OCCUPATIONAL HEALTH & SAFETY**
- 23.1 The School Council must:
- (a) establish and maintain systems to assess, manage and eliminate risks and hazards at the Facility, in connection with its rights and obligations under this Agreement, to the standard required by occupational health and safety law; and
 - (b) provide appropriate training and supervision for all persons employed or engaged by it in connection with its rights and obligations under this Agreement.
- 23.2 The School Council must ensure that its Personnel comply with the systems and training referred to above.
- 23.3 The School Council must notify the Community Partner immediately if it breaches any of its obligations under this Agreement with respect to

work health and safety and provide the Community Partner with a copy of all relevant information on request.

- 23.4 The School Council must notify the Community Partner immediately if any notice is issued under work health and safety law and provide the Community Partner with a copy of any documents or other relevant information on request.

24 AUDIT

- 24.1 The Minister may, at any time, conduct an audit and inspection in respect of all matters relating to the construction, operation, use and maintenance of the Facility including:

- (a) the performance by the parties of their obligations under this Agreement, including their financial obligations;
- (b) all payments made in accordance with the terms of this Agreement;
- (c) the current financial position of the Facility including any provision for future maintenance or Capital Expenditure; and
- (d) matters concerning safety or work health and safety; and
- (e) any incidents occurring at the Facility, including those resulting in injury or death.

- 24.2 The Minister may appoint a third party to conduct this audit.

- 24.3 The Minister must give the School Council and the Community Partner reasonable written notice of any proposed audit.

- 24.4 The Community Partner must provide all reasonably requested information to the Department, the Minister, the School Council or the appointed auditor if requested to do so.

25 PERMISSIBLE DEALINGS WITH THE LAND

- 25.1 Without derogating from clause 34, at any time during the Licence Term the Community Partner may subdivide, sell or otherwise dispose of or deal with the whole or any part of the Land, where this does not affect the School Council's use of the Facility and the Land pursuant to this Agreement and where the Community Partner does not propose to terminate the Agreement.

26 RIGHT OF COMMUNITY PARTNER TO UNDERTAKE WORKS AT THE FACILITY

- 26.1 The Community Partner reserves the right to undertake any works and take any other steps which are necessary to comply with any Law or to ensure the safe and proper use of the Facility and the Land.

- 26.2 The Community Partner must exercise its rights under clause 26.1 at a reasonable time and in a way which seeks, so far as is reasonable practicable, to minimise any interference with the School Council's use of the Facility. The Community Partner must give the School Council reasonable notice if the Community Partner intends to enter the Facility during School Hours or any other times the School Council is entitled to use the Facility. If there is an emergency, the Community Partner or any person authorised by the Community Partner may enter the Facility at any time without notice.

27 DAMAGE TO THE FACILITY CAUSED BY NEGLIGENCE, GROSS NEGLIGENCE OR WILFUL MISCONDUCT

- 27.1 Each party is responsible for damage to the Facility to the extent caused or contributed to by the negligent, unlawful act or omission, gross negligence or wilful misconduct of that party or its Personnel.

- 27.2 Subject to clause 27.3, the responsible party must reimburse the other parties for any costs reasonably incurred by those parties in respect of such damage within 28 days of receiving a written notice from the other parties specifying the damage and the costs.

- 27.3 Where the party responsible for the damage is responsible for carrying out maintenance and repair works to the part of the Facility which is damaged, that party must rectify the damage at its own expense without any contribution from the other parties, regardless of any other provision of this Agreement.

28 DAMAGE TO THE FACILITY NOT COVERED BY INSURANCE

- 28.1 Without derogating from clause 27, if any part of the Facility or any plant, equipment or property located in the Facility suffers damage which arises from an event or risk that is not covered by any of the insurances required to be obtained by the

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parties under this Agreement, or under any other applicable insurance (including insurance obtained by a Hirer), and clause 28.2 does not apply, then the party responsible for carrying out maintenance and repair works in respect of the part of the Facility which is damaged must rectify the damage in the first instance with the other party (excluding the Minister) to reimburse 50% of this cost within 30 days of receipt of written notice specifying the damage and the cost incurred. If the cost of rectification is likely to exceed \$5,000 (excluding GST) then the party responsible for rectifying the damage in the first instance must obtain the prior approval of the other party (excluding the Minister, unless the cost of rectification is greater than \$50,000) before carrying out the rectification works.

28.2 Clause 28.1 does not apply if the amount is not recoverable under a policy of insurance because:

- (a) The School Council or the Community Partner has failed to meet a condition, requirement or warranty forming part of the policy. In such a situation, the defaulting party is responsible for the cost of rectifying the damage.
- (b) The Community Hiring Party has failed to ensure that a Hirer obtains the insurance required by clause 56.4(d) of this Agreement. In such a situation, the Community Hiring Party is responsible for the cost of rectifying the damage.

28.3 If the amount is not recoverable under a policy of insurance because a Hirer has failed to meet a condition, requirement or warranty forming part of the policy, then the School Council and the Community Partner will be equally responsible for the cost of fixing the damage if this cannot be recovered from the Hirer. Pending any recovery from the Hirer, the party responsible for carrying out maintenance and repair works in respect of the part of the Facility which is damaged must rectify the damage in the first instance and the other party (excluding the Minister) must reimburse 50% of this cost within 30 days of receipt of written notice specifying the damage and the costs incurred.

28.4 If a party disputes a notice setting out the cost of and responsibility for the damage issued in accordance with any provision of this clause 28, it may within 14 days of receipt of the notice refer the matter for dispute resolution in accordance with this Agreement. Pending resolution of the dispute, that party must pay the amount stated in the notice to the party that issued the notice.

SECTION E: PEOPLE**29 ONLY PROPER PERSONS ARE PERMITTED**

- 29.1 The School Council may only employ or engage Proper Persons in connection with the use, operation and maintenance of the Facility.
- 29.2 If the Community Partner, acting reasonably, forms the opinion that a person employed or engaged by the School Council is not a Proper Person, the Community Partner may require the School Council to remove such person from the Facility and, if appropriate, to replace him or her with someone of appropriate competence and/or experience who is a Proper Person.

30 REQUIREMENT FOR WORKING WITH CHILDREN AND POLICE CHECKS

- 30.1 The Community Partner must (and must ensure that all persons engaged or used by it to work at the Facility) during School Hours:
 - (a) have undertaken a satisfactory working with children check, if required pursuant to the *Working With Children Act* or as otherwise requested by the School Council; and
 - (b) have undertaken a satisfactory police records check if the Principal requires this check; and
 - (c) have met any additional relevant legal requirements and policies of the Department in relation to the suitability of persons to work with school children or within the precinct of the School as advised by the School Council or the Principal to the Community Partner.
- 30.2 The Community Partner must ensure the terms and conditions of employment of any staff or of engagement of any contractor used by it for the purpose of carrying out work at the Facility are consistent with the above obligations.

31 CHILD SAFE STANDARDS

- 31.1 The parties acknowledge and agree that Victorian government schools are committed to:
 - (a) creating child safe environments;

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- (b) 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.

31.2 This clause only applies to the extent that the Community Partner (and its Personnel) are engaged in Child-connected work.

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

31.4 If the Community Partner is an Applicable Entity it warrants to the School Council that it:

- (a) is compliant and will continue to comply with Child Safety Laws; and
- (b) 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 Community Partner (or its Personnel).

31.5 The Community Partner (and its Personnel) must:

- (a) if applicable (whether or not the Community Partner must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and
- (b) comply with any reasonable direction by the School Council in respect to compliance by the School Council, Principal and School Staff and/or the Community Partner with any Child Safety Laws or any relevant School Council Child Safety Policies.

31.6 The School Council and/or the Minister may terminate this Agreement immediately if, in the School's Council's and/or the Minister's reasonable opinion, it determines at any time that:

- (a) there is a breach of any Child Safety Laws caused by, or in any way connected with, the Community Partner or its Personnel; or

the Community Partner or any of its Personnel are not suitable to engage in Child-connected work for the purposes of the School Council, Principal and School

Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

SECTION F: BREACH, DISPUTES AND TERMINATION

32 DEFAULT BY THE SCHOOL COUNCIL AFTER CONSTRUCTION OF THE FACILITY

32.1 If the School Council commits a substantial breach of this Agreement, the Community Partner may give the School Council written notice that the School Council is in breach and require the School Council to rectify the breach within the time specified in the notice, which must be a reasonable time.

32.2 If the School Council fails to rectify the breach to the reasonable satisfaction of the Community Partner within the time specified, the Community Partner may:

- (b) do anything that the Community Partner reasonably believes is necessary to rectify the breach; or
- (c) terminate this agreement by written notice to the School Council and the Minister.

32.3 All costs incurred by the Community Partner in rectifying the breach shall be a debt due from the School Council to the Community Partner, payable 30 days from receipt by the School Council of an invoice provided by the Community Partner to the School Council in respect of the costs.

32.4 Nothing in this clause 32 affects any of the Community Partner's other rights under or in connection with this Agreement.

32.5 Termination in accordance with this clause will be effective from the date of receipt of the written notice referred to above.

32.6 The parties agree that no compensation is payable to the School Council or the Minister if this Agreement is terminated in accordance with this clause.

33 DISPUTES

33.1 All disputes between any of the parties in connection with this Agreement must be resolved in the manner set out in this clause.

Notice of Dispute

33.2 The parties agree to consult in good faith with each other but if a dispute arises between any of the parties in connection with this Agreement any party may serve on the other parties a written notice of the dispute (**Notice of Dispute**). The Notice of Dispute must adequately identify and give reasonable details of the nature of the dispute.

Meeting of Senior Representatives

33.3 If the dispute set out in a Notice of Dispute is not settled within 7 days of receipt of the Notice of Dispute, then the parties to the dispute must each nominate a senior representative (**the Senior Representatives**) who must meet within 21 days of receipt of the Notice of Dispute (or such other time as agreed between the parties to the dispute) and use their best endeavours to negotiate a resolution of the dispute.

Mediation

33.4 If :

(a) the dispute set out in a Notice of Dispute is not settled by the meeting of Senior Representatives referred to in clause 33.3 above; or

(b) the Senior Representatives do not meet,

within 21 days of receipt of the Notice of Dispute (or such other time as agreed between the parties to the dispute), then the party which issued the Notice of Dispute must refer the dispute to mediation.

33.5 The mediation must be conducted by a mediator agreed between the parties to the dispute or, failing agreement, within 7 days of the referral to mediation, appointed by the Chair or acting Chair of the Resolution Institute, who must be requested to appoint an independent person reasonably expert in the matters the subject of the dispute. The mediation must be held in accordance with the mediation rules of the Resolution Institute in force at the date of the Notice of Dispute within 45 days of receipt of the Notice of Dispute unless all parties to the dispute agree in writing to a longer period.

33.6 The parties to the dispute must share the mediator's costs and any other administrative costs associated with the mediation equally.

Litigation

33.7 If the dispute set out in a Notice of Dispute is not settled at the mediation, then any party to the dispute may issue proceedings in respect of the dispute.

Performance of obligations pending resolution of a dispute

33.8 Pending the resolution of a dispute in connection with this Agreement:

(a) the parties must continue to perform their obligations under this Agreement; and

(b) each party must pay all amounts under this Agreement when due in accordance with this Agreement without regard to the pending dispute and regardless of whether the dispute relates to payment of money.

34 COMMUNITY PARTNER'S RIGHTS OF TERMINATION

Community Partner wishes to sell the Land

34.1 If the Community Partner wishes to sell the Land or a part of it on which the Facility is located, the Community Partner may terminate this Agreement by prior written notice to the School Council and the Department of at least 18 months, provided that the Community Partner:

(a) must first offer the Land for sale to the Minister (**'Land Offer'**), at a price based on the value of the Land as vacant land without the Facility, to be agreed by the parties or, failing agreement, as determined by the Valuer-General Victoria or successor;

(b) if the Minister rejects the Land Offer, the Community Partner may dispose of the Land subject to a licence of the whole of the Land, or the part of the Land on which the Facility is located plus a reasonable access route, between the third party purchaser of the Land and the Minister and School Council, on substantially the same terms and conditions as this Agreement, with the licence fee payable by the Minister and the School Council to be no more than the Licence Fee payable under this Agreement; and

(c) if the Minister rejects the Land Offer and the Community Partner is unable to dispose of

the Land in accordance with paragraph 34.1(b) above, the Community Partner must pay fair compensation to the Minister and the School Council having regard to the Minister's and the School Council's Construction Contribution towards the Works.

SECTION G: CONSTRUCTION

35 RESPONSIBILITY FOR CONSTRUCTION

35.1 The Constructing Party is responsible for managing the construction phase and must:

- (a) enter into the Building Contract to carry out the Works with the Contractor;
- (b) use reasonable endeavours to ensure that the Works are commenced, carried out and completed in accordance with the Building Contract;
- (c) do everything which a reasonably prudent principal (as defined in the Building Contract) would do to enforce the Building Contract and ensure that the rights and entitlements of the principal under the Building Contract are exercised in a proper and timely manner;
- (d) use reasonable endeavours to ensure that the Works are progressed diligently and are brought to Practical Completion by the Date for Practical Completion in the Building Contract, which date must be in accordance with clause 35.2.

35.2 The Constructing Party must commence construction of the Works within 12 months from the Date of the Announcement, unless the Minister agrees otherwise.

35.3 The Constructing Party must achieve Practical Completion of the Works within 24 months from the Date of the Announcement, unless the Minister agrees otherwise.

35.4 The Constructing Party must comply with the conditions as specified in the *Shared Facilities Fund Conditions* attached as Annexure C.

36 ACCESS DURING CONSTRUCTION PHASE

36.1 If the School Council or the Minister is the Constructing Party, the Community Partner grants a licence to:

- (a) the School Council or the Minister, as the case may be, and its Personnel; and
- (b) the Contractor and its Personnel;

to enter the Land and to do all things necessary to carry out their obligations under this Agreement and the Building Contract.

37 COMPLYING WITH THE LAW

37.1 The Constructing Party must, at its own cost, apply for and comply with all Laws, authorisations and agreements which apply to the Works and their design, including:

- (a) all necessary permits and approvals under the *Planning and Environment Act 1987* (Vic) and the *Building Act 1993* (Vic); and
- (b) the current Victorian Code of Practice for the Building and Construction Industry, including any applicable implementation guidelines.

38 CONSTRUCTION CONTRIBUTIONS

38.1 The Community Partner agrees to contribute towards the development of the Facility by contributing the Land.

38.2 The Minister, the School Council and the Community Partner agree to make the Construction Contributions as set out in **Part B** of the Schedule towards the cost of the Works.

39 ADDITIONAL CONSTRUCTION COSTS

39.1 If it becomes apparent that the cost of the Works exceeds the Construction Costs before the acceptance of the tender for the Works, then the parties must as soon as practicable consider the cost increase and may either:

- (a) agree to change the Specifications in order to reduce the cost of the Works; or
- (b) meet the additional cost of the Works as agreed between them and recorded in writing.

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39.2 If the parties cannot reach agreement under clause 39.1 about how to share the cost of the Works before the acceptance of the tender for the Works, then the Community Partner may terminate this Agreement upon written notice to the other parties. The termination is effective 14 days after receipt of the letter from the Community Partner. The parties agree that no compensation is payable by any party to any other party in the event of such termination.

39.3 If, after the Works have commenced, the cost of carrying out the Works exceeds the Construction Costs for reasons other than the default of the Constructing Party, the parties agree to fund the additional construction costs as set out in **Part B5** of the Schedule, unless clause 39.4 applies.

39.4 If the cost of carrying out the Works under the Building Contract exceeds the Construction Costs due to a Variation requested by any of the parties, then the party requesting the Variation must pay the additional costs.

39.5 The Constructing Party must ensure that the Superintendent promptly notifies all parties in writing if it appears that the cost of carrying out the Works under the Building Contract will exceed the Construction Costs.

40 TIME FOR PAYMENT OF CONSTRUCTION CONTRIBUTIONS AND ADDITIONAL COSTS

40.1 If the Minister is not the Constructing Party, the Minister must make payments on account of his or her Construction Contribution (if any) and any additional costs payable pursuant to this Agreement to the Constructing Party at such times as determined by Department policy, such policy to be advised by the School Council to the Community Partner prior to payment, unless the Minister has agreed to a specific regime for payment of such costs, as set out in **Part B6** of the Schedule.

40.2 Each party (excluding the Minister) not responsible for construction must make payment on account of its Construction Contribution (if any) at such times as the Constructing Party reasonably requests, unless the parties have agreed to a specific regime for payment of such costs, as set out in **Part B6** of the Schedule.

40.3 Each party (excluding the Minister) not responsible for construction must make payment on account of

any additional costs payable by it pursuant to this Agreement to the Constructing Party at such times as the Constructing Party reasonably requests.

41 REPAYMENT OF CONSTRUCTION CONTRIBUTIONS

41.1 If the Constructing Party:

- (a) receives payment in whole or in part of the Construction Contributions made by other parties or additional costs required to be paid by other parties pursuant to clause 39; and
- (b) for any reason is not required to pay that amount or part of that amount to any Contractor under the Building Contract, a consultant in connection with the works or for legal costs associated with this Agreement or the Building Contract,

then the Constructing Party must refund to the other parties in the proportion paid the amounts not required, including any interest which has accrued on such money.

42 CONSTRUCTION INSURANCE

42.1 The Constructing Party must ensure that the provisions of the Building Contract require either the Contractor or the Constructing Party to obtain and maintain the following insurances:

- (a) A public liability policy of insurance covering the Constructing Party, the Contractor and all sub-contractors engaged in relation to the Works for their respective rights and interests and covering their liabilities to third parties. The policy must also cover the liability of the Contractor and the Constructing Party to each other for loss of or damage to property (other than property required to be insured under sub-clause 42.1(b) below) and the death of or injury to any person other than a liability which is required to be insured under a workers' compensation policy of insurance. The public liability policy must be for an amount of \$20 million in respect of any one occurrence.
- (b) An insurance policy in the joint names of the Constructing Party, the Contractor and all subcontractors engaged in relation to the Works covering the Works against loss or

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damage resulting from any cause whatsoever.

- (c) Workers' compensation insurance as required by State or Federal Law.

42.2 If a part or the whole of the Works is destroyed or damaged during construction, the parties agree that all money received as insurance proceeds must be applied towards the reconstruction or reinstatement of the Works, subject to the Minister's rights in clause 34.

43 SPECIFICATIONS

43.1 The Constructing Party must submit Specifications for the approval of each other party not responsible for construction within a reasonable time prior to going out to tender in respect of the Building Contract.

43.2 Each party not responsible for construction must:

- (a) review and give initial approval to the Specifications proposed by the Constructing Party within the time limits reasonably specified by the Constructing Party;
- (b) review and may approve any alteration, variation or amendment of Specifications proposed by the Constructing Party from time to time; and
- (c) not unreasonably withhold its approval.

43.3 The request for tender may not be issued until the parties have approved the draft Specifications to be included with the request for tender.

44 TENDERING

44.1 This clause applies if the School Council or the Minister is the Constructing Party.

44.2 The Constructing Party must notify the Community Partner of the planned dates for the tender and evaluation process for the Works and parties must discuss and agree on the extent of the Minister and the School Council's relative involvement in the tender and evaluation process before issuing the request for tender documents.

44.3 If tenders for the Works are to be called for by public notice, the Construction Party must provide a copy of the notice to the Community Partner for approval prior to it being advertised.

44.4 During the tender process the Constructing Party must comply with all Laws as well as ministerial directions, government policies and other requirements relevant to public construction, including those:

- (a) published by the Building Commission and required under the *Project Development and Construction Management Act 1994* (Vic); and
- (b) published by the Victorian Government Purchasing Board and required under the *Financial Management Act 1994* (Vic); or
- (c) in the *Local Government Act 1989* (Vic).

44.5 For the purposes of clause 44.4, if a ministerial direction conflicts with a supply policy within the meaning of the *Financial Management Act 1994* (Vic), the ministerial direction will prevail.

45 INSPECTION OF THE WORKS

45.1 If the School Council or the Minister is the Constructing Party, the Community Partner may inspect the Works at any time prior to the Date of Practical Completion of the Works, on reasonable notice to the Constructing Party.

45.2 If the Community Partner is the Constructing Party, the School Council or the Minister may inspect the Works at any time prior to the Date of Practical Completion of the Works, on reasonable notice to the Community Partner.

46 PRACTICAL COMPLETION

46.1 The Constructing Party must notify the other parties in writing when Practical Completion of the Works has been achieved.

46.2 The Constructing Party must provide the other parties with a copy of the Certificate of Practical Completion issued by the Superintendent within 7 days of receiving the certificate.

46.3 If the School Council or the Minister is the Constructing Party, then, within 14 days of the Date of Practical Completion of the Works or any earlier termination of this Agreement, the Constructing Party must remove all materials and equipment brought onto the Facility or the Land for the purpose of carrying out the Works and make good any damage to the Facility and the Land.

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46.4 If the School Council or the Minister is the Constructing Party, the Constructing Party must provide a complete copy of all 'as built' plans and drawings to the Community Partner within 14 days of the Date of Practical Completion.

(b) provide to the Community Partner any other documents necessary to complete the Works.

47 DEFAULT BY THE SCHOOL COUNCIL OR THE MINISTER DURING THE CONSTRUCTION PHASE

SECTION H: LICENCE

48 LICENCE TERM AND LICENCE FEE

Licence

47.1 A Default Event will have occurred if the School Council or the Minister :

- (a) commits a substantial breach of this Agreement during the Construction phase; or
- (b) has failed, if it is the Contracting Party, to use reasonable endeavours to ensure the Works are commenced, carried out or completed within a reasonable time (where the School Council or the Minister is responsible for construction); and

48.1 The Community Partner grants a licence to the Minister and the School Council to use the Facility on the terms and conditions of this Agreement.

48.2 The parties acknowledge that use of the Facility by the Minister and the School Council and members of the public is not exclusive and is subject to the provisions of this Agreement.

Licence Fee

the Community Partner has requested the School Council or the Minister in writing to remedy the breach or failure with 35 days of receipt of the request, and the School Council or the Minister fails to remedy, or commence to remedy, the specified breach or failure within such time.

48.3 If demanded, the Minister and the School Council must pay to the Community Partner the Licence Fee as set out in **Part D3** of the Schedule.

Initial Term of the Licence

47.2 If a Default Event occurs, then the Community Partner may by written notice to the School Council and the Minister :

48.4 The Initial Term of the Licence is for the period set out in **Part D1** of the Schedule and runs from the Date of Operation.

Further Term of the Licence

- (a) terminate this Agreement; or
- (b) where applicable, take over the School Council's or the Minister's construction obligations under this Agreement in order to complete the Works.

48.5 The Further Term of the Licence is for a period up to the period set out in **Part D2** of the Schedule.

49 LICENCE RENEWAL PROCESS

47.3 The termination or taking over pursuant to clause 47.2 will be effective from the date of receipt by the School Council and the Minister of the written notice issued under clause 47.2.

49.1 The School Council (on behalf of itself and the Minister) must notify the Community Partner in writing at least 6 months but not more than 12 months before the expiry of the Initial Term whether the School Council and the Minister wish to renew the Licence for a period up to the Further Term.

47.4 If the Community Partner elects to take over and complete the Works under clause 47.2, then the School Council or the Minister must immediately on written notice from the Community Partner:

- (a) novate the Building Contract, and any other agreements relevant to the completion of the Works, to the Community Partner, as directed in the notice; and

49.2 If the School Council notifies the Community Partner that it and the Minister wish to renew the Licence, the Community Partner must meet with the School Council (on behalf of itself and the Minister) within 21 days of receipt of the notice to discuss whether any adjustments are required to the arrangements set out in **Sections H, I, J and K** of this Agreement to reflect the passage of time or changes to Department or local government policy or Laws. The Community Partner must ensure that

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any agreed adjustments are finalised in writing between it and the School Council (on behalf of itself and the Minister) (**Written Adjustments**).

49.3 Once the Community Partner has prepared any Written Adjustments, the Community Partner must, as soon as practicable, notify the School Council in writing either that:

- (a) the Community Partner does not agree to renew the Licence, in which case the Licence Term will terminate at the end of the Initial Term; or
- (b) the Community Partner agrees to a renewal of the Licence for an agreed period up to the Further Term, in which case the Licence is deemed to be renewed from the expiry of the Initial Term for the agreed period on the terms and conditions of this Agreement as varied by the Written Adjustments, except for clause 48.5 and this clause 49.

50 OBTAINING AND COMPLYING WITH PERMITS

50.1 The Community Partner must obtain or procure all relevant planning permits and licences or approvals necessary for the use of the Facility and to carry out their obligations under this Agreement before commencement of the Licence and must comply with any conditions contained within each such permit, licence or approval.

51 REINSTATEMENT OBLIGATIONS AT THE END OF THE LICENCE TERM

- 51.1 At the request of the Community Partner, the School Council must at its own cost within one month of the end of the Licence Term:
- (a) remove all materials and equipment brought into the Facility by the School Council or its Personnel and make good all damage to the Facility caused by such removal;
 - (b) remove all signs and writing from the Facility, whether permanent or temporary, installed by the School Council and make good any damage;
 - (c) ensure that the Facility is in a condition consistent with the School Council having fulfilled all of its maintenance obligations and obligations with regards to Capital Works and Capital Expenditure under this Agreement; and

- (d) do all other acts and things reasonably necessary to enable the Community Partner to use the Facility with minimum disruption or expense.

52 SUB-LICENSING

52.1 The School Council and the Minister must not sub-licence the Facility except as set out in this Agreement or as agreed in writing with the Community Partner. The Community Partner's consent must not be unreasonably withheld. The obligations of the School Council and the Minister under this Agreement will not be affected by any such sub-licence.

SECTION I: USE

53 USE OF THE FACILITY BY THE SCHOOL COUNCIL AND COMMUNITY PARTNER

School Council's Use of the Facility

- 53.1 The School Council is entitled to use the School Council Area during School Hours.
- 53.2 The School Council is entitled to use the Community Partner Area, or part of it, free of charge, during School Hours, subject to availability and subject to the School Council making a prior written booking with the Community Partner when required.
- 53.3 The School Council is entitled to shared use of the Office Area, free of charge, during the Facility Operation Hours. The parties (acting reasonably) will agree on which part of the Office Area will be used by the School Council.
- 53.4 The School Council is entitled to shared use of the Common Area forming part of the Facility during School Hours and at any other time that the School Council is entitled to use all or a part of the Facility.
- 53.5 The School Council and the Community Partner must in good faith negotiate the use of the Facility by the School Council during school holiday periods.
- 53.6 The School Council may use the Facility, or a part of it, free of charge outside School Hours on up to 52 occasions each year at such times to be agreed with the Community Partner.
- 53.7 The School Council may negotiate additional use of the Facility or part of it, free of charge, outside

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School Hours (but within the Facility Operating Hours) with the Community Partner subject to such terms and conditions as agreed with the Community Partner.

(a) manage the use of the Facility during Community Partner's Hours and any other times the Community Partner is entitled to use the Facility; and

Community Partner's Use of the Facility

53.8 The Community Partner is entitled to use the Community Partner Area during the Community Partner's Hours.

(b) manage the Community Partner's obligations in respect of the Facility (or some of the obligations), in accordance with this Agreement.

53.9 The Community Partner is entitled to use the Office Area during the Facility Operating Hours in accordance with Schedule A Clause E.

55.2 In order to obtain the School Council 's approval to appoint a manager, the Community Partner must:

53.10 The Community Partner may negotiate use of the Teaching Kitchen, outside School Hours (but within the Facility Operating Hours), free of charge, with the School Council subject to such terms and conditions as agreed with the School Council. Such use may only be for the delivery of health and well-being programs or events by the Community Partner.

(a) inform the School Council of its proposed manager and give the School Council at least 30 days to consider the proposed appointment; and

53.11 The Community Partner is entitled to shared use of the Common Area forming part of the Facility during the Facility Operating Hours unless the School Council is entitled to use all of the Facility.

(b) give the School Council reasonable details of the proposed arrangement, including a copy of the proposed management agreement between it and the manager which meets the requirements of clause 55.5;

53.12 The School Council and the Community Partner must in good faith negotiate the use of the Facility by the Community Partner during school holiday periods.

(c) give the School Council details of any management fees payable to the Manager; and

53.13 The Community Partner may amend the Community Partner's Hours provided the Community Partner's Hours are not outside the Facility Operating Hours and the Community Partner advises the School Council, in writing, of the amended Community Partner's Hours.

(d) provide the School Council with any other information which the School Council may reasonably require.

55.3 The School Council must advise the Community Partner in writing whether it approves the appointment of the manager. Such approval must not be unreasonably withheld.

54 USE OF THE FACILITY BY COMMUNITY GROUPS

54.1 The School Council and the Community Partner will encourage use of the Facility by community groups. The Community Hiring Party must ensure that any use by the community is a Permitted Use.

55.4 The Community Partner must provide the School Council with details of the addresses and telephone numbers of the senior executives and any other key personnel of the manager and provide updated details as required.

55 APPOINTMENT OF A MANAGER

55.1 The Community Partner may appoint a manager at any time during the Licence Term, with the prior written approval of the School Council , to:

55.5 If the Community Partner wishes to appoint a manager, the School Council must prepare a management agreement. The Community Partner must ensure that the management agreement between it and the manager contains terms and conditions which:

(a) are consistent with the Community Partner's obligations under this Agreement;

(b) require the manager to comply with any direction from the Community Partner;

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- (c) stipulate that the Management Agreement will terminate at the end of the Licence Term;
- (d) include the same obligations for employees or contractors of the manager to obtain working with children and police checks as are contained in clause 30 of this Agreement;
- (e) include a clause which provides that, if the School Council forms the reasonable opinion that a person employed or engaged by the manager for the purposes of the Facility is not a Proper Person, the Community Partner may require the manager to remove such person from the Facility and replace him or her with someone of appropriate competence and/or experience who is a Proper Person; and
- (f) stipulate that where an inconsistency exists between the Management Agreement and this Agreement, the terms of this Agreement will prevail.
- 55.6 The School Council must give the School Council a copy of the executed Management Agreement.
- 55.7 The appointment of a manager does not in any way derogate from or affect the obligations of the Community Partner under this Agreement.
- 56 HIRING**
- Hire by the School Council during School Hours**
- 56.1 The Community Partner acknowledges that the School Council may:
- (a) hire out the School Council Area or part thereof during School Hours or any other times that the School Council is entitled to use the Facility or part thereof. Any fees that may be charged by the School Council in respect of such hire belong to the School Council unless otherwise agreed between the School Council and the Community Partner; and
- (b) permit other government or non government schools and not for profit users to use the School Council Area or part thereof during School Hours or any other times that the School Council is entitled to use the Facility or part thereof.
- 56.2 Unless the School Council obtains the Community Partner's prior written approval, the School Council must not hire out the Facility to a commercial or for profit entities for the purpose of conducting a private business, unless the purpose directly relates to a school curriculum or community event, program or non-profit benefit.
- Community hire outside School Hours**
- 56.3 The Community Hiring Party must ensure that it:
- (a) only hires the Facility, excluding the School Council Area, out for use by members of the public during the Community Partner's Hours or any other times the Community Partner is entitled to use the Facility;
- (b) sets terms and conditions for the use of the Facility provided they meet the requirements of clause 56.4;
- (c) collects fees for the hire of the Facility; and
- (d) instructs all Hirers as to what constitutes appropriate behaviour and how to ensure security is maintained during the hire period.
- 56.4 The terms and conditions for the use of the Facility by Hirers must:
- (a) be consistent with the current guidelines and policies of the Community Partner which relate to buildings on its land, a copy of which must be provided by the Community Partner to the School Council if the School Council is the Community Hiring Party;
- (b) require that all Hirers leave the Facility in a clean and tidy condition ready for use, unless the Community Hiring Party makes its own arrangements for the Facility to be cleaned following use by a Hirer or Hirers;
- (c) where applicable, require all Hirers to ensure that all external doors and windows at the Facility are secured and locked following their use of the Facility;
- (d) require that all Hirers enter into and maintain at all times during the use of the Facility public liability insurance and produce evidence of such insurance unless current Community Partner policy does not require the particular user to obtain public liability insurance; and

- (e) only allow the Facility to be used during the Community Partner's Hours and any other times the Community Partner is entitled to use the Facility.

56.5 Any fees charged for such hire of the Facility belong to the Community Hiring Party unless otherwise agreed between the parties.

SECTION J: OPERATIONAL RESPONSIBILITIES

57 MAINTENANCE

57.1 The Community Partner is responsible for arranging and paying for all maintenance, repair, cleaning, mowing of any grassed areas and security of the Facility to a standard appropriate for a facility similar to the Facility and taking into account the proposed use of the Facility.

58 CAPITAL WORKS AND CAPITAL EXPENDITURE

Capital Works

58.1 The Community Partner must arrange all Capital Works in relation to the Facility and ensure they are carried out to a standard appropriate for a facility similar to the Facility and taking into account the proposed use of the Facility.

Responsibility for Capital Expenditure

58.2 The Community Partner must pay for all Capital Expenditure in relation to the Facility.

60 CAPITAL WORKS PLAN

60.1 Within 3 months of the Date of Operation the Community Partner and the School Council must together prepare a 10 year rolling Capital Works plan for the Facility and update it annually.

61 UTILITIES

61.1 The Community Partner is responsible to pay for the cost of mains water, electricity and gas supplied to the Facility.

62 ADDITIONAL FINANCIAL OBLIGATIONS OF THE COMMUNITY PARTNER AND THE SCHOOL COUNCIL

Additional financial obligations of the Community Partner

62.1 The Community Partner must pay:

- (a) the cost of employing staff and engaging contractors and any other costs or expenses in relation to its use of the Facility and the performance of its obligations in respect of the Facility; and
- (b) any Statutory Charges payable in respect of the Community Partner's use or occupation of the Facility;
- (c) telephone, internet and any other telecommunication charges for the Facility as agreed with the School Council; and
- (d) the cost of any service call outs in relation to the security or fire safety of the Facility, if the call out was required due to an act or omission of the Community Partner or its Personnel.

Additional financial obligations of the School Council

62.2 The School Council must pay:

- (a) the cost of employing staff and engaging contractors in relation to its use of the Facility and the performance of its obligations in respect of the Facility;
- (b) telephone, internet and any other telecommunication charges for the Facility as agreed with the Community Partner; and
- (c) the cost of any service call outs in relation to the security or fire safety of the Facility, if the call out was required due to an act or omission of the School Council or its Personnel.

63 INSURANCE

Public liability insurance

63.1 The Community Partner must enter into and maintain at all times during the Licence Term a public liability insurance policy as described in Part F1 of the Schedule.

- 63.2 The Minister confirms that it holds public liability insurance on behalf of itself and the School Council, and will maintain that insurance during the Licence Term.

Property damage insurance

- 63.3 The parties have agreed to insure the Facility in respect of property damage as set out in **Part F3** of the Schedule.
- 63.4 The party responsible for obtaining property damage insurance, as specified in **Part F2** of the Schedule, must provide the other parties with a copy of the policy of insurance for inspection if requested to do so.
- 63.5 The parties have agreed to share the cost of such insurance as set out in **Part F4** of the Schedule.
- 63.6 If the property damage insurance selected and specified in **Part F3** of the Schedule does not include cover for equipment and apparatus owned by the Community Partner and the School Council which is kept in or on the Facility, then each of the School Council and the Community Partner is responsible for separately insuring the equipment and apparatus owned by it.

Workers' compensation insurance

- 63.7 The Community Partner must enter into and maintain at all times during the Licence Term workers' compensation insurance or similar insurance as required by State or Federal Law, including in respect of any volunteer workers.
- 63.8 The Minister confirms that it holds workers' compensation insurance on behalf of itself and the School Council as required by State or Federal Law, including in respect of any volunteer workers.

Not to void insurance

- 63.9 No parties must do or permit any act, matter or thing to be done which may invalidate, make void or voidable any insurance in relation to the Facility or which increases the premium of any insurance which is payable by the other parties.

SECTION K: CONSULTATION

64 MEETINGS OF REPRESENTATIVES OF SCHOOL COUNCIL AND COMMUNITY PARTNER

- 64.1 Throughout the Licence Term, an authorised representative of the School Council must meet with an authorised representative of the Community Partner, at such places and such times as the School Council's representative may reasonably determine following consultation with the Community Partner's representative, but at least once every six months, to discuss issues relating to the Facility and its use and to recommend actions and resolutions where necessary.

SCHEDULE

A THE SCHOOL AND THE FACILITY			
A1	The School – Clause 1	Kurunjang Primary School	
A2	The Facility – Clause 1	Kurunjang Neighbour House as shown on Plan B comprising: <ul style="list-style-type: none"> A. Community Partner Area as coloured blue on Plan B <ul style="list-style-type: none"> • community rooms including storeroom • meeting room • kitchen • alfresco garden B. School Council Area as coloured and hatched pink on Plan B <ul style="list-style-type: none"> • teaching kitchen [hatched] • classroom including storeroom • kitchen garden C. Common Area as coloured yellow on Plan B <ul style="list-style-type: none"> • entrance, foyer and corridors • male and female toilets (including accessible toilet) • pedestrian access paths D. Office Area as coloured green on Plan B 	
A3	Works - Clause 1	The construction of the Neighbour House	
B CONSTRUCTION			
B1	Constructing Party - Clauses 1 and 35.1	Community Partner	
B2	Construction Contributions (ex GST) - Clauses 1 and 38.2	Party	Contribution (\$)
		Minister	\$ 2,350,000 [Shared Facilities Fund]
		School Council	\$ 0
		Community Partner	\$ 300,000
		Total	\$ 2,650,000
B3	Construction Costs (ex GST) - Clauses 1 & 39	\$2,650,000 - includes \$50,000 consultants' fees related to construction	
B4	Legal Costs (ex GST) Clause 11	Party	Percentage (%)
		School Council	N/A
		Community Partner	N/A

Community Joint Use Agreement

B5	Responsibility for additional Construction Costs - Clause 39.3	Party	Percentage (%)
		Minister	0%
		School Council	0%
		Community Partner	100%
		Total	100%
B6	Date for Payment of Constructions Contributions – Clause 40.2	Date	Percentage (%) PAYABLE
		Milestone 1 30 days after the Date of the Agreement	10%
		Milestone 2 Commencement of the Works	40%
		Milestone 3 Upon 50% completion of the Works under the Building Contract	40%
		Milestone 4 Upon Practical Completion of the Works under the Building Contract	10%
		TOTAL For Milestone 2, 3 & 4: The Minister will make payments after 30 days upon receipt of the completed Letter of Notification for the relevant milestone as per the template letters attached as Annexure D.	100%
C DATE OF OPERATION			
C1	Date of Operation – Clauses 1 and 48.4	The Date of Practical Completion of the Works	
C2	Date of Announcement - Clauses 1	The date the Minister announces the project, being 12 July 2017.	
D LICENCE			
D1	Initial Term – Clauses 1 and 48.4	25 years	
D2	Further Term – Clauses 1 and 48.5	15 years	
D3	Licence Fee – Clauses 1 and 48.3	\$1.00 per annum if demanded	

Community Joint Use Agreement

E USE OF THE FACILITY			
E1	School Hours – Clause 1 and 53	School Council Area Monday to Friday 8.30am to 4.30pm Shared Area/Office Monday to Friday 8:00pm to 9.00pm Saturday 9.00am to 5:00pm Sunday 10.00am to 4.00pm	
E2	Community Partner's Hours – Clauses 1 and 53	School Council Area Monday to Friday 4.30pm to 9.00pm Saturday 9.00am to 5:00pm Sunday 10.00am to 4.00pm Community Partner Area Monday to Sunday 8.30am to 11.00pm Shared Area/Office Monday to Sunday 8.30am to 11.00pm	
E3	Facility Operating Hours – Clauses 1 and 53	Monday to Sunday 8.00am to 11.00pm unless the Planning Scheme or Planning Permit authorises reduced hours	
E4	Community Hiring Party – Clauses 1 and 56	Community Partner	
E5	Permitted Use – Clauses 1 and 22.2	Community programs and services and educational purposes including health and wellbeing initiatives and programs	
F PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE			
F1	Public liability insurance – Clause 63.1	Scope of policy	Insurance which provides the Community Partner, including its employees while acting in the course of their employment, with at least \$20 million cover per event against any liability resulting from death or personal injury or the destruction of or damage to property occurring in or on the Facility or arising out of or in relation to the use of the Facility.
F2	Property Damage Insurance for the Facility – Clause 63.3	Party responsible for obtaining	Community Partner
F3		Scope of policy	Insurance which provides cover for the reinstatement or replacement value of the Facility and against the destruction of or damage to the Facility plus any plant, equipment or property belonging to or used by the State of Victoria, the School Council or the Community Partner which is housed, stored, kept or used in or on the Facility. If the policy is obtained by the Community Partner then the School Council and the State of Victoria must also be named as insureds in the policy.

Community Joint Use Agreement

F4		Reimbursement arrangements	Not Applicable Community Partner responsible for all costs
G ADDRESSES FOR NOTICES – CLAUSE 12.1			
Minister	Addressee	Chief Executive Officer Victorian School Building Authority Department of Education and Training	
	Street Address	2 Treasury Place East Melbourne Victoria 3002	
	Postal Address	GPO Box 4367 Melbourne Victoria 3001	
School Council	Addressee	Executive Officer Kurunjang Primary School Council	
	Street Address	37-45 Mowbray Crescent Kurunjang Melbourne Victoria 3337	
	Postal Address	PO Box 554 Melton Melbourne Victoria 3337	
Community Partner	Addressee	Chief Executive Officer Melton City Council	
	Street Address	232 High Street Melton Melbourne Victoria 3337	
	Postal Address	232 High Street Melton Melbourne Victoria 3337	

Community Joint Use Agreement

EXECUTION

Executed as an Agreement.

Signed by, Manager,
Property Unit this day of
..... 20..... for and on behalf of
James Merlino, MP in his capacity as Minister for
Education, in the presence of:

.....
Signature

.....
Signature of witness

.....
Print Name of witness in full (print)

The common seal of **Kurunjang Primary School Council** was affixed by order of the council and in the presence of the President of the School Council and its authorised appointee:



Elizabeth Bajada
.....
Signature of President of School Council

Jenny Robinson
.....
Signature of authorised appointee

ELIZABETH BAJADA
.....
Print Name of President of School Council in full

JENNY ROBINSON
.....
Print Name of authorised appointee in full

The **Common Seal** of the **Melton City Council** was affixed in the presence of:

.....
Signature of Councillor

.....
Signature of Chief Executive Officer

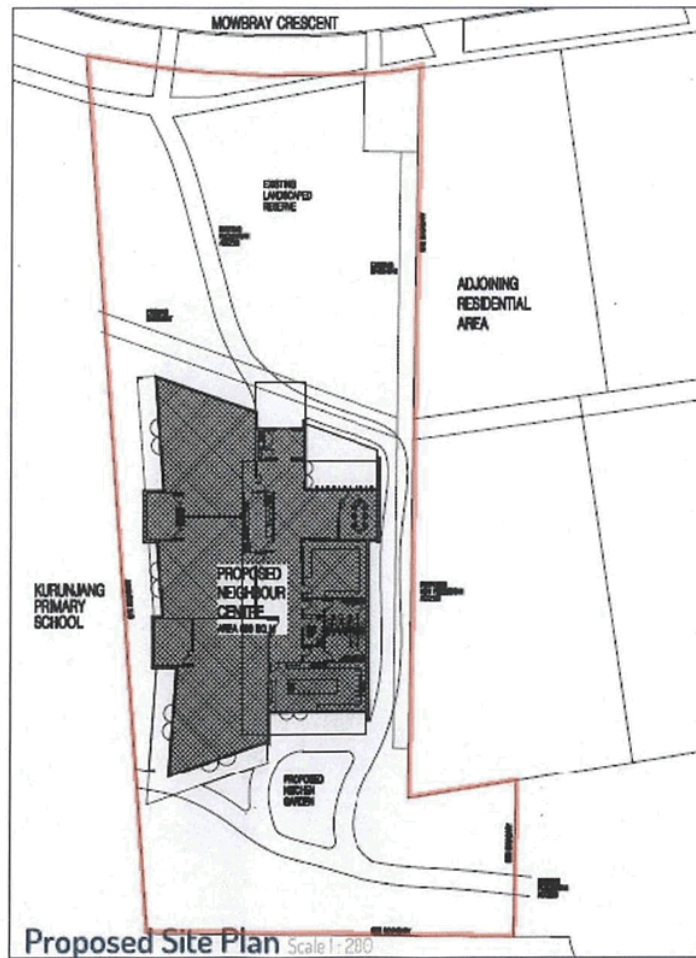
.....
Print Name of Councillor in full (print)

.....
Print Name of Chief Executive Officer in full (print)

Community Joint Use Agreement

ANNEXURE A – PLAN A

Plan of the Land



Kurunjang Neighbour House

Proposed Neighbour House

Concept Design

CA

Community Joint Use Agreement

ANNEXURE B – PLAN B

Plan of the Facility



Kurunjang Neighbour House 30 Curran Street, Curran, VIC 3083	Dispersed Neighbour House Plan E-1 (clean)	Concept Design	TCA
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Community Joint Use Agreement

ANNEXURE C – Shared Facilities Fund Conditions

Reporting

The Constructing Party will submit a report to the Department's Portfolio Manager, Indec Arup, via the Department's web-based project management tool ("iTwoCX") on a monthly basis, commencing one month after the Date of the Agreement. The report will include key milestone dates, risks and issues and overall status of the project.

Final Acquittal

The Constructing Party will submit a completed Final Acquittal Statement, via iTwoCX, to the Department as per the template attached as Annexure D.

Community Joint Use Agreement

ANNEXURE D – Template Letters

THIS TEMPLATE IS TO BE REPRODUCED ON THE COMMUNITY PARTNER LETTERHEAD

**LETTER OF NOTIFICATION
Milestone 2 - Commencement of the Works**

Director
Delivery Branch
Victorian School Building Authority
GPO Box 4367
Melbourne 3001

Re: Shared Facilities Fund - [Project Name] Project

Constructing Party: [insert name]

I wish to advise the Victorian School Building Authority that the commencement of construction of the works has occurred on site on the [insert date].

For record purposes, please find attached photos of commencement of works on site.

Yours sincerely

Signature block of person authorised to sign
Sender's full name
Sender's full title
[Insert Date]

Community Joint Use Agreement

**THIS TEMPLATE IS TO BE REPRODUCED ON THE COMMUNITY PARTNER
LETTERHEAD**

LETTER OF NOTIFICATION

Milestone 3 – Midpoint (50%) of construction of the Works

Director
Delivery Branch
Victorian School Building Authority
GPO Box 4367
Melbourne 3001

Re: Shared Facilities Fund - [Project Name] Project

Constructing Party: [insert name]

I wish to advise the Victorian School Building Authority that the midpoint of the construction of the works has occurred on site on the [insert date].

For record purposes, please find attached photos of construction works on site.

Yours sincerely

Signature block of person authorised to sign

Sender's full name

Sender's full title

[Insert Date]

Community Joint Use Agreement

THIS TEMPLATE IS TO BE REPRODUCED ON THE COMMUNITY PARTNER
LETTERHEAD

LETTER OF NOTIFICATION
Milestone 4 – Practical Completion of the Works

Director
Delivery Branch
Victorian School Building Authority
GPO Box 4367
Melbourne 3001

Re: Shared Facilities Fund - [Project Name] Project

Constructing Party: [insert name]

I wish to advise the Victorian School Building Authority that the Practical Completion of the works has occurred on site on the [insert date].

For record purposes, please find attached Certificate of Practical Completion by the Principal Consultant and photos of works on site.

Yours sincerely

Signature block of person authorised to sign

Sender's full name

Sender's full title

[Insert Date]

Community Joint Use Agreement

Final Acquittal Statement

THIS TEMPLATE IS TO BE REPRODUCED ON THE COMMUNITY PARTNER LETTERHEAD

Shared Facilities Fund Program - [Insert name] Project

Income, Expenditure and Assets in respect of the Financial Grants provided for [Insert Name] Project

Completing this Statement:

This Statement must be completed after the finalising all the expenditure of the project and must be signed by the Constructing Party

1. Project Details:

Project Name: **Insert Name**

Fiscal Year of Funding: **2017/18**

(GST Exclusive)

School Project Funding as per the Budget	A	\$ XXX,XXX
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Purpose of Funding
[Provide details]

2. Project Income:

INCOME		\$	Date funding released for Project
Funding as per the Shared Facilities Fund budget	Payment 1	160,000.00	xx/xx/xx
	Payment 2	160,000.00	xx/xx/xx
	Payment 3	160,000.00	xx/xx/xx
	Payment 4	160,000.00	xx/xx/xx
Total Income (GST Exclusive) including B		B 400,000.00	

Community Joint Use Agreement

Funding from other sources (include any interest accrued if applicable) Provide details:	C	100,000.00	
Total Income (GST Exclusive) = B+C	D	500,000.00	

3. Project Expenditure:

3.1 Total Project Expenditure

EXPENDITURE	Actual \$ (GST Exclusive)
<i>Capital Works</i>	370,000.00
<i>Furniture & Equipment</i>	30,000.00
<i>Consultant Fees, includes project management fees</i>	50,000.00
<i>Other – provide details</i>	100,000.00
Total Project Expenditure	E 500,000.00

Explanation of variations to budgeted expenditure

Community Joint Use Agreement

4. Certification:

I, *[Insert Name]*, certify that the above Statement of Income and Expenditure in respect of the Funding provided for *[Insert Name]* Project is correct;

Signature.....

Date.....

Print Name.....

Position: *Authorised Officer, Constructing Party*

Signature.....

Date.....

Print Name.....

Position: *Financial Delegate, Constructing Party*