

# School Council Canteen Licence

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## Between

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

and

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

## Background

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

## Agreed terms

### 1. Grant of Licence

- (a) The School Council grants to the Licensee a licence to occupy the Licensed Area for the Term subject to the terms and conditions of this Licence.
- (b) The parties agree that:
  - (i) this Licence will confer no right of exclusive occupation of the Licensed Area to the Licensee;
  - (ii) the School Council may at any time exercise all rights as owner of the Licensed Area including (but without in any way limiting the generality of this provision) the right to use, possess and enjoy the whole or any part of the Licensed Area save only in so much as such rights will not prevent the operation of the Licence hereby granted; and
  - (iii) the right to exclusive possession of the Licensed Area will remain with the Minister via the School Council.

### 2. Representatives

- (a) The School Council and the Licensee each appoint the person listed as such in Item 16 as their respective representatives who will be responsible for communications under this Licence.
- (b) Either party may replace its representative by giving written Notice to the other party.

- (c) The School Council representative and the Licensee representative have authority to:
  - (i) exercise all of the powers and functions of his or her party under this Licence other than the power to amend this Licence; and
  - (ii) bind his or her party in relation to any matter arising out of or in connection with this Licence.
- (d) The Licensee must comply with any reasonable instruction or direction given by the School Council's Representative.

### 3. Term

This Licence commences on the Commencement Date listed in Item 5 and ends on the Expiry Date listed in Item 6, unless terminated earlier or extended in accordance with this Licence, including any holding over pursuant to clause 29.

### 4. Further Term

- (a) The School Council may renew this Licence for the Further Term(s) listed in Item 7 if:
  - (i) there is no unremedied breach of this Licence by the Licensee of which the School Council has given the Licensee notice;
  - (ii) the Licensee has not persistently committed breaches of this Licence of which the School Council has given the Licensee notice; and

(iii) the Licensee has made a written request for the renewal to the School Council, not earlier than 12 months and not later than three months before the Expiry Date.

(b) Each Further Term:

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

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

## 5. Licence Fee

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

(a) at the School Council's address specified in Item 16 (or to any other address as the School Council notifies the Licensee by Notice from time to time); and

(b) without demand by the School Council at the times and in the manner set out in Item 8 (or at such other times or in such other manner as the School Council notifies the Licensee by Notice from time to time).

## 6. Rates and Taxes and Outgoings

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

(b) The party specified in Item 9 must pay the Outgoings for the Licensed Area.

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

## 7. Review of Licence Fee

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

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

## 8. Security Deposit

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

(b) If the Licensee breaches any of the Licensee's obligations under this Licence and the School Council incurs any Losses (or

acquires any other entitlement to payment from the Licensee), the School Council may, if the default remains unremedied 10 Business Days after the Default Notice has been given to the Licensee, draw on the Security Deposit without further notice to the Licensee to make good such Loss.

(c) If the School Council draws on the Security Deposit, the Licensee must replace the amount drawn down within 10 Business Days to maintain the Security Deposit at the level specified in Item 17.

(d) Subject to any right the School Council has to draw on the Security Deposit, the School Council must return the Security Deposit to the Licensee when each of the following criteria has been satisfied:

(i) 60 days have elapsed since the expiry or termination of this Licence;

(ii) the Licensee has vacated the Licensed Area in accordance with this Licence, including satisfying all of its reinstatement obligations; and

(iii) the Licensee has no outstanding obligations under this Licence or subsisting breach of this Licence or any actual or potential liability for any breach or non-performance of any of the Licensee's obligations under this Licence.

## 9. Use of Licensed Area

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

(b) The Licensee must not use or allow the Licensed Area to be used for any purpose other than the Permitted Use.

(c) The Licensee acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the School Council regarding the suitability of the Licensed Area for the conduct of the Permitted Use otherwise than as expressly contained in this Licence, or for any other use.

(d) The Licensee:

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

(ii) may access other parts of the School in common with others and being solely those parts of the School required for the purpose of accessing the Licensed Area;

(iii) acknowledges that if the Licensed Area includes external areas (for example, playgrounds and ovals), School

amenities, kitchen facilities, car parks and/or staff facilities, these areas will be used and occupied together with other occupiers of the School; and

- (iv) acknowledges that the School Council may grant its consent, which consent will be at the absolute discretion of the School Council, for the Licensee to use other areas of the School in addition to those listed in clauses 9(d)(i) to 9(d)(iii) solely for the purposes of the Licensee's use of the Licensed Area.

#### 10. Conduct of Canteen Business

- (a) The Licensee acknowledges and agrees that the Permitted Use is the conduct of a canteen business from the Licensed Area, such canteen business to trade solely with students, Associates of the School and others legitimately upon the Land.

- (b) The Licensee must:

- (i) conduct the Permitted Use in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of canteen services;
- (ii) conduct the Permitted Use in a manner that complies with all Laws applicable to the Permitted Use and/or the Licensee;
- (iii) ensure the highest quality of work and the provision of canteen services with the utmost efficiency;
- (iv) act in good faith and in the best interests of the School Council;
- (v) keep the School Council informed of all matters of which it ought reasonably be made aware, and provide such information in relation to the Permitted Use as may reasonably be required by the School Council; and
- (vi) carry on the Permitted Use to the reasonable satisfaction of, and in accordance with the requirements of, the School Council.

- (c) Without limiting clause 10(b), the Licensee must:

- (i) provide a reasonable selection and quantity of nutritional and wholesome foodstuffs (adjusted seasonally to accord with the then season) which comply with the requirements of the publications listed in Item 19 or any other publications by the Department (or its successor) and the reasonable requirements of the School Council;

- (ii) not sell or offer for sale any foodstuffs which the School Council has previously required the Licensee not to offer for sale;

- (iii) withdraw from sale any item at the direction of the School Council in its absolute discretion;

- (iv) use only (unless none are reasonably available) bio-degradable cleaning substances in respect of the Licensed Area;

- (v) use only packaging which is reasonably acceptable to the School Council, acting reasonably;

- (vi) not knowingly charge prices for items sold in excess of those prices for the time being usually charged in the district in which the Land is situated;

- (vii) deliver to the School Council, immediately upon request, a list of the Licensee's then retail prices in respect of all items then available for sale in the canteen which the School Council will thereafter be entitled to publish in any School publication or otherwise as the School Council determines;

- (viii) ensure that the canteen business is fully and properly staffed and capable of serving all customers within the hours of business referred to in Item 12;

- (ix) ensure that the canteen remains open for business on all days and times listed in Item 12 or such other periods (if any) as the School Council requires; and

- (x) not operate any food or drink vending machines in a location other than in the Licensed Area without the written consent of the School Council.

- (d) The Licensee must:

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

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

- (iii) not do anything in or near the Licensed Area or the Land which is noxious, offensive or a nuisance and not cause any injury or nuisance to neighbours or other occupiers of the, or surrounding the, Licensed Area;

- (iv) not keep or use chemicals, inflammable liquids, acids or other hazardous things on the Licensed Area except for the Permitted Use, or create fire hazards;

- (v) not overload the floor of the Licensed Area;

- (vi) comply with all Department, School and School Council policies and/or guidelines which deal with the safety or health of persons on the Licensed Area or otherwise under its control including but not limited to all applicable Health and Safety Laws and any regulations made under those Laws;
  - (vii) not erect, display, affix or exhibit on or at the Licensed Area any signs except for signs that comply with all Laws and then only after obtaining the School Council's approval (which approval is at the absolute discretion of the School Council) and all necessary planning and building permits from the relevant Government Agency;
  - (viii) observe fire precautions;
  - (ix) not install any fixtures or fittings, except those necessary for the Permitted Use, without the School Council's written consent;
  - (x) lock the Licensed Area at the close of trading each day, provided that the School Council must not in any way be restricted from accessing the Licensed Area;
  - (xi) ensure that all external doors and windows are secured and locked and all lights extinguished daily at the end of its use of the Licensed Area; and
  - (xii) if the Licensee is a Framework Organisation or an Agency under the FVP Act it warrants to the School Council that:
    - (A) it will Align its relevant policies, procedures, practice guidance and tools with the Approved Framework as amended from time to time; and
    - (B) it will maintain Alignment of its relevant policies, procedures, practice guidance and tools with the Approved Framework during this Agreement.
  - (e) By arrangement with the Licensee upon not less than 7 days' prior notification, the School Council may use the Licensee's facilities and equipment in the Licensed Area at such time or times notified by the School Council, provided that the facilities and equipment are not in use by the Licensee at that time. The Licensee's facilities and equipment must be left in the same condition that they were in before use by the School Council and any damage caused or contributed to by, or due to the negligence of, the School Council under this clause will be paid for by the School Council.
  - (f) Any authorised representative of the School Council may at times and without notice enter the Licensed Area to undertake an inspection as to the state and condition of the Licensed Area and of the compliance of the Licensee with the terms and conditions of this Licence.
  - (g) Any person entering the Licensed Area under clause 10(f) must:
    - (i) comply with all policies regarding food handling and safety as notified by the Licensee's appointed manager for the Licensed Area.
    - (ii) minimise interference to the Licensee's activities, to the extent possible.
  - (h) The Licensee must trade at the Licensed Area under its corporate name if it is a body corporate or, if it is not a body corporate, under a registered business name, neither of which must bear any reference to the name of the School Council.
- 11. Accident Compensation**
- The Licensee must ensure that, in respect of its Associates and any other persons engaged by the Licensee to perform the Permitted Use, it:
- (a) complies with the provisions of the *Accident Compensation Act 1985 (Vic)*;
  - (b) insures against its liability to pay compensation whether under Law or otherwise; and
  - (c) produces to the School Council on request any certificates or like documentation required by the *Accident Compensation Act 1985 (Vic)*.
- 12. Staff Costs**
- (a) The Licensee will indemnify and keep indemnified the School Council from and against all liability for the Staff Costs in any way relating to this Licence.
  - (b) If the School Council is or becomes liable to pay any Staff Costs, the School Council may deduct the amount of its liability for the Staff Costs from any amount due by the School Council to the Licensee, whether under this Licence or otherwise.
- 13. Numbers of Students**
- (a) The School Council will use reasonable endeavours to give the Licensee not less than five (5) Business Days' notice of any student-free day(s) at the School.
  - (b) The Licensee acknowledges and agrees that the number of students attending the School fluctuates from time to time and no guarantee is given as to the number of students attending the School during the Term.

#### 14. Compliance with Laws

- (a) The Licensee must, at its own expense, in all respects observe and comply with all Laws that apply to this Licence and all directions, notices and Requirements of any Government Agency relating to the development, construction, use and occupation of the Licensed Area, and any other use or development which the Licensee may undertake on the Licensed Area.
- (b) The Licensee must keep in force and available for inspection by the School Council upon request all licences, permits and registrations required for the carrying on of any business use or other activity conducted by the Licensee in or upon the Licensed Area.
- (c) Without limiting any other clause in this Licence, the Licensee must, in conducting the Permitted Use, strictly observe and comply with the *Public Health and Wellbeing Act 2008* (Vic) and any other Laws relating to the preparation, sale, disposal or storage of foodstuffs, and must obtain any relevant planning or other permits required to conduct the Permitted Use.

#### 15. Repairs

- (a) Except for fair wear and tear, the Licensee must keep the Licensed Area clean and in the same condition as at the Commencement Date and properly repaired and maintained.
- (b) If the Licensed Area is damaged, the Licensee must promptly repair such damage to the extent that it is caused or contributed to by the Licensee.
- (c) If the Licensee fails to properly repair any damage it is responsible for in accordance with clause 15(b) within a reasonable time then the School Council may do so and the Licensee must immediately reimburse the School Council the cost of such repairs.
- (d) The School Council is under no obligation to repair or replace any equipment provided by the School Council and used by the Licensee in respect of the Licensed Area.
- (e) If any equipment provided by the School Council is damaged or destroyed by the Licensee, the Licensee must at its own expense repair or replace such items.

#### 16. Improvements and Fit Outs

- (a) The Licensee acknowledges that:
  - (i) subject to clause 28, at the end of this Licence, all improvements and fit outs (excluding the Licensee's non-fixed equipment) financed and constructed on the Licensed Area by the Licensee will be owned by the School Council; and

- (ii) until the Licence comes to an end, all improvements and fit outs constructed by the Licensee on the Licensed Area will be owned and be the responsibility of the Licensee.
- (b) The Licensee must not and must not permit any other person to carry out any improvements, fit outs or works of any kind on the Licensed Area without the School Council's prior written consent, which consent will be at the absolute discretion of the School Council.
- (c) In seeking the School Council's consent under clause 16(b) the Licensee must submit any plans and specifications of the proposed improvements or fit outs on the Licensed Area for the approval of the School Council.
- (d) The School Council may give consent under clause 16(b) subject to any conditions the School Council sees fit, which may include the Licensee satisfying the following requirements:
  - (i) in carrying out any improvements or fit outs to the Licensed Area the Licensee must comply with all reasonable directions of the School Council in accordance with the consent given by the School Council and such directions may include requirements and approvals in relation to materials and contractors or tradespersons to be used for the improvements or fit outs;
  - (ii) any improvements or fit outs will be at the cost of the Licensee unless otherwise agreed in writing by the School Council,
  - (iii) any improvements or fit outs must be executed promptly and continuously in a proper and skilful manner, in accordance with all Laws and Requirements and strictly in accordance with the consent given by the School Council;
  - (iv) the Licensee must pay, on demand, all costs incurred by the School Council in considering and inspecting the improvements and any supervision, including the costs of engineers or other building consultants reasonably engaged by or on behalf of the School Council;
  - (v) the Licensee must obtain and keep current and comply with all necessary approvals or permits from all Government Agencies necessary to enable any improvements or fit outs to be lawfully effected, and must on request by the School Council produce for inspection by the School Council copies of all such approvals and permits;

- (vi) within 30 days of completion of the improvements or fit outs, the Licensee must obtain and produce to the School Council any unconditional certificates of compliance or of satisfactory completion issued by relevant Government Agencies and a certificate by a consultant approved by the School Council that the improvements or fit outs have been carried out in accordance with the plans and specifications approved by the School Council;
- (vii) the improvements or fit outs must be completed within the time period (if any) specified by the School Council, acting reasonably;
- (viii) in carrying out any improvement or fit out works the Licensee and/or any third party engaged to undertake the whole, or any part, of the improvements or fit outs must ensure that they have all necessary and adequate insurance relating to the works in undertaking the improvements or fit outs; and
- (ix) the Licensee must note the interest of the State of Victoria, the Minister for Education and the School Council on all insurance policies effected under clause 16(d)(viii) and must immediately provide evidence of all such insurance policies to the School Council.

#### 17. School Council's Exercise of Rights

- (a) The Licensee acknowledges that the School Council and the School Council's Associates have the right to:
  - (i) enter and view the state of repair of the Licensed Area;
  - (ii) carry out any works that may be desirable or required to comply with any applicable Law or Requirement or this Licence;
  - (iii) show the Licensed Area to prospective licensees, lessees or purchasers;
  - (iv) create any registered or unregistered easement or other right over the Land or Licensed Area;
  - (v) undertake any of the Licensee's obligations under this Licence which the Licensee fails to undertake in accordance with this Licence and/or within a reasonable time and the Licensee must immediately reimburse the School Council the costs to the School Council in undertaking such obligations; and
  - (vi) enter the Land and the Licensed Area for the purposes set out in this Licence or for any other lawful purpose.

- (b) Except in an emergency, the School Council must:
  - (i) give the Licensee reasonable notice of the School Council's intended exercise of the rights set out in this clause;
  - (ii) only exercise the rights set out in this clause at reasonable times; and
  - (iii) minimise interference to the Licensee when exercising the rights set out in this clause.

#### 18. Environmental Matters

- (a) The Licensee acknowledges that:
  - (i) the Licensee will occupy the Licensed Area in its present condition and has entered into this Licence on that basis; and
  - (ii) the School Council is not obliged to:
    - (A) remove, encapsulate or otherwise treat any asbestos which may be present in or on the improvements or any fixtures, fittings or installation in, to or on the Licensed Area; or
    - (B) remove, empty, clean or take any action in relation to any underground storage tank or tanks or associated pipes, valves or appliances or any Contamination in, on, or under the Licensed Area.
- (b) The Licensee releases and discharges the Department, School Council and their Associates, successors and assigns, from and against all claims arising after the date of the Licensee's occupation of the Licensed Area under this Licence which the Licensee has, may have, or which may accrue in the future or which, but for the execution of this Licence, the Licensee would or might have had against the Department, the School Council or their Associates, successors and assigns as a result of the presence of any asbestos or Contamination in, on or under the Licensed Area.
- (c) Clause 18(b) does not apply in respect of any claim made by any person arising from exposure to asbestos or any Contaminant on the Licensed Area prior to the date of the Licensee's occupation of the Licensed Area.

#### 19. Requirement for Working with Children and Police Checks

- (a) The Licensee must (and must ensure that all persons engaged or used by it to work at the Licensed Area and/or carry out the Permitted Use under this Licence, including its Associates):
  - (i) have undertaken a satisfactory working with children check if required pursuant to the *Worker Screening Act 2020* (Vic),

- or as otherwise requested by the School Council;
  - (ii) if required by the School Council, have undertaken a satisfactory police records check; and
  - (iii) have met any additional relevant legal requirements and policies of the School Council, School and/or Department in relation to the suitability of persons to work with children or within the precinct of the School as advised by the School Council.
- (b) The Licensee must ensure the terms and conditions of employment of any staff or of engagement of any contractor for the purpose of carrying out work at the Licensed Area and/or carrying out the Permitted Use under this Licence are consistent with the above obligations.

## 20. 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 Licensee (and its Associates) are engaged in Child-connected work.
- (c) The Licensee acknowledges that the School Council and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.
- (d) If the Licensee is an Applicable Entity, it warrants to the School Council that it:
- (i) is compliant and will continue to comply with Child Safety Laws; and
  - (ii) will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Licensee (or its Associates).
- (e) The Licensee (and its Associates) must:
- (i) if applicable (whether or not the Licensee must itself comply with Child Safety Laws), comply with any relevant

School Council Child Safety Policies; and

- (ii) comply with any reasonable direction by the School Council in respect to compliance by the School Council, School Staff and/or the Licensee with any Child Safety Laws or any relevant School Council Child Safety Policies.
- (f) The School Council may terminate this Licence immediately if, in the School's Council's reasonable opinion, it determines at any time that:
- (i) there is a breach of any Child Safety Laws caused by, or in any way connected with, the Licensee or its Associates; or
  - (ii) the Licensee or any of its Associates are not suitable to engage in Child-connected work for the purposes of the School Council and School Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

## 21. Reporting

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

## 22. Insurance, Release and Indemnity

### 22.1 Insurance

- (a) The Licensee must obtain and maintain for the Term the insurance set out in Item 15.1 with an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia that is acceptable to the School Council.
- (i) The insurance requirements of Item 15.2 and Item 15.3 are the responsibility of, and at the discretion of, the Licensee. The Licensee accepts that the School Council's Industrial Special Risks coverage and WorkCover arrangements do not extend to the Licensee.
- (b) The Licensee must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the School Council or any other person.

- (c) Unless otherwise agreed in writing, on or before the date of this Agreement, 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 22.1(a), 22.2 and 22.3 do not apply if the Licensee is insured by VMIA or is a municipal council within the meaning of the *Local Government Act 1989* (Vic) and insured by Liability Mutual Insurance.

## 22.2 Release

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

## 22.3 Indemnity

- (a) Subject to clause 22.3(c), the Licensee at all times indemnifies and will continue to indemnify, hold harmless and defend to the fullest extent permissible by Law, the Department, the School Council and their respective Associates (in this clause, each an **Indemnified Party**) against any Losses which any Indemnified Party suffers or incurs as a result of any demand, suit, action, claim or proceeding against an Indemnified Party where the Losses arise as a direct or indirect result of any of the following:
  - (i) personal injury, including sickness and death;
  - (ii) property damage;
  - (iii) a breach of an obligation of confidence or privacy, whether under this Licence or otherwise;
  - (iv) fraudulent acts or omissions of the Licensee or its Associates;
  - (v) any wilful misconduct or unlawful act or omission by the Licensee or its Associates; or
  - (vi) any third party claim arising out of a breach of this Licence by the Licensee or its Associates (including breach of warranty) or any negligent act or omission of the Licensee or its Associates.
- (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 Licensee will not be liable under the indemnity in clause 22.3(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 Licence by an Indemnified Party; or
  - (iii) the condition of the Licensed Area or the Land before the Commencement Date.

## 23. Termination Events

### 23.1 Damage, destruction, interruption or inaccessibility

In the event that the Licensed Area is damaged or destroyed or there is interruption to access to the Licensed Area so as to render the Licensed Area or any part of the Licensed Area wholly or substantially unfit for the Permitted Use and otherwise unfit for the occupation or use of the Licensee or inaccessible by any usual means of access, the School Council, in its absolute discretion, may terminate this Licence by Notice to the Licensee.

### 23.2 Approvals

- (a) This Licence may be immediately terminated by either party if:
  - (i) an approval required under applicable Laws to conduct a canteen business in the Licensed Area; or
  - (ii) a licence or approval required under applicable Laws for the Licensee to operate a canteen business,
    - is suspended, cancelled, terminated or expired.
- (b) The Licensee cannot exercise its right to terminate under this clause where the Licensee has caused or materially contributed to the event giving rise to the right of termination.

### 23.3 Termination for Insolvency

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

### 23.4 Related Agreement

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

### 23.5 By Agreement

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

### 23.6 School closure or amalgamation

The School Council may terminate this Licence with 3 months' notice to the Licensee in the event that the School closes down or amalgamates with another school.

### 24. Default

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

- (i) specifying the default; and
- (ii) requiring the Licensee to:
  - (A) take steps to rectify the default; or
  - (B) pay reasonable compensation to the School Council (where the School Council, acting reasonably, considers that the default is not capable of remedy),

within the cure period stated in the Notice, which must be reasonable having regard to the nature of the default,

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

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

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

- (i) for the purpose of doing any such thing, the School Council may enter and remain on the Licensed Area; and
- (ii) the School Council may recover on demand from the Licensee the amount paid and the Cost to the School Council and to any other person incurred together with all incidental expenses,

without prejudice to any other right or remedy which the School Council has or may have for any non-payment or non-performance by the Licensee.

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

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

- (a) a written notice by the School Council accepting a surrender of the Licensee's interest under this Licence; or
- (b) a formal notice of forfeiture or re-entry being served on the Licensee by the School Council,

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

- (c) for the purpose of inspection;
- (d) for the purpose of showing the Licensed Area to prospective licensees; or
- (e) the advertising of the Licensed Area for letting,

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

### 26. Removal of Licensee's Property

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

### 27. Interest

- (a) The Licensee must pay interest on any money payable by it under this Licence from the due date until the amount is paid on demand or at times notified by the School Council calculated on daily balances.
- (b) The rate of interest to be applied to each daily balance is 2% per annum above the rate for the time being fixed under s 2 of the *Penalty Interest Rates Act 1983* (Vic).

## 28. Consequences of expiry or termination of Licence

- (a) At the expiration or the earlier determination of the Term, the Licensee must surrender and yield up the Licensed Area (and all keys, including card keys) to the School Council:
- (i) clean and free from rubbish; and
  - (ii) in a condition consistent with the Licensee's performance and observance of all relevant covenants relating to the Licensed Area under this Licence.
- (b) Unless the:
- (i) Licensee has been granted a new licence or lease of the Licensed Area; or
  - (ii) School Council directs in writing to the Licensee that any of the improvements made on the Land by the Licensee under this Licence are to remain on the Land and are not to be demolished whereby clause 16(a) will apply,
- the Licensee at its cost must:
- (iii) demolish and remove all such improvements made under this Licence in a proper and skilful manner in compliance with the applicable Law and Requirements and to the satisfaction of the School Council including landscaping, vegetation and drainage as required by the School Council; and
  - (iv) remove all of its property in a proper and skilful manner in compliance with the applicable Laws and Requirements and to the satisfaction of the School Council.
- (c) Until the Licensee has demolished all relevant improvements and removed its property, the Licensee must continue to pay the Licence Money in full.
- (d) The Licensee must not cause or contribute to any damage to the Licensed Area or the Land while demolishing or removing any of the improvements or its property. If the Licensee does so, it must make good that damage and leave the Licensed Area and the Land in a condition that is acceptable to the School Council (acting reasonably) and to all Government Agencies.
- (e) If the Licensee fails to comply with clause 28(d) within a reasonable time, the School Council may make good that damage at the cost of and as agent for the Licensee. The School Council can recover the reasonable costs of doing so from the Licensee which is payable by the Licensee on demand by the School Council.
- (f) If the Licensee fails to remove the improvements in accordance with this clause

or if the School Council re-enters the Licensed Area, the School Council may at its own option (and without prejudice to any other rights it may have):

- (i) demolish and remove the improvements;
  - (ii) treat the improvements as if the Licensee had abandoned its interest in them and they have become the property of the School Council, and deal with them in such manner as the School Council thinks fit without being liable in any way to account to the Licensee for them; and
  - (iii) without being guilty of any manner of trespass, cause any of the Licensee's property to be removed and stored in such manner as is reasonable at the risk and at the cost of the Licensee and/or at the option of the School Council sell them as the attorney of the Licensee and appropriate the proceeds of sale in payment of any Licence Fee or other money owing by the Licensee to the School Council and pay any residue without interest to the Licensee.
- (g) The Licensee must:
- (i) indemnify and keep indemnified the School Council in respect of the reasonable cost of the removal and storage of the Licensee's property, the cost of demolishing and removing the improvements and also in respect of all claims which the School Council may suffer or incur at the suit of any person (other than the Licensee) claiming an interest in the Licensed Area or the Licensee's property by reason of the School Council acting in any manner permitted in this clause; and
  - (ii) pay to the School Council on demand any reasonable costs incurred by the School Council in exercising its rights pursuant to this clause, including any excess of costs over moneys received in disposal of the Licensee's property pursuant to the School Council's rights contained in clause 28(f) except to the extent caused by any negligent act or omission of the School Council.
- (h) The expiry or termination of this Licence does not prejudice or affect:
- (i) any rights or remedies the School Council has against the Licensee for any earlier breach by the Licensee of any of its obligations under this Licence; and
  - (ii) the Licensee's obligation to make a payment under this Licence for periods

prior to expiry or termination, as the case may be.

- (i) Clauses 8, 18, 22, 26, 28, 29, 31, 33, 34, 35, 37 and 38 survive the termination or expiry of this Licence and may be enforced at any time.

## 29. Holding Over

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

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

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

## 30. Assignment, Sublicensing and Franchising

This Licence is personal to the Licensee. The Licensee must not dispose of, deal with, transfer, novate or assign its rights as Licensee, or enter into franchising arrangements, under this Licence without obtaining the School Council's prior written consent, which consent is at the absolute discretion of the School Council, and if granted, may be granted subject to such conditions as the School Council sees fit to impose.

## 31. Confidentiality

### 31.1 School Council's Confidential Information

- (a) The Licensee will keep the Confidential Information confidential and secure and will (and will ensure that its Associates will):
  - (i) use and reproduce Confidential Information only to the extent necessary to perform its obligations under this Licence; and
  - (ii) not disclose or otherwise make available Confidential Information other than to its Associates who have a need to know the information to enable the Licensee to perform its obligations under this Licence.
- (b) All Confidential Information will remain the property of the School Council.
- (c) The Licensee acknowledges that the School Council will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Licensee of this clause 31.1 and without the need on the part of the School Council to prove any special damage.

## 31.2 Disclosure of Licensee's information

- (a) Subject to clause 31.2(b), the School Council agrees to treat as confidential all information of or relating to the Licensee that is provided to it by or on behalf of the Licensee and which is identified in writing by the Licensee as confidential.
- (b) The Licensee consents to the School Council publishing or otherwise making available information in relation to the Licensee and this Licence as may be required:
  - (i) in order to comply with the requirements of the Contract Publishing System;
  - (ii) to other Victorian Government departments and agencies or Ministers of the State of Victoria in connection with this Licence;
  - (iii) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Licensee;
  - (iv) by the office of the Auditor General appointed under section 94A of the *Constitution Act 1975 (Vic)* (**Auditor-General**) or the ombudsman appointed under the *Ombudsman Act 1973 (Vic)* (**Ombudsman**);
  - (v) to comply with Law, including the *Freedom of Information Act 1982 (Vic)*; or
  - (vi) to the IBAC.

## 32. Disputes

- (a) A party claiming that a dispute or disagreement has arisen under this Licence may give the other party a Dispute Notice.
- (b) A Dispute Notice may be withdrawn at any time by the party that gave the Dispute Notice.
- (c) Within 10 Business Days of the date of issue of the Dispute Notice, the parties must enter into good faith discussions in an attempt to resolve the issues between them.
- (d) If any dispute is unable to be resolved within 20 Business Days of the date of issue of the Dispute Notice, the parties agree to endeavour in good faith to settle the dispute by mediation administered by The Resolution Institute, Victorian Chapter, before having recourse to litigation.
- (e) If the parties fail to settle any dispute in accordance with clause **Error! Reference source not found.**, either party may pursue its rights at Law.

- (f) The School Council and Licensee will continue to perform their respective obligations under this Licence pending the resolution of a dispute under this clause.
- (g) The School Council and Licensee will not oppose any application for interlocutory relief pending resolution of a dispute under this clause.

### 33. Privacy and Data Protection

- (a) The Licensee acknowledges that it will be bound by the Information Privacy Principles, any applicable Code of Practice and the Health Privacy Principles (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Licensee in connection with this Licence in the same way and to the same extent as the Privacy Obligation would have applied to the School Council in respect of that act or practice had it been directly done or engaged in by the School Council.
- (b) The Licensee agrees to be bound by the Protective Data Security Standards. The Licensee will not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to a contravention by the School Council in respect of any Data collected, held, used, managed, disclosed or transferred by the Licensee on behalf of the School Council under or in connection with this Licence.
- (c) The Licensee must:
  - (i) only use the Data to the extent necessary to perform its obligations under this Agreement;
  - (ii) not disclose or transfer the Data outside Victoria unless approved by the School Council in writing;
  - (iii) not do anything that would place the School Council in breach of the Privacy Obligations;
  - (iv) prohibit and prevent access by any person who does not have the appropriate level of security clearance from gaining access to the Data;
  - (v) comply with any of the School Council's or the State's policies in relation to the secure retention and destruction of Data; and
  - (vi) immediately notify the School Council if the Supplier suspects that any Data has been (or may be) lost or corrupted or that there is unauthorised access to the Data, proposing remedial action it will take and specifying the actions that will be taken to prevent recurrences.

### 34. Notices

- (a) A Notice must be in writing, signed by or on behalf of the party giving it and may be sent by post, courier or by electronic mail as follows:
  - (i) to the School Council: to the School Council, Representative, at the address which is set out in Item 16 of Schedule 1; and
  - (ii) to the Licensee: to the Licensee Representative, at the address which is set out in Item 16 of Schedule 1.
- (b) A Notice takes effect from the time it is received, unless a later time is specified in it. A Notice will be deemed to have been received by the addressee:
  - (i) in the case of delivery in person or by courier, on delivery at the address of the addressee;
  - (ii) in the case of delivery by post, on the third Business Day after posting; and
  - (iii) in the case of electronic mail, if the receiving party has agreed to receipt in that form under this Licence and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when receipt of the message is recorded on the sender's computer.
- (c) If any Notice is delivered or deemed to be delivered:
  - (i) after 5.00 pm in the place of receipt; or
  - (ii) on a day which is a Saturday, Sunday or public holiday in the place of receipt,
 it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

### 35. GST

#### 35.1 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).

#### 35.2 Consideration is exclusive of GST

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

taxable supply is to be paid or provided in accordance with this Licence.

### **35.3 Reimbursement**

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

### **35.4 Adjustment Event**

If an adjustment arises in relation to a taxable supply made under this Licence, the Licensee must recalculate the amount payable on account of GST under clause 35.2 to take account of the adjustment event. The Licensee must issue an adjustment note to the School Council within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Licensee to the School Council, or by the School Council to the Licensee, as the case may be.

### **35.5 Other taxes**

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

## **36. Conflict of Interest**

- (a) The Licensee warrants that it does not, and will ensure that its Associates do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interest under this Licence.
- (b) The Licensee must promptly inform the School Council of any matter which may give rise to an actual or potential conflict of interest and comply with any reasonable directions given by the School Council in terms of dealing with that conflict.
- (c) The Licensee acknowledges and agrees that failure to comply with this clause 36 will constitute a breach of a fundamental term of this Licence.

## **37. General**

### **37.1 Costs**

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

### **37.2 Amendment**

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

### **37.3 Waiver and exercise of rights**

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

### **37.4 Severability**

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

### **37.5 Rights cumulative**

Except as expressly stated otherwise in this Licence, the rights of a party under this Licence are cumulative and are in addition to any other rights of that party.

### **37.6 Set off**

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

### **37.7 Governing law and jurisdiction**

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

### **37.8 Counterparts**

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

### **37.9 Entire understanding**

- (a) This Licence is comprised of the following documents:
  - (i) the Special Conditions (if any);
  - (ii) clauses 1 to 37 (inclusive);
  - (iii) Schedule 1 to this Licence ; and
  - (iv) any other documents or representations referred to in this Licence or incorporated by reference.
- (b) In the event and to the extent of any inconsistency between the documents listed in clause 37.9(a), the provisions of the earlier mentioned document will prevail to the extent

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

- (c) This Licence contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Licence was executed.
- (d) Except as otherwise provided in clause 37.9(a):
  - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Licence are merged in and superseded by this Licence and are of no effect; and
  - (ii) no oral explanation or information provided by any party to another:
    - (A) affects the meaning or interpretation of this Licence; or
    - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

### 37.10 Publicity

The Licensee must not make any public announcement or media release in respect of any aspect of this Licence without the prior written approval by the School Council. Without limitation, if permission to publish is granted pursuant this clause 37.10, the Licensee must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

### 37.11 Relationship of parties

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

### 37.12 Demand not required

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

### 37.13 No inducements

- (a) The Licensee will not, and will ensure that its Associates will not, directly or indirectly, offer, promise, agree to pay, give, accept, or solicit

anything of value (including to or from any third party) in order to secure any reward or improper benefit other than payment for the performance of its obligations under this Licence.

- (b) The School Council may terminate this Licence immediately on Notice to the Licensee if the Licensee or any of its Associates are found to have engaged in any conduct under clause 37.13(a) and recover the amount of any loss resulting from such termination as a debt due from the Licensee.

### 37.14 Variation

No variation or modification of the terms and conditions of this Licence will be binding unless agreed in writing and signed by both parties.

### 37.15 Electronic Execution

- (a) Each party acknowledges and agrees to the signing of this Agreement by electronic means. The parties agree to be legally bound by the Agreement signed this way.
- (b) This Agreement constitutes an original document in an electronic format and will have the same legal effect, validity and enforceability as a document signed by a signature affixed by hand.

## 38. Definitions and Interpretation

### 38.1 Definitions

In this Licence, unless the context otherwise requires:

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

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

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

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

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

**Business Day** means any day that is not a Saturday, Sunday or a public holiday (being a

public holiday appointed as such under the *Public Holidays Act 1993* (Vic) in Melbourne, Victoria.

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

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

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

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

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

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

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

- (a) is in or which subsequently enters the public domain other than as a result of a breach of an obligation of confidentiality;
- (b) the Licensee can demonstrate was in its possession prior to the date of this Licence;
- (c) the Licensee can demonstrate was independently developed by the Licensee;
- (d) is lawfully obtained by the Licensee on a non-confidential basis from another person who is not bound by a confidentiality agreement with the School Council or otherwise prohibited from disclosing the information to the Licensee; or
- (e) is disclosed pursuant to Law.

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

- (f) personal information (as that term is defined in the PDP Act) relating to students of the School or Associates of the School and/or School Council;
- (g) business information relating to the School and/or School Council; and

- (h) all copies of the information, notes or other records referred to in paragraphs (f) and (g) above.

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

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

**CPI** means the Consumer Price Index - All Groups Melbourne, or if this index is not available or is discontinued or suspended, any other index that represents the rise in the cost of living in Melbourne, as the School Council reasonably determines.

**Current CPI** means the CPI number for the quarter ending immediately before the Review Date.

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

**Default Notice** has the meaning given to that term in clause 24(a).

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

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

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

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

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

**Further Term** means the further term(s) set out in Item 7.

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

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

**Health and Safety Laws** means all workplace, health and safety related Laws, including the OH&S Act and the OH&S Regulations.

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

**Hours of Use** means the hours when the Licensee may use the Licensed Area for the Permitted Use, as specified in Item 11. If no hours are specified in Item 11, the Licensee may use the Licensed Area during hours within the Term as agreed to in writing by the parties (and subject to any Dates and/or Days of Use).

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

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

**Insolvency Event** means if the Licensee:

- (a) stops or suspends payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A(2) of the Corporations Act;
- (c) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless the debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure or the statutory demand is set aside;
- (d) has an administrator appointed over all or any of its assets or undertakings;
- (e) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking;
- (f) has an application or order made, proceedings commenced, a resolution passed, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or
- (g) has any step taken to enforce security over or a distress, execution or other similar process levied or served out against the whole or any of its assets or undertakings,

or any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

**Item** means an item of Schedule 1.

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

**Law** means:

- (a) principles of law or equity established by decisions of courts within the Commonwealth of Australia;
- (b) statutes, regulations, by-laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, State of Victoria, any local government or a Government Agency, including but not limited to the *Education and Care Services National Law Act 2010* and the *Children's Services Act 1996 (Vic)*;
- (c) the Constitution of the Commonwealth;
- (d) binding requirements and mandatory approvals (including conditions) of the Commonwealth, the State of Victoria or a Government Agency which have the force of law; and
- (e) guidelines of the Commonwealth, the State of Victoria or a Government Agency which have the force of law.

**Licence** means this licence agreement.

**Licence Fee** means the licence fee specified in Item 8.

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

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

**Licensee's Representative** means the Licensee's representative nominated pursuant to clause 2(a) from time to time.

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

**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 or amended from time to time).

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

**OH&S Act** means the *Occupational Health and Safety Act 2004 (Vic)*.

**OH&S Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).

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

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

**Permitted Use** means the use of the Licensed Area as specified in Item 13.

**Plan** means the plan attached as Annexure A.

**Previous CPI** means the CPI number for the quarter ending immediately before the last date that the Licence Fee was reviewed, adjusted or increased, or the Commencement Date (whichever is the later).

**Rates and Taxes** means all existing and future rates (including any special rates or levies), taxes (including land tax on a single holding basis), duties, charges, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the Land or in connection with the Land, but does not include Outgoings or GST.

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

**Review Date** means the review date(s) specified in Item 14.

**Schedule** means any schedule(s) to this Licence.

**School** means the school which the School Council represents.

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

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

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

**Security Deposit** means the security deposit referred to in clause 8 and specified in Item 17.

**Special Conditions** means the special conditions (if any) contained in Item 18.

**Staff Costs** means Pay as You Go tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to this Licence, or any engagement arising under this Licence (together with all interest or penalties payable by reference to those costs).

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

## 38.2 Interpretation

Unless expressed to the contrary, in this Licence:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other gender;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) headings are for guidance only and are to be ignored in interpreting this Licence;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) the obligations of the Licensee, if more than one person, under this Licence are joint and several and each person constituting the Licensee acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Licence, of the other as if those acts or omissions were its own;
- (h) the rights of the Licensee, if more than one person, under this Licence, including the right to payment, jointly benefit each person constituting the Licensee (and not severally or jointly and severally); and
- (i) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a

failure to comply with an obligation includes a breach of warranty or representation; and

- (v) "\$", "dollars" or "AUD" is a reference to the lawful currency of the Commonwealth of Australia;

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

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

## Signing page

Executed by the parties as an agreement

### School Council

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

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Name of authorised officer (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Position of authorised officer

### Licensee

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

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Company  
Secretary/Director

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Company Secretary/Director  
(print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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

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

\_\_\_\_\_  
Signature of Authorised person

\_\_\_\_\_  
Signature of Authorised person

\_\_\_\_\_  
Name of Authorised person (print)

\_\_\_\_\_  
Name of Authorised person (print)

\_\_\_\_\_  
Position of authority (print)

\_\_\_\_\_  
Position of authority (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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

Signed by **[Licensee company name]** ACN **[insert ACN]**:

\_\_\_\_\_  
Signature of Sole Director and Company Secretary

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of Sole Director and Company Secretary (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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

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

\_\_\_\_\_  
Signature of Licensee

\_\_\_\_\_  
Date

## Schedule 1 Licence Details

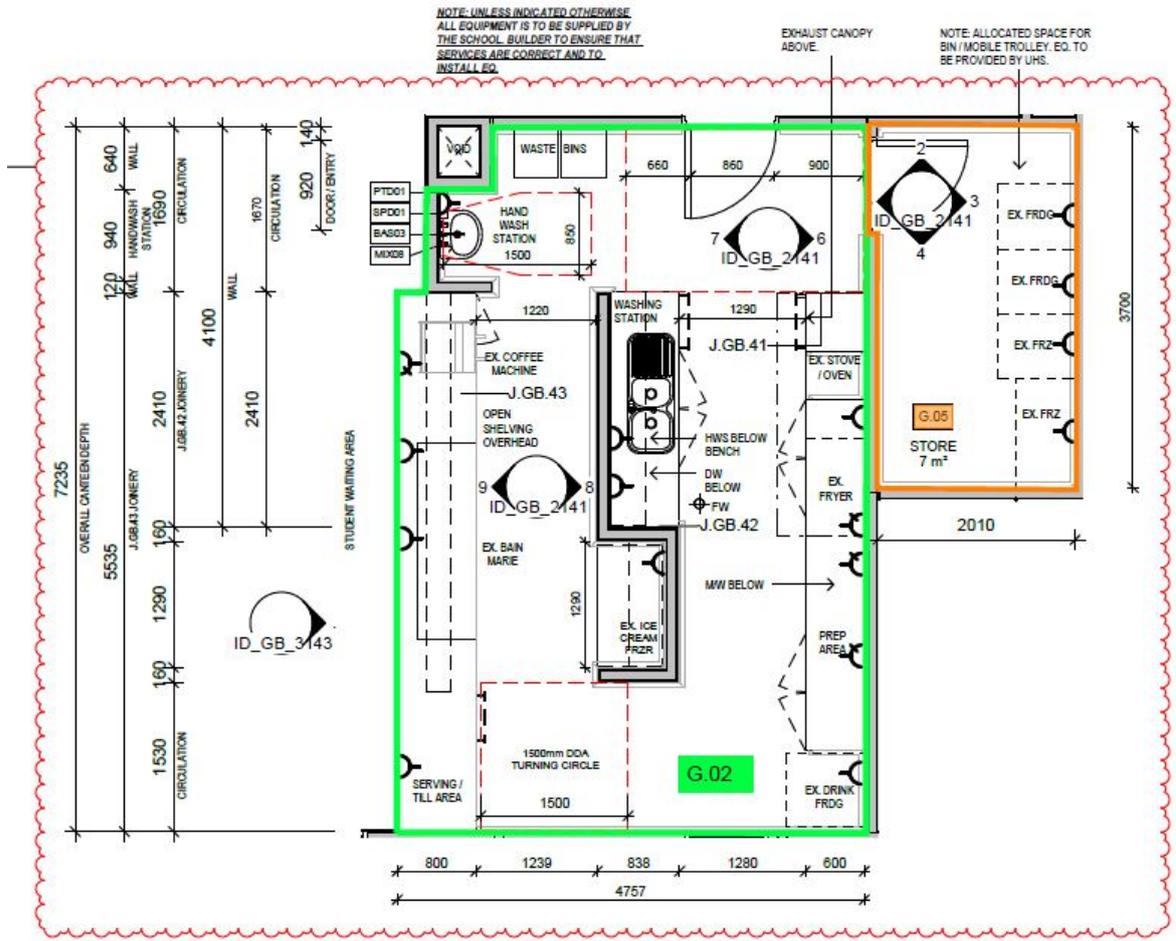
Item 1	<b>School Council's Name</b>	Upwey High School Council ABN: 11 923 949 189 1451 Burwood Hwy Upwey VIC 3158
Item 2	<b>Licensee's Name</b>	[Insert registered name of Licensee (including ACN (if a company) or registered association number (if an incorporated association), and address]
Item 3	<b>Licensed Area</b>	Upwey High School Canteen - See Annexure A
Item 4	<b>Land</b>	Upwey High School 1451 Burwood Hwy Upwey VIC 3158
Item 5	<b>Commencement Date</b>	12 July 2022
Item 6	<b>Expiry Date</b>	12 July 2024
Item 7	<b>Further Term</b> (Clause 4)	One year
Item 8	<b>Licence Fee</b> (Clause 5)	<p>\$19,125 GST inclusive per annum.</p> <p>Payable in 10 equal instalments of \$1912.50 each in February to November inclusive each year of the term. The Licence may be reviewed pursuant to item 14.</p> <p><b>Basketball</b> The Licensee agrees to pay the School Council 6% of all profit received from providing a canteen service for the basketball association. The Licensee agrees to maintain and make available the School Council records of all its sales made for the basketball association. If this Licence is terminated or upon expiry of this License all basketball profits still owing to the School Council for the sales the Licensee has made up to the termination or expiry date will be paid by the Licensee to the School Council.</p>
Item 9	<b>Party responsible for Outgoings:</b> (Clause 6)	Licensee
Item 10	<b>Dates and/or Days of Use</b> (Clause 9)	<p>Monday to Friday inclusive during each school term</p> <p><b>Basketball</b> Monday, Tuesday Wednesday and Friday evenings (40 weeks) Saturday and Sunday all day (40 weeks) The date comprising the 40 weeks are to be provided by the Licensee to the School Council.</p>
Item 11	<b>Hours of Use</b> (Clause 9)	<b>School Canteen</b> Monday to Friday – 8am to 2pm

		<p><b>Basketball</b>  Monday, Tuesday and Wednesday - 6pm to 9pm  Friday - 6pm to 10pm  Saturday – 8.30am to 9.30pm  Sunday – 8.00am to 2.30pm</p>
Item 12	<b>Canteen Hours of Business</b>	<p>Monday to Friday – 8am to 2pm</p> <p><b>Basketball</b>  Monday, Tuesday and Wednesday - 6pm to 9pm  Friday - 6pm to 10pm  Saturday – 8.30am to 9.30pm  Sunday – 8.00am to 2.30pm</p>
Item 13	<b>Permitted Use</b> (Clause 9)	To operate a canteen business in accordance with this Licence
Item 14	<b>Licence Fee Review Date</b> (Clause 7)	An initial review will be held by 5 December 2022 and reviewed annually from that date.
Item 15	<b>Insurance</b> (clause 22.1)	<p><b>15.1 Public and Product Liability Insurance</b></p> <p>\$10 million per each event and/or in the annual aggregate.</p> <p><b>15.2 Industrial Special Risks Insurance (or equivalent property insurance)</b></p> <p>Insurance cover for the reinstatement or replacement value of any refurbishment, apparatus, equipment and/or stock belonging to or used by the Licensee which is housed, stored, kept or used in or at the Licenced Area.</p> <p><b>15.3 WorkCover Insurance</b></p> <p>Insurance in accordance with the requirements of the <i>Accident Compensation Act 1985 (Vic)</i> and the <i>Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)</i> which provide the Associates of the Licensee (including equivalent cover for volunteers) with cover against personal injury or sickness arising from providing goods or services or working in or on the Licensed Area.</p>
Item 16	<b>School Council Representative and Address for Service</b> (Clause 2)	<p>Tom Daly  Principal:  Upwey High School  1451 Burwood Hwy:  Upwey VIC 3158  Tel 9754 2838:  Email:Upwey.hs@edumail.vic.gov.au</p>

	<b>Licensee Representative and Address for Service</b>	Authorised Officer: Address: Tel: Fax: Email:
<b>Item 17</b>	<b>Security Deposit</b> (Clause 8)	\$2,000 payable by 8 July 2022.
<b>Item 18</b>	<b>Special Conditions</b>	<p><b>Appliances and Equipment</b></p> <p>The Licensee must supply the following appliances and equipment and be responsible for all installation costs:</p> <ul style="list-style-type: none"> <li>Refrigerator x 2</li> <li>Freezer</li> <li>Microwave Oven</li> <li>Commercial Deep Fryer</li> <li>Sandwich Press</li> <li>Coffee Machine</li> <li>Oven</li> <li>Small refrigerators on counter</li> <li>Bain Marie</li> <li>Cold Display</li> <li>Pie Warmer</li> <li>Vending Machine</li> </ul> <p>At the termination or expiry of this Licence, the above listed appliances and equipment remain the property of the Licensee. All maintenance and repairs are the responsibility of the Licensee.</p> <p><b>Special Catering</b></p> <p>The Licensee agrees to cater for 1 morning tea during each school term for school staff (approximately 105 staff)</p> <p>The Licensee agrees to provide morning tea for Year 12 students in October each year (approximately 116 students)</p>
<b>Item 19</b>	<b>Publications</b>	<ol style="list-style-type: none"> <li>1. School Canteens and Other School Food Services Policy, located at  <a href="https://www.education.vic.gov.au/Documents/school/principals/management/gfylpolicy.pdf">https://www.education.vic.gov.au/Documents/school/principals/management/gfylpolicy.pdf</a></li> <li>2. Safe Food Handling, located at  <a href="https://www2.education.vic.gov.au/pal/food-handling/policy">https://www2.education.vic.gov.au/pal/food-handling/policy</a></li> <li>3. Go for your life' Healthy Canteen Kit – Food Planner and the Dietary Guidelines for Children and Adolescents in Australia.  <a href="https://www.education.vic.gov.au/Documents/school/principals/management/gfylplan.pdf">https://www.education.vic.gov.au/Documents/school/principals/management/gfylplan.pdf</a></li> </ol> <p>Please check the above links are current at the time of signing the Licence. Keep a copy of each document with the signed Licence.</p>

# Annexure A Plan of Licensed Area

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



1 GF Plan - Canteen & Store - G.02/G.05  
1 : 50

