School Council Canteen Licence

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 in Item 16 as their respective representatives who will be responsible for communications under this Licence on behalf of each of the School Council and the Licensee.

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

   (c) Each party acknowledges that the representative appointed under this clause is authorised to act as the agent of that party in relation to the exercise of that party’s rights, discretions and obligations under this Licence, and that the representative has full power and authority to act for and on behalf of and to bind each party in relation to the exercise of those rights, discretions and obligations.

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

3. Term
   This Agreement 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 Agreement.

4. Further Term
   (a) The School Council may renew this Licence for the Further Term 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) The renewed licence:

       (i) commences on the date after this Licence ends;

       (ii) has a starting Licence Fee as set out in the Review Notice provided by the School Council to the Licensee; and

       (iii) must contain the same terms and conditions as this Licence except that on the exercise of each option for renewal the number of further options will accordingly be reduced, with no option for renewal after the last option for a Further Term has been exercised.
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 or in any other way the School Council notifies the Licensee by Notice); and
(b) without demand by the School Council at the times and in the manner set out in Item 8.

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.

7. CPI Review of Licence Fee
(a) The Licence Fee on the Review Date will be adjusted to an amount equal to the Licence Fee payable immediately before the Review Date multiplied by the Current CPI and divided by the Previous CPI.
(b) On the next due date for the payment of the Licence Fee, after the Licensee receives a Review Notice specifying the adjusted Licence Fee from the School Council, the School Council and the Licensee must make any necessary adjustment to apply on and from the Review Date.

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) The Licensee must ensure that the Security Deposit is maintained at the required level for the Term.
(c) If the Licensee breaches any of the Licensee’s obligations under this Licence and the School Council incurs any Costs, Loss, damage or Liability (or acquires any other entitlement to payment from the Licensee), the School Council may, if the default remains unremedied 10 Business Days after Notice of default has been given to the Licensee, draw on the Security Deposit without further notice to the Licensee to make good such Costs, Loss, damage or Liability.
(d) If the School Council draws on the Security Deposit, the Licensee must within 10 Business Days pay any additional amounts required to restore the Security Deposit to the necessary level.
(e) 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 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) If Dates and/or Days of Use and/or Hours of Use are listed in Schedule 1, 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, including but not limited to a canteen business in accordance with applicable Laws.
(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 for the purposes of the Licensee’s use of the Licensed Area.

10. Conduct of Canteen Business
(a) The School Council grants to the Licensee the sole right and privilege to conduct a canteen business from the Licensed Area, dealing only with students and staff of the School and others legitimately upon the Land.
(b) The Licensee must:
   (i) conduct the canteen business 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 canteen business in a manner that complies with all Laws applicable to the Licensee;

(iii) ensure the highest quality of work and the provision of canteen services with the utmost efficiency;

(iv) act in good faith;

(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 provision of the canteen services as may reasonably be required by the School Council; and

(vi) carry on the canteen business to the reasonable satisfaction of and in accordance with the requirements of the School Council.

(c) Without limiting sub-clause (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 published 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;

(v) use only packaging reasonably acceptable to the School Council;

(vi) not knowingly charge prices for goods 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 goods 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 that the Licensee is or should be aware of which deal with the safety or health of persons on the Licensed Area or otherwise under its control and, relating to this Licence;

(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 necessary planning and building permits from the relevant Government Agency;

(viii) observe fire precautions;

(ix) at all times exercise due care, skill and judgement and act with the utmost good faith;

(x) not install any fixtures or fittings, except those necessary for the Permitted Use, without the School Council’s written consent;

(xi) 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;

(xii) 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

(xiii) keep the Licensed Area clean and in the same condition as at the start of this Licence and
properly repaired (excluding structural and capital repairs) and maintained.

(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. 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 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.

(i) Any person entering the Licensed Area under clause 10(f) must comply with all policies regarding food handling and safety at the instruction of the manager of the Licensed Area.

(ii) Any person entering the Licensed Area under clause 10(f) must minimise interference to the Licensee’s activities.

(g) The Licensee must trade under its corporate name if it is a body corporate or in any other case 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 employees and contractors and any other persons engaged by the Licensee to provide the canteen services, it:

(a) complies with the provisions of the Accident Compensation Act 1985 (Vic);

(b) insures against its liability to pay compensation whether under legislation or otherwise; and

(c) produces to the School Council on request any certificates or like documentation required by the Accident Compensation Act 1985 (Vic).

(d) The Licensee will indemnify and keep indemnified the School Council from and against all liability for 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 in any way relating to the operation of the canteen business or this Licence).

12. Numbers of Students

(a) The School Council must give not less than five (5) days’ notice of any student-free day to the Licensee, except in the case of sudden necessity or where caused by industrial action.

(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.

13. 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) Without limiting any other clause in this Licence, the Licensee must in conducting the canteen strictly observe and perform the provisions of the Public Health and Wellbeing Act 2008 (Vic) and any other Act relating to the preparation, sale, disposal or storage of foodstuffs, and must obtain any relevant planning or other permits required to conduct the canteen.

14. Repairs

(a) For the avoidance of any doubt, and subject to clause 14(b), the Licensee is responsible for all repairs to the Licensed Area, including but not limited to structural and capital repairs unless these repairs were not as a result of damage caused by the Licensee.

(b) The Licensee is not responsible for repairs to the Licensed Area including structural and capital repairs caused or contributed to by, or due to the negligence of, the School Council.

(c) If the Licensee fails to properly repair any such damage it is responsible for under this clause within a reasonable time then the School Council may do so and the Licensee must immediately reimburse the School Council the cost of such repairs.

(d) The School Council is under no obligation to repair or replace any equipment provided by the School Council and used by the Licensee.

(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.

15. Improvements and Fit Outs

(a) The Licensee acknowledges that:

(i) subject to clause 26, 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 or fit outs 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 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 subject to 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 or inspecting the improvements and its supervision, including the reasonable fees 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) on completion of the improvements or fit outs, the Licensee must within 30 days of completion 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 have been carried out in accordance with all of the plans and specifications approved by the School Council;

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

(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 15(d)(viii) and must immediately provide evidence of all such insurance policies to the School Council.

16. School Council’s Reservations and Exercise of Rights

(a) The School Council reserves the right for the School Council and the School Council’s Associates to:

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

(ii) carry out any works that may be required to comply with any applicable Law or Requirement 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, as long as it does not adversely affect the Licensee’s rights under this Licence;

(v) undertake any of the Licensee’s obligations under this Licence which the Licensee fails to undertake in accordance with this Licence and/or within a reasonable time and the Licensee must immediately reimburse the School Council the costs to the School Council in undertaking such obligations; and

(vi) enter the Land and the Licensed Area for the purposes set out in this clause or for any other lawful purpose.

(b) Except in an emergency, the School Council must:

(i) give the Licensee reasonable notice of the School Council’s intended exercise of the rights set out in this clause;

(ii) only exercise the rights set out in this clause at reasonable times; and

(iii) minimise interference to the Licensee when exercising the rights set out in this clause.

17. Environmental Matters

(a) The Licensee acknowledges that:
18. Requirement For Working with Children and Police Checks

(a) The Licensee must ensure that all persons engaged or used by it to work at the Licensed Premises and/or carry out the Permitted Use under this Licence:

(i) if required by the Working with Children Act 2005 (Vic), have undertaken a satisfactory Working With Children Check;

(ii) if required by the School Council, have undertaken a satisfactory National Police History Check;

(iii) have met any additional relevant legal requirements and policies of the School Council, School and/or Department in relation to the suitability of persons to work with children or within the precinct of the School as advised by the School Council.

(b) The Licensee must ensure the terms and conditions of employment of any staff or of engagement of any contractor for the purpose of carrying out work at the Licensed Premises and/or carry out the Permitted Use under this Licence are consistent with the above obligations.

19. Reporting

(a) At the request of the School Council, the Licensee must provide to the School Council within a reasonable period any information and/or documentation it holds pertaining to this Licence.

(b) The Licensee must immediately report by Notice to the School Council:

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

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

20. Insurance, Release and Indemnity

20.1 Insurance

(a) The Licensee must keep the insurance set out in Item 15 in force during the Term.

(b) The Licensee must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the School Council or any other person.

(c) Within 10 Business Days of the Commencement Date of this Licence, and immediately upon the request by the School Council from time to time, the Licensee must provide the School Council with evidence of the Licensee's insurance required under this Licence.

(d) Clauses 20.1(a), 20.2 and 20.3 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

20.2 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 damage, injury or loss is caused by the negligent or unlawful act, omission or default of the School Council.

20.3 Indemnity

(a) Subject to clause 20.3(b), the Licensee must indemnify and keep indemnified the School Council and its Associates from and against all Claims that the School Council or its Associates suffer or incur in respect of or arising from:

(i) any negligent act or negligent omission of the Licensee in connection with this Licence;

(ii) any loss, injury, illness or damage to persons (including death) including any member of the public or any third party to the extent it is caused by the act or omission of the Licensee in connection with this Licence;

(iii) any loss of or damage to property of any kind to the extent it is caused by the act or omission of the Licensee in connection with this Licence; or
(iv) the Licensee's breach of this Licence.

(b) The Licensee will not be liable under the indemnity in clause 20.3(a) to the extent that a Claim or Liability results from:

(i) any fraudulent, negligent or deliberate act or omission of the School Council or its Associates;

(ii) any breach of this Licence by the School Council or its Associates; or

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

(c) The indemnity given by the Licensee under this clause is a continuing obligation, separate and independent from the other obligations of the Licensee, and survives expiry or termination of this Licence.

21. Termination Events

21.1 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.

21.2 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.

21.3 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 whether by agreement, breach, expiry or otherwise except that the School Council may not terminate this Licence for a period of 3 months from the date of expiry of the agreement referred to if negotiations are then underway for the renewal of the agreement.

21.4 By Agreement

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

21.5 School closure or amalgamation

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

22. Default

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

(i) specifying the default; and

(ii) requiring the Licensee to:

(A) take steps to rectify the default; or

(B) pay reasonable compensation to the School Council (where the School Council reasonably considers that the default is not capable of remedy),

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

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

(c) Alternatively, if the Licensee fails to comply with a Default Notice within time, 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.

(d) The termination of this Licence for default does not affect:

(i) the School Council's rights arising out of a breach of this Licence by the Licensee before the termination; or

(ii) the Licensee's obligation to make a payment under this Licence for periods before the termination.

23. 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:
26. Licensee's Obligations on the Expiry or End of Licence

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

(i) clean and free from rubbish; and

(ii) in a condition consistent with the Licensee's performance and observance of all relevant covenants relating to the Licensed Area under this Licence.

(b) Unless the:

(i) Licensee has been granted a new licence 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 15(a) will apply,

(c) the Licensee at its cost must:

(i) demolish and remove all such improvements made under this Licence in a proper and 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

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

Until the Licensee has demolished and removed all improvements and its property which is required to be demolished or removed under this Licence, it must continue to pay the Licence Money.

(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 26(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 Cost 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;
27. 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 on a monthly Licence:

(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; and

(c) until such occupancy terminates by either party giving the other party at least one month’s written notice.

28. Assignment and Subletting

The Licensee must not dispose of, deal with or assign its interest, rights or powers as Licensee under this Licence without obtaining the School Council's prior written consent, which consent 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.

29. Confidentiality

(a) Subject to clause 29(b), the parties must keep confidential:

(i) any information provided to one another in connection with this Licence, including but not limited to:

(A) personal information relating to students of the School;

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

(C) information treated by either party, and notified in writing to the other party, as confidential.

(b) The parties may make disclosures as they, acting reasonably, think necessary to:

(i) their professional advisers, bankers, financial advisers, financiers, investors and potential investors if those persons undertake to keep information disclosed confidential;

(ii) comply with Laws; and

(iii) any of their employees to whom they deem necessary to disclose the information if that employee undertakes to keep the information confidential.

(c) The parties' obligations under this clause are continuing obligations, separate and independent from the other obligations of the parties and survive the expiry or termination of this Licence.

30. Disputes

(a) A party claiming that a dispute or disagreement has arisen under this Licence may give the other party a Dispute Notice.

(b) A Dispute Notice may be withdrawn at any time by the party that gave the Dispute Notice.

(c) Within 10 Business Days of the date of issue of the Dispute Notice, the parties must enter into good faith discussions in an attempt to resolve the issues between them.

(d) If the parties have not resolved the dispute within 20 Business Days of the date of issue of the Dispute Notice, the parties agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) in
accordance with ACDC's guidelines, before having recourse to expert determination or litigation.

(e) If the parties fail to settle any dispute in accordance with clause 30(d), either party may refer the dispute for expert determination.

(f) If a dispute is referred for expert determination the Expert will be requested by the party giving the Dispute Notice.

(g) The Expert:
   (i) will fix and inform the School Council and Licensee of a time for the parties to present their respective positions to the Expert. Unless otherwise agreed between the parties, the parties must present their respective positions to the Expert no later than 5 Business Days after the Expert's appointment;
   (ii) must make a determination or finding in respect of the dispute within 10 Business Days after the parties have presented their respective positions. Any determination of a dispute by the Expert will include a determination as to the award of costs and will be binding on all parties; and
   (iii) will act as an expert and not an arbitrator.

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

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

31. Privacy

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

32. Notices

(a) A Notice must:
   (i) be in writing;
   (ii) signed by or on behalf of the party giving it; and
   (iii) hand delivered to the address of the addressee or sent by post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee, which address and facsimile number of each party are set out in Item 16 or, if the addressee notifies another address or facsimile number, then to that address or facsimile number.

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

(c) If any notice or document is delivered or deemed to be delivered:
   (i) after 5.00 pm in the place of receipt; or
   (ii) on a day which is a Saturday, Sunday or public holiday in the place of receipt, it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

33. Special Conditions

Any special condition set out in Item 18:

(a) binds the parties; and

(b) if there is an inconsistency between a special condition in Item 18 and any other provision of this Licence, the special condition prevails.

34. GST

(a) In this clause, expressions set out in italics have the same meaning as those expressions in the GST Act.

(b) An amount payable under this Licence by a party to the other party, in respect of a supply which is a taxable supply, represents the GST exclusive value of the supply.

(c) The party who receives a taxable supply under this Licence from the Supplier must, upon receipt of a tax invoice from the Supplier, pay GST to the Supplier in addition to the GST exclusive value of the supply.

(d) Any penalty or interest payable as a result of late payment of any GST payable under this Licence is payable by the party who is the cause of the late payment.

(e) If the Supplier is entitled to an input tax credit for any GST recoverable from the other party under this Licence, the amount of GST payable by the other party is to be reduced by the amount of the input tax credit which the Supplier has received or is entitled to receive.
35. Conflict of Interest
   (a) The Licensee warrants that, to the best of its knowledge and belief, after due inquiry as at the date of this Licence, neither it nor its employees have any duties or interests that create or might reasonably be anticipated to create a conflict with their duties and obligations under this Licence.

   (b) The Licensee warrants that during the Term neither it nor its employees will take any action that will result in the Licensee or its employees having a duty or interest that creates or might reasonably be anticipated to create a conflict with their duties and obligations under this Licence.

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

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

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

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

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

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

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

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

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

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

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

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

36.13 Survival
   The expiry or termination of this Licence does not affect:
   (a) the School Council's rights for a breach of this Licence by the Licensee before the expiry or termination; and
   (b) the Licensee's obligation to make a payment under this Licence for periods before the expiry or termination.

36.14 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. Definitions and Interpretation
37.1 Definitions
   In this Licence, unless the context otherwise requires:
   Associates means any officer, employee, agent, contractor, subcontractor, consultant, advisor, invitee, licensee or servant to the extent that such person or entity is performing an act or a function directly related to the Licence.

   Business Day means 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.

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

   Code of Practice means a code of practice as defined in, and approved under, the Privacy and Data Protection Act 2014 (Vic).
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.

Corporations Act means the Corporations Act 2001 (Cth).

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

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 9. If no dates and/or days are specified in Item 9, 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 Dates and/or Days of Use).

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

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


Expert means a person who has accepted appointment to determine a dispute in accordance with the rules of the Australian Commercial Disputes Centre.

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

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

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

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


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 10. If no hours are specified in Item 10, 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).

Information Privacy Principles means the information privacy principles set out in the Privacy and Data Protection Act 2014 (Vic).

Insolvency Event means if the Licensee:

(d) stops or suspends payment of all or a class of its debts;
(e) is insolvent within the meaning of s 95A(2) of the Corporations Act;
(f) fails to comply with a statutory demand (within the meaning of s 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;
(g) has an administrator appointed over all or any of its assets or undertakings;
(h) has a controller within the meaning of s 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking;
(i) 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
(j) 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 the law in force in the State of Victoria and the Commonwealth of Australia, including any local government...
by-law, common law and legislation which have the force of law.

**Liability** means any debt, obligation, Cost, expense, Loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

**Licence** means this licence agreement.

**Licence Fee** means the licence fee specified in Item 7.

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

**Licensed Area** means the area 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** means the licensee specified in Item 2 and includes, where appropriate, the employees or agents of the Licensee or other persons authorised by the Licensee.

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

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

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

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

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

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

**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.

**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.

**Review Notice** means a notice of the CPI adjusted Licence Fee given by the School Council to the Licensee.

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

**School** means the School administered by the School Council.

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

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

**Security Deposit** means the security deposit referred to in clause 21 and specified in Item 16.

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

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

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

### 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) a reference to:

(i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

(ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;

(iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
(iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and

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

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

School Council

Date: <Insert date that School Council signs>

<table>
<thead>
<tr>
<th>Signature of President/Executive Officer</th>
<th>Signature of Witness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of President/Executive Officer (print)</td>
<td>Name of Witness (print)</td>
</tr>
</tbody>
</table>

Licensee

Date: <Insert date that Licensee signs>

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

<table>
<thead>
<tr>
<th>Executed by the Licensee in accordance with s 127 of the Corporations Act 2001</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature of director</td>
<td>Signature of director/company secretary</td>
</tr>
<tr>
<td>Name of director (print)</td>
<td>Name of director/company secretary (print)</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Executed by the Licensee in accordance with the Associations Incorporation Reform Act 2012</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature of authorised person</td>
<td>Signature of authorised person</td>
</tr>
<tr>
<td>Name of authorised person (print)</td>
<td>Name of authorised person (print)</td>
</tr>
<tr>
<td>Position of authority (print)</td>
<td>Position of authority (print)</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Signed by the Licensee in the presence of:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature of witness</td>
<td>Signature of Licensee</td>
</tr>
<tr>
<td>Name of witness (print)</td>
<td>Name of Licensee (print)</td>
</tr>
</tbody>
</table>
### Schedule 1  Licence Details

<table>
<thead>
<tr>
<th>Item</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Item 1</strong></td>
<td><strong>School Council’s Name</strong>&lt;br&gt;Insert name of School Council, ABN (if the School Council does not have its own ABN, insert the School’s ABN) and address</td>
</tr>
<tr>
<td><strong>Item 2</strong></td>
<td><strong>Licensee’s Name</strong>&lt;br&gt;Insert registered name of Licensee (including ACN (if a company), ABN (if a sole trader or a non-company business) or registered association number (if an incorporated association), and registered address)</td>
</tr>
<tr>
<td><strong>Item 3</strong></td>
<td><strong>Licensed Area</strong>&lt;br&gt;Insert description of part of Land which is to be licensed to the Licensee and/or if a clear plan is to be attached at Annexure A, say “See Annexure A”</td>
</tr>
<tr>
<td><strong>Item 4</strong></td>
<td><strong>Land</strong>&lt;br&gt;Insert full address of the school/Licensed Area</td>
</tr>
<tr>
<td><strong>Item 5</strong></td>
<td><strong>Commencement Date</strong>&lt;br&gt;Insert the date the Licence is to commence</td>
</tr>
<tr>
<td><strong>Item 6</strong></td>
<td><strong>Expiry Date</strong>&lt;br&gt;Insert the date that the Licence is to expire</td>
</tr>
<tr>
<td><strong>Item 7</strong></td>
<td><strong>Further Term</strong>&lt;br&gt;(Clause 4)&lt;br&gt;Insert the number of further terms available to the Licensee. If the School does not want to grant any further terms, insert “Nil”</td>
</tr>
<tr>
<td><strong>Item 8</strong></td>
<td><strong>Licence Fee</strong>&lt;br&gt;(Clause 5)&lt;br&gt;Amend and delete as relevant&lt;br&gt;$ (GST inclusive*)&lt;br&gt;per week/month/annum&lt;br&gt;payable weekly/monthly/annually in advance&lt;br&gt;* School Councils must charge the Licensee a Licence Fee which is inclusive of GST. The School Council would receipt the Licence Fee using GST code G01. [GST Fact Sheet – April 2014]</td>
</tr>
<tr>
<td><strong>Item 9</strong></td>
<td><strong>Party responsible for Outgoings:</strong>&lt;br&gt;(Clause 6)&lt;br&gt;Eg gas, electricity, water, telephone&lt;br&gt;Insert Licensee or School Council as relevant&lt;br&gt;Party responsible for Outgoings: …………………………&lt;br&gt;Insert School Council or Licensee&lt;br&gt;If Outgoings are to be paid proportionally by the party responsible, insert either a percentage or a fixed dollar amount:&lt;br&gt;………………..% or $……………………………….</td>
</tr>
<tr>
<td><strong>Item 10</strong></td>
<td><strong>Dates and/or Days of Use</strong>&lt;br&gt;(Clause 9a)&lt;br&gt;Insert specific dates and/or days during the Term the Licensee may use the Licensed Area. If this is unlimited, insert “Not applicable”</td>
</tr>
</tbody>
</table>
| Item 11 | Hours of Use  
(Clause 9a)  
<Insert hours of the day during the Term the Licensee may use the Licensed Area. If this is unlimited, insert “Not applicable”> |
| --- | --- |
| Item 12 | Canteen Hours of Business  
<Insert details of when the canteen must remain open for business (days and times)> |
| Item 13 | Permitted Use  
(Clause 9b)  
To operate a canteen business in accordance with this Licence |
| Item 14 | Licence Fee Review Date  
(Clause 7)  
<Insert the date(s) the School Council wishes to review the amount of the Licence Fee to CPI (ie annually on the anniversary of the Commencement Date or on the exercise of a further term). If the School does not wish to review the Licence Fee, insert “Not applicable”> |
| Item 15 | Insurance  
(clause 20.1)  
| Public and Product Liability Insurance  
$20 million per each event.  
**Industrial Special Risks Insurance (or equivalent insurance)**  
Insurance cover for the reinstatement or replacement value of any apparatus or equipment belonging to or used by the Licensee which is housed, stored, kept or used in or at the Licensed Area.  
**WorkCover Insurance**  
Insurance in accordance with the requirements of the *Accident Compensation Act 1985* (Vic) and the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) which provide the servants, agents and employees 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. |
| Item 16 | School Council Representative and Address for Service  
(Clause 2)  
<The School Council Representative can be the Principal>  
| Authorised Officer:  
Address:  
Tel:  
Fax:  
Email: |
| Licensee Representative and Address for Service  
| Authorised Officer:  
Address:  
Tel:  
Fax:  
Email: |
| Item 17 | Security Deposit  
(Clause 8)  
<p>|</p>
<table>
<thead>
<tr>
<th>Item 18</th>
<th>Special conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Clause 33)</td>
</tr>
<tr>
<td></td>
<td>If special conditions are needed, delete the words ‘Not applicable’ and insert details.</td>
</tr>
<tr>
<td></td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item 19</th>
<th>Publications</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>&lt;insert details of any additional related publications which the Licensee needs to comply with&gt;</td>
</tr>
<tr>
<td></td>
<td>4. Healthy Eating Advisory Service</td>
</tr>
</tbody>
</table>

Please check the above links are current at the time of signing the Licence. Keep a copy of each document with the signed Licence.
Annexure A  Plan of Licensed Area

<insert or attach a clear plan identifying the area to be licensed>