

# School Council Hire Agreement

## Between

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

and

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

## Background

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

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## Agreed terms

### 1. Hire of Hired Area

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

### 2. Use of Hired Area

The Hirer:

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

### 3. Hire Fee

The Hirer must pay the Hire Fee to the School Council within 14 days of receipt of the School Council's invoice.

### 4. Security Deposit

- (a) In order to secure the performance of the Hirer under this Agreement the Hirer must pay the Security Deposit to the School Council on or before the Commencement Date.
- (b) If the Hirer breaches any of its obligations under this Agreement and the School Council incurs any costs, loss, damage or liability the School Council may draw on the Security Deposit to make good such costs, loss, damage or liability.
- (c) Subject to any right the School Council has to draw on the Security Deposit, the School Council must return the Security Deposit to the Hirer on or before the date 60 days after the expiration of this Agreement.

### 5. Cancellation or Postponement by Hirer

If, for any reason, the Hirer is unable to proceed with any date and/or time of use under clause 2 then the Hirer must immediately notify the School Council in writing. The Hire Fee will remain payable unless:

- (a) the Hirer gives the School Council 7 days prior written Notice to the relevant date of use under clause 2; or
- (b) the Hired Area is re-hired for that same period.

### 6. Cancellation or Postponement by School Council

- (a) If, for any reason, the School Council is unable to provide the Hired Area to the Hirer at the date and/or time of use specified in Item 8 and under clause 3, then the School Council will give the Hirer Notice of:
  - (i) cancellation whereby, if the Hirer has paid the Hire Fee (whether in part or in full), then the

School Council will refund to the Hirer that part (of whole) of the Hire Fee paid by the Hirer, which the School Council, acting reasonably, represents the unused portion of that amount: or

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

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

#### 7. Termination by School Council

The School Council may for any reason and in its absolute discretion terminate this Agreement by giving the Hirer reasonable written Notice. If the Hirer has paid a Hire Fee (whether in part or in full), then the School Council will refund to the Hirer any unused part of the Hire Fee paid by the Hirer and the Hirer will not be entitled to any other payment and/or compensation for the School Council's termination under this clause.

#### 8. Hirer's Obligations

The Hirer must:

- (a) at its own cost in all respects observe and comply with all Laws that apply to this Agreement and all directions, notices and Requirements of any Government Agency relating to its use and occupation of the Hired Area;
- (b) keep available for inspection by the School Council upon request, all licences, permits and registrations required for the carrying on of any activity by the Hirer in or upon the Hired Area;
- (c) ensure the Hired Area is kept secure, clean and free from debris and rubbish;
- (d) not do anything in or near the Hired Area or the Land which is noxious, offensive or a nuisance and not cause any injury or nuisance to neighbours;
- (e) comply with all Department policies and guidelines which deal with the safety or health of persons on the Hired Area or otherwise under its control;
- (f) not erect, display, affix or exhibit on or at the Hired Area any signs unless it has obtained the School Council's written approval and necessary planning and building permits from the relevant Government Agency;
- (g) observe fire precautions;
- (h) at all times exercise due care, skill and judgement and act with the utmost good faith; and

- (i) not install any fixtures or fittings.

#### 9. Repairs and Damage to the Hired Area

- (a) The Hirer will be responsible for the cost of any damage to the Hired Area, or its surrounding areas (including but not limited to any building, fixture, fitting or equipment) if such damage is caused by or contributed to the Hirer or the Hirer's breach of this Agreement.
- (b) Any repairs which, under this clause 9, are the responsibility of the Hirer will be carried out by the School Council at the cost of the Hirer. The Hirer must reimburse the School Council for such costs within 14 days of written demand by the School Council to the Hirer.

#### 10. Parties' Representatives

- (a) The School Council and Hirer each nominate the person specified in Item 10 as their respective representative (**Representative**) in relation to all queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement.
- (b) Either party may nominate a replacement Representative by Notice in writing to the other party.

#### 11. Insurance, Release and Indemnity

##### 11.1 Insurance

- (a) The Hirer must take out and maintain the insurances set out in Item 9 in force during the Agreement.
- (b) The Hirer must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the School Council or any other person.
- (c) Clauses 11.1(a), 11.2 and 11.3 do not apply if the Hirer is insured by VMIA or is a municipal council within the meaning of the *Local Government Act 1989* (Vic) and is insured by Liability Mutual Insurance.

##### 11.2 Release

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

##### 11.3 Indemnity

- (a) The Hirer must indemnify and keep indemnified the School Council and its Associates from and against all Claims that the Hirer or its Associates suffer or incur in respect of or arising from:
  - (i) any negligent act or negligent omission of the Hirer in connection with this Agreement;

- (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 Hirer in connection with this Agreement;
  - (iii) any loss of or damage to property of any kind to the extent it is caused by the act or omission of the Hirer in connection with this Agreement; or
  - (iv) the Hirer's breach of this Agreement.
- (b) The Hirer will not be liable under the indemnity in clause 11.3(a) to the extent that a Claim results from:
- (i) any fraudulent, negligent or deliberate act or omission of the School Council or its Associates;
  - (ii) any breach of this Agreement by the School Council or its Associates; or
  - (iii) the condition of the Hired Area before the Commencement Date.
- (c) The indemnity given by the Hirer under this clause 11.3 is a continuing obligation, separate and independent from the other obligations of the Hirer, and survives expiry or termination of this Agreement.

## 12. Default and Termination

If:

- (a) the Hirer has failed to pay the Hire Fee on the due date;
- (b) the Hirer fails to perform or observe its obligations (whether express or implied) under this Agreement; or
- (c) an Insolvency Event occurs,

then, without limiting any other right of action or remedy of the School Council in respect of any prior breach of any of the Hirer's covenants, the School Council may, by Notice in writing to the Hirer:

- (d) remedy the breach or default at the cost of the Hirer; and/or
- (e) terminate this Agreement, and

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

## 13. Hirer's Obligations on the Expiry or End of Agreement

- (a) At the expiration or the earlier determination of this Agreement, the Hirer must remove all its property from the Hired Area and ensure that the Hired Area is in a condition consistent with the requirements in this Agreement.
- (b) The expiry or termination of this Agreement does not affect:
  - (i) the School Council's rights in relation to a breach of this Agreement by the Hirer before the expiry or termination; and/or

- (ii) the Hirer's obligation to make a payment under this Agreement for periods before the expiry or termination.

## 14. Notices

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

## 15. Special Conditions

Any special condition set out in Item 11 of Schedule 1 binds the parties. If there is an inconsistency between a special condition in Schedule 1 and any other provision of this Agreement, the special condition prevails.

## 16. Negation of Warranties

- (a) The Hirer acknowledges that it has entered into this Agreement solely on the basis of the terms and conditions in this Agreement and that no warranties, representations or promises have been made by the School Council or its agents.
- (b) Without limiting clause 16(a) the Hirer acknowledges that:
  - (i) no warranties have been given by the School Council that the Hired Area are suitable for the Permitted Use; and
  - (ii) subject to the terms and conditions of this Agreement, the Hirer must do all things necessary to enable the Hired Area to be used for the Permitted Use.

## 17. GST

- (a) In this clause 17, expressions set out in italics have the same meaning as those expressions in the GST Act.
- (b) An amount payable under this Agreement 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 Agreement 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*.

## 18. Requirement For Working with Children and Police Checks

- (a) The Hirer must ensure that all persons engaged or used by it to work at the Hired Area and/or carry out the Permitted Use under this Agreement:
  - (i) if required by the Working with Children Act, have undertaken a satisfactory working with children check;
  - (ii) if required by the School Council, have undertaken a satisfactory police records check; and
  - (iii) have met any additional relevant legal requirements and policies of the School Council,

School and/or Department in relation to the suitability of persons to work with children or within the precinct of the School as advised by the School Council.

- (b) The Hirer must ensure the terms and conditions of employment of any staff or of engagement of any contractor for the purpose of carrying out work at the Hired Area and/or carry out the Permitted Use under this Agreement are consistent with the above obligations.

## 19. General

### 19.1 Amendment

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

### 19.2 Severability

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

### 19.3 Set off

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

### 19.4 Governing law and jurisdiction

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

### 19.5 Assignment of rights

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

### 19.6 Publicity

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

## 20. Definitions and Interpretation

### 20.1 Definitions

In this Agreement, unless the context otherwise requires:

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

**Associates** means any officer, employee, agent, delegate, contractor, subcontractor, consultant, advisor, invitee, hirer or servant to the extent that such person or entity is

performing an act or a function directly related to the Agreement.

**Business Day** means any day that is not a Saturday, Sunday or a public holiday in Melbourne, Victoria appointed under the *Public Holidays Act 1993*.

**Claim** includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding and right of action.

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

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

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

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

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

**Hire Fee** means the amount specified in Item 5.

**Hirer** means the person or entity set out in Item 2 and includes, where appropriate, its employees or agents or other authorised persons.

**Insolvency Event** means if the Hirer:

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

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

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

**Law** means:

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

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

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

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

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

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

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

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

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

**School Council** means the school council set out in Item 1 and includes, where appropriate, its employees or agents or other authorised persons.

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

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

## 20.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) 'includes' means includes without limitation;
- (b) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (c) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

**Executed as an agreement.**

**School Council**

**Date:**

<Insert date that School Council signs>

<b>The common seal of the School Council</b> was affixed by order of the School Council in the presence of the President of the School Council and its Appointee:		<Affix seal here>
<b>Signature of President</b>		<b>Signature of Appointee</b>
<b>Name of President (print)</b>		<b>Name of Appointee (print)</b>

**Hirer**

**Date:**

<Insert date that Hirer signs>

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

<b>Executed by the Hirer</b> in accordance with section 127 of the <i>Corporations Act 2001</i>		
<b>Signature of director</b>		<b>Signature of director/company secretary (delete as applicable)</b>
<b>Name of director (print)</b>		<b>Name of director/company secretary (print)</b>

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

<b>Signed by the Hirer</b> in accordance with section 38 of the <i>Associations Incorporation Reform Act 2012</i>		
<b>Signature of authorised person</b>		<b>Signature of authorised person</b>
<b>Name of authorised person (print)</b>		<b>Name of authorised person (print)</b>
<b>Position of authority (print)</b>		<b>Position of authority (print)</b>

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

<b>Signed by the Hirer</b> in the presence of:		
<b>Signature of witness</b>		<b>Signature of Hirer</b>
<b>Name of witness (print)</b>		<b>Name of Hirer (print)</b>

## Schedule 1     Details

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

## **Annexure A Plan**

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