

School Council Licence – School Uniform Business

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 Permitted Use.
- 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 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 not confer a 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 through the School Council.

2. Representatives

- (a) The School Council and the Licensee each appoint the person listed as such in Item 13 as their respective representatives who will be responsible for communications under this Licence.

- (b) Either party may replace its representative by giving 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 instruction or direction given by the School Council's representative.

3. Licence Fee

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

- (a) at the School Council's address specified in Item 1 (or to any other address as the School Council notifies the Licensee by Notice from time to time); and
- (b) at the times and in the manner set out in Item 7 (or at such other times or in such other manner as the School Council notifies the Licensee by Notice from time to time).

4. Rates and Taxes and Outgoings

- (a) The Licensee must pay any Rates and Taxes for the Licensed Area.
- (b) The party or parties specified in Item 8 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.

5. 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 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 14..
- (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 have 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.

6. Use of Licensed Area

- (a) The Licensee may only use the Licensed Area for the Permitted Use.
- (b) The Licensee may only use the Licensed Area during the Term during the Hours of Use and on the Dates and/or Days of Use (as applicable).
- (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, carparks 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 6(d)(i) to 6(d)(iii) solely for the purposes of the Licensee's use of the Licensed Area.

7. Compliance with Laws

- (a) The Licensee must, at its own expense and 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 its 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 within the terms of this Licence.

8. Improvements and Fit Outs

- (a) The Licensee acknowledges that:
 - (i) subject to clause 20, at the end of this Licence, all improvements and fit outs 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 Land 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 8(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.

9. Licensee's Obligations

The Licensee must:

- (a) not use the Licensed Area for any illegal purpose;
- (b) ensure the Licensed Area is kept secure, clean and free from debris and rubbish;
- (c) 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, or surrounding, the Licensed Area;
- (d) 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;
- (e) not overload the floor of the Licensed Area;
- (f) comply with all Department, School and School Council policies and/or guidelines which deal with 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;
- (g) 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 written

approval and all necessary planning and building permits from the relevant Government Agency;

- (h) observe fire precautions;
- (i) at all times exercise due care, skill and judgement and act with the utmost good faith;
- (j) 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
- (k) if the Licensee is a Framework Organisation or an Agency under the FVP Act it warrants to the School Council that:
 - (i) it will Align its relevant policies, procedures, practice guidance and tools with the Approved Framework as amended from time to time; and
 - (ii) it will maintain Alignment of its relevant policies, procedures, practice guidance and tools with the Approved Framework during this Agreement.

10. 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 such damage it is responsible for in accordance with clause 10(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) If the School Council supplies any services to the Licensed Area, such as air conditioning and elevators, the School Council must do all it reasonably can to ensure that they are working efficiently during the School Council's normal hours of operation. However, if any of such services do not work efficiently, the School Council is not liable to compensate the Licensee.

11. School Council's Exercise of Rights

- (a) The Licensee acknowledges that the School Council and its 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;
 - (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; and
 - (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.

12. 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) The Licensee at all times indemnifies and will continue to indemnify, hold harmless and defend the Department, the School Council and their respective Associates, successors and assigns (in this clause, each an **Indemnified Party**) against any Losses which any Indemnified Party suffers or incurs as a result of any claim resulting or arising after the date of the Licensee's occupation of the Licensed Area, in respect of the presence of any asbestos or other Contaminant in, on or under the Licensed Area (including any Losses incurred in relation to any notice, direction or order issued or made under the *Environment Protection Act 1970* or any other Law relating to the protection of the environment).
- (d) 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.
- (e) Clauses 12(b) and 12(c) do 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.

13. 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.

14. Child Safe Standards

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

15. 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.

16. Insurance, Release and Indemnity

16.1 Insurance

- (a) The Licensee must obtain and maintain for the Term, the insurance set out in Item 12 with an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia that is acceptable to the School Council.
- (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 16.1(a), 16.1(c), 16.2 and 16.3 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 is insured by Liability Mutual Insurance.

16.2 Release

The Licensee will occupy, use and keep the Licensed Area at the risk of the Licensee 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 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.

16.3 Indemnity

(a) Subject to clause 16.3(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 16.3(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.

17. Termination Events

17.1 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.

17.2 Related Agreement

The School Council may terminate this Licence where 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), provided that, 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.

17.3 Insolvency Event

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

17.4 By Agreement

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

17.5 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.

18. Default

(a) Where 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.

19. 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.

20. Consequences of expiry or termination of Licence

- (a) At the expiration or the earlier termination 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 in respect of the Licensed Area; or
 - (ii) School Council directs in writing to the Licensee that any of the improvements made on the Licensed Area by the Licensee under this Licence are to remain on the Licensed Area and are not to be demolished in which case clause 8(a) will apply,

the Licensee at its cost must:

- (iii) demolish and remove all such improvements made under this Licence in a proper and workmanlike manner in compliance with the applicable Law and Requirements and to the satisfaction of the School Council; and
 - (iv) 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.
- (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 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.
- (e) Clauses 5, 12, 16, 19, 20, 22, 24, 25, 26, 27, 28, 30 and 31 survive the termination or expiry of this Licence and may be enforced at any time.

21. Assignment and Sublicensing

This Licence is personal to the Licensee. The Licensee must not dispose of, deal with, transfer, novate or assign its rights as Licensee under this Licence without obtaining the School Council's prior written consent, which consent may be granted or withheld in 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.

22. Holding Over

If the Licensee continues to use 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; and
- (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, payable monthly in advance.

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

23. 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 23(d), 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.

24. Interest

- (a) The Licensee must pay interest on any money payable by it under this Licence for the interval between the due date and the date of actual payment 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 section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.

25. Confidentiality

25.1 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 25.1 and without the need on the part of the School Council to prove any special damage.

25.2 Disclosure of Licensee's information

- (a) Subject to clause 25.2(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.

26. 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.

27. 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 13 of Schedule 1; and

(ii) to the Licensee: to the Licensee Representative, at the address which is set out in Item 13 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.

28. GST

28.1 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).

28.2 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.

28.3 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.

28.4 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 28.2 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.

28.5 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.

29. 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 29 will constitute a breach of a fundamental term of this Licence.

30. General

30.1 Amendment

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

30.2 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.

30.3 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.

30.4 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.

30.5 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.

30.6 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.

30.7 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.

30.8 Counterparts

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

30.9 Entire understanding

- (a) This Licence is comprised of the following documents:
 - (i) the Special Conditions (Annexure B);
 - (ii) clauses 1 to 31 (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 30.9(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 30.9(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.

30.10 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 30.10, the Licensee must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

30.11 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.

30.12 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 30.12(a) and recover the amount of any loss resulting from such termination as a debt due from the Licensee.

30.13 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.

31. Definitions and Interpretation

31.1 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 a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

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

Child Safety Laws means any Laws that in any way relate to child safety, including the *Child Wellbeing and Safety 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.

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 personnel of the School and/or School Council and either of their Associates;
- (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.

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.

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).

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 Hours of Use).

Department means the Department of Education in the State of Victoria. **Default Notice** has the meaning given to that term in clause 18(a).

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 the 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.

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 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).

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) has an administrator appointed over all or any of its assets or undertakings or 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;
- (d) 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
- (e) 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, as described in Item 4 and includes 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 and includes the schedules and any annexures to it or documents incorporated by reference.

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 as described in Item 3 and shown hatched on the Plan, 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).

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

Ministerial Order means Ministerial Order 1359 (as amended or replaced 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 11.

Plan means the plan attached as Annexure A.

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 outgoing whatsoever now or at any time imposed, charged or assessed on or against the Licensed Area or in connection with the Licensed Area, 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 a requirement is addressed or directed but if not addressed to the Licensee then the Licensee must be given a copy.

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 amount specified in Item 14.

Special Conditions means the special conditions (if any) contained in Item 15.

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 possession of the Licensed Area.

31.2 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 genders;
- (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);
- (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;
 - (v) "\$", "dollars" or "AUD" is a reference to the lawful currency of the Commonwealth of Australia; and
 - (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	School Council's Name	[Insert name of School Council, ABN and address]
Item 2	Licensee's Name	[Insert registered name of Licensee (including ACN (if a company) or registered association number (if an incorporated association), and address)]
Item 3	Licensed Area	[Insert a description of the part of the Land to be licenced to the Licensee]
Item 4	Land	[Insert full address of the school (of which the Licenced Area forms part)]
Item 5	Commencement Date	[Insert the date the Licence is to commence]
Item 6	Expiry Date	[Insert the date the Licence is to expire – this date should not be more than three years from the Commencement Date unless legal advice has been sought]
Item 7	Licence Fee	<p>[Insert Licence fee payable by the Licensee and whether it is per annum, per month, per day etc]</p> <p>\$ (plus and GST and Rates and Taxes)</p> <p>per week/month/annum payable weekly/monthly/annually in advance</p> <p>If the licence fee is to be increased during the term this should be way of a fixed amount. For example:</p> <p>Year 1: \$xxx per month (GST inclusive); Year 2: \$xxx per month (GST inclusive); and Year 3: \$xxx per month (GST inclusive)</p>
Item 8	Party responsible for Outgoings:	[Insert Licensee or School Council as relevant]
Item 9	Dates and/or Days of Use	

		[Insert specific dates and/or days during the Term the Licensee may use the Licensed Area. If this is unlimited, insert "Not applicable"]
Item 10	Hours of Use	[Insert hours of the day during the Term the Licensee may use the Licensed Area. If this is unlimited, insert "Not applicable"]
Item 11	Permitted Use	School Uniform Business
Item 12	Insurance	Public Liability Insurance \$10 million per each event.
Item 13	School Council Representative and Address for Service [Insert as applicable]	Authorised Officer: Address: Tel: Fax: Email:
	Licensee Representative and Address for Service	Authorised Officer: Address: Tel: Fax: Email:
Item 14	Security Deposit	[Insert amount of safety deposit (if any). If a security deposit is not required, insert "Nil"]
Item 15	Special Conditions	As set out in Annexure B [If special conditions are needed insert details]

Annexure A Plan

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

Annexure B Special Conditions – School Uniform Business

1. Special Conditions

1.1 Definitions

In these Special Conditions:

- (a) **Goods** means the goods (or any of them) specified in Item 1 of Schedule B1 (as amended from time to time in accordance with clause 1.4 or 1.5 of these Special Conditions);
- (b) **Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, trade secrets and know how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (c) **Specifications** means the specifications to which the Goods must comply, including any relevant performance requirements, technical constraints and quality standards, as set out in Item 2 of Schedule B1; and
- (d) **Unique Stock** means Goods bearing the School's specific logo or labelling that are made exclusively for the School, or which include fabric made exclusively for the School.
- (e) **Unit Price** means the price per item of each of the Goods, inclusive of all taxes and charges, as stated in Item 3 of Schedule B1, and as amended from time to time in accordance with these Special Conditions.

1.2 Appointment as Licensee and Retailer

- (a) The School Council grants to the Licensee the right to conduct from the Licensed Area a school uniform shop which supplies the Goods to students of the School.
- (b) The Licensee is hereby appointed to supply the Goods for sale by the Licensee in the Licensed Area, on and subject to the terms of this Licence.
- (c) The Goods supplied by the Licensee pursuant to this Licence must comply in all respects with the Specifications.

1.3 Improvements and Fitouts

The Licensee acknowledges and agrees that, when giving a consent pursuant to clause 8 of this Licence (Improvements and Fitouts) the School Council may give consent subject to any conditions it sees fit, which may include the Licensee satisfying the following requirements:

- (a) 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 tradesmen to be used for the improvements or fit outs;
- (b) any improvements or fit outs will be at the cost of the Licensee;
- (c) any improvements or fit outs must be executed promptly and continuously in a proper and workmanlike manner, in accordance with all Laws and Requirements and strictly in accordance with the consent given by the School Council;
- (d) the Licensee must pay on demand all costs incurred by the School Council in considering and inspecting the improvements and its supervision, including the costs of architects, engineers or other building consultants reasonably engaged by or on behalf of the School Council;
- (e) 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;
- (f) 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 have been carried out in accordance with all of the plans and specifications approved by the School Council;

- (g) the improvements or fit outs must be completed within the time period (if any) specified by the School Council, acting reasonably;
- (h) in carrying out any improvement or fitout 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
- (i) 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 this clause and must immediately provide evidence of all such insurance policies to the School Council.

1.4 New Products

- (a) If, during the Term, the School Council wishes a new item to be supplied by the Licensee that is not at that time one of the Goods (**New Product**), the School Council will notify the Licensee of that fact in writing.
- (b) The parties must negotiate in good faith with a view of reaching agreement as to the terms on which the requested New Product will be supplied by the Licensee under this Agreement.
- (c) The Licensee undertakes that, in determining the Unit Price for any New Product, it will, to the extent that it is reasonably possible to do so, calculate the Unit Price on the same basis as that on which the Unit Price of the Goods was calculated.
- (d) If the parties reach agreement pursuant to clause 1.4(b), the New Product will be deemed to form part of the Goods for the purposes of this Licence, and the Licensee must promptly provide to the School Council an updated version of Schedule B1 containing a list of all Goods and their respective Unit Prices.

1.5 Inability to Supply

- (a) If at any time during the Term the Licensee is unable or is likely to become unable, for whatever reason, to supply a particular Good, irrespective of the reason for that inability to supply, the Licensee must:
 - (i) immediately notify the School Council of that fact; and

- (ii) promptly provide to the School Council for its consideration, a substitute for the relevant item.

- (b) Any substitute or replacement item will be supplied at the same cost (or lower) as the item that it has replaced, unless otherwise agreed in writing by the School Council. If the School Council agrees to accept the substituted item in replacement for the original item, the substituted item will become part of the Goods and the Licensee must promptly provide to the School Council an updated version of Schedule B1 containing a list of all Goods and their respective Unit Prices.

1.6 Price for Goods

- (a) The initial Unit Price for each of the Goods is set out in Schedule B1 to these Special Conditions. Subject to any change in the Unit Price for any Goods resulting from the application of clauses 1.4, 1.5 and 1.6 of these Special Conditions, the Unit Prices are fixed for the Term.
- (b) The Licensee must supply each item of the Goods at the Unit Price during the Term.
- (c) Subject to Special Conditions 1.7(b) and 1.14, the Licensee acknowledges and agrees that the School Council is not liable to the Licensee for payment of the Unit Price for the Goods supplied by the Licensee from the Licensed Area. The Goods can be purchased directly from the Licensee by students of the School.
- (d) The Licensee may increase the Unit Price on each anniversary of the Commencement Date in accordance with the process in this clause 1.6 to reflect any increases in costs and other charges reasonably incurred and evidenced by the Licensee.
- (e) At least 30 days' prior to an anniversary of the Commencement Date, the Licensee must provide the School Council with written notice of its proposed increase in the Unit Prices.
- (f) If the School Council notifies the Licensee in writing that it accepts the proposed increase in the Unit Prices notified by the Licensee under clause 1.6(e), the Unit Prices will be varied with effect from the next anniversary of the Commencement Date and the Licensee must promptly provide to the School Council an updated version of Schedule B1 containing a list of all Goods and their respective Unit Prices.

- (g) If the School Council, in its reasonable opinion, believes a proposed increase to the Unit Prices as notified by the Licensee under clause 1.6(e) to be excessive, it will notify the Licensee and provide reasons for its refusal.
- (h) If the School Council refuses a price variation under clause 1.6(g), the School Council and the Licensee will discuss in good faith the proposed price variation.
- (i) If the School Council and the Licensee agree any variation to the Unit Price in accordance with 1.6(h), the School Council will notify the Licensee in writing and the Unit Prices will be varied with effect from 14 days after the Licensee's receipt of such notice and the Licensee must promptly provide to the School Council an updated version of Schedule B1 containing a list of all Goods and their respective Unit Prices.
- (j) The Licensee must ensure, at all times during the Term, that the Unit Prices are no less favourable than any price at which the Licensee provides or offers to provide Goods that are equivalent or similar to the Goods to any other customer of the Licensee whose orders of goods are of a comparable volume to those placed by students of the School.

1.7 Design

- (a) Before commencing supply of Goods from the Licensed Area, the Licensee must provide the School Council with two complete sets of samples of each item of Goods to be supplied under this Licence. Each sample will be manufactured in accordance with the Specifications, for approval by the School Council.
- (b) If the School Council approves the sample of Goods in writing (**Approved Sample**), the School Council will retain one complete set and return the other set to the Licensee. The School Council will pay the Licensee a reasonable sum for the set which it retains.
- (c) The Licensee must ensure that each item of Goods supplied by it is the same quality as the Approved Sample. In the event of any conflict between the Specifications and the Approved Sample, the Approved Sample will take precedence over the Specifications to the extent of the inconsistency.

1.8 Design Change

The School Council may vary the Specifications by giving the Licensee at least 18 months' notice

of the variation (or such lesser period as is agreed between the parties).

1.9 Labelling

The Licensee must ensure that each item of Goods supplied by it has affixed to it:

- (a) fabric care and size labels that conform to all relevant Australian Standards; and
- (b) any other distinctive label required under the Specifications.

1.10 Warranties

- (a) The Licensee warrants to the School Council that the Licensee has the right to sell and transfer full and unencumbered title to, and property in, the Goods.
- (b) The Licensee warrants to the School Council that the Goods:
 - (i) except as otherwise provided in the Specifications, are new when delivered for sale at the Licensed Area;
 - (ii) notwithstanding any approval of an Approved Sample, are fit for the purpose for which the Goods would ordinarily be used;
 - (iii) conform in all other respects with the requirements of this Licence (including the Specifications);
 - (iv) are free from defects;
 - (v) are of merchantable quality and comply with all applicable Laws and standards; and
 - (vi) have been manufactured, constructed or assembled at the location and in the facility disclosed by the Licensee as the place of manufacture, construction or assembly of the Goods.
- (c) The Licensee warrants to the School Council that it will not vary the specification, design, shape, configuration or characteristics of the Goods during the Term without first obtaining the written consent of the School Council.
- (d) The Licensee must, to the extent that it is possible to do so, obtain for the students of the School the benefit of any manufacturer's warranty applicable to any Goods supplied under this Licence.

1.11 Intellectual Property

- (a) The Licensee acknowledges that:
 - (i) it acquires no right, title or interest in or to any Intellectual Property Rights

associated with the Goods (whether owned by the School Council or a third party) by virtue of this Licence;

- (ii) it may use any Intellectual Property Rights associated with the Goods during the Term solely for the purpose of, and only to the extent necessary to, perform its obligations under this Licence; and
 - (iii) information concerning Specifications (including drawings, patterns and fabric specifications) which is provided to the Licensee by the School Council is Confidential Information.
- (b) The School Council agrees that it will not provide any samples made up by the Licensee to any competitor of the Licensee during the Term without the prior written approval of the Licensee.

1.12 Number of Students

- (a) To enable the Licensee to establish production schedules and to place orders with its Licensees, the School Council will on the Commencement Date and at least 3 months prior to the end of each academic year (or within such lesser period as may be agreed between the parties in writing) provide the Licensee with an estimate of:
- (i) the number of students likely to be attending the School during the next academic year;
 - (ii) the number of male and female students; and
 - (iii) the likely distribution of those students into form classes.
- (b) The Licensee acknowledges and agrees that:
- (i) the number of pupils attending the School may fluctuate from time to time;
 - (ii) the advice as to student numbers provided in accordance with this clause 1.12 of these Special Conditions is subject to change at any time;
 - (iii) the School Council does not guarantee those number of students will remain stable; and
 - (iv) the School Council does not guarantee the number of students who will purchase the Goods.

1.13 Stock

- (a) The Licensee must maintain a stock of the Goods which is adequate to meet to the demand of the estimated number of pupils provided by the School Council from time to time in accordance clause 1.12 of these Special Conditions.
- (b) The Licensee agrees that:
- (i) the stock levels maintained by the Licensee pursuant to this clause 1.13 of these Special Conditions are entirely at the Licensee's risk; and
 - (ii) subject to clause 1.14 of these Special Conditions, the School Council is not liable for any Goods which remain unsold at any time during the Term.

1.14 Buyback

- (a) The School Council will purchase agreed Unique Stock of Goods identified by the Licensee (**Buy-back Stock**) at the date of termination or expiry, if it is evidenced that the Licensee has only sought to maintain reasonable stock levels required by clause 1.13.a) and not sought to increase stock levels.
- (b) The price the School Council will pay the Licensee for the Buy-back Stock purchased under clause 1.14(a) will not exceed the wholesale price of the Unique Stock of Goods plus 5%.
- (c) Payment for the Buy-back Stock will be made within one month of delivery to the School Council.

1.15 Sale of Second Hand Uniforms

Notwithstanding anything else in this Licence, the School Council may:

- (a) sell or otherwise dispose of; or
 - (b) authorise or assist any person or organisation, including the School parents' club, to sell or otherwise dispose of,
- second hand Goods on the Land or at any other venue.

1.16 Licensee's Trading Name

The Licensee will trade 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.

Schedule B1 – Licence Special Conditions (School Uniform Business)

Item 1	Goods	[Insert details]
Item 2	Specifications	[Insert details]
Item 3	Unit Price	[Insert details]