

# **Community Joint Use Agreement**

The Minister for Education

The Mansfield Secondary College Council

The Mansfield Shire Council

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## **PARTIES**

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

The Mansfield Secondary College Council of 15 View Street, Mansfield, Victoria, 3722 (**School Council**)

The Mansfield Shire Council of 33 Highett Street, Mansfield, Victoria, 3722 (**Community Partner**)

## **OVERVIEW**

- A. The School Council and the Community Partner wish to enter into an agreement for the construction or refurbishment and sharing of new or refurbished facilities at and adjacent to the School.
- B. The Community Partner is a local government authority or a not for profit entity.
- C. The Department Land is owned or managed by the Minister.
- D. The Community Partner Land is owned by the Community Partner and is adjacent to the Department Land.
- E. The Crown Land is managed by the Community Partner as the appointed Committee of Management pursuant to the *Crown Land (Reserves) Act 1978* (Vic) and is adjacent to the Department Land.
- F. The completed Facility will be located partly on Department Land, partly on Community Partner Land and partly on Crown Land. The parties agree to carry out the Works to construct or refurbish the Facility and fund them as set out in this Agreement.
- G. When the Works are complete, the School Council and the Minister agree to grant a licence to the Community Partner to use the Facility upon the terms and conditions of this Agreement and the Community Partner agrees to grant a licence to the School Council and the Minister to use the Facility upon the terms and conditions of this Agreement.

## CLAUSES

### SECTION A: DEFINITIONS AND INTERPRETATION

#### DEFINITIONS

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

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

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

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

**Building Contract** means the contract between the Constructing Party and the Contractor to carry out the Works, being a construct only contract in the form of Australian Standard General Conditions of Contract AS2124-1992 as amended in accordance with Ministerial Directions issued under the *Project Development and Construction Management Act 1994* (Vic).

**Capital Works** means works that are:

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

**Capital Expenditure** means expenditure on Capital Works.

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

**Community Hiring Party** means the party responsible for hiring out the Facility (or a part of it) for community use outside School Hours, or any other times that the School Council is entitled to use the Facility, in accordance with clause 58 and as set out in Part E4 of the Schedule.

**Community Partner Land** means the whole of the land shaded in blue on Plan A.

**Community Partner Licence** means the non-exclusive licence to use the part of the Facility on the Community Partner Land granted to the School Council and the Minister under clause 50.3 of this Agreement.

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

**Constructing Party** means the party responsible for entering into the Building Contract with the Contractor and for managing the construction phase, as set out in Part B1 of the Schedule.

**Construction Contributions** means the financial contributions of the Minister, the School Council and the Community Partner towards the cost of the Works, as set out in Part B2 of the Schedule.

**Construction Costs** means the estimated costs of the Works as at the Date of the Agreement, as set out in Part B3 of the Schedule.

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

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

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

**CPI** means the All Groups Consumer Price Index number published by the Australian Bureau of Statistics or, if the All Groups Consumer Price Index number ceases to be published, the nearest equivalent economic indicator.

**Crown Land** means the whole of the land shaded in red on Plan A.

**Crown Licence** means the non-exclusive licence to use the part of the Facility on the Crown Land granted to the School Council and the Minister under clause 50.5 of this Agreement.

**Date of Operation** is the date on which operation or use of the Facility commences, as set out in Part C1 of the Schedule.

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

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

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

**Department Land** means the whole of the land shaded in pink on Plan A.

**Department Licence** means the non-exclusive licence to use the part of the Facility on the Department Land granted to the Community Partner under clause 50.1 of this Agreement.

**Facility** means the Facility described in Part A2 of the Schedule and shown on Plan B.

**Facility Operating Hours** means the hours when the Facility is entitled to operate, as set out in Part E3 of the Schedule.

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

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

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

**Hirer** means the person or entity hiring out the Facility (or a part of it) in accordance with clause 58 and its agents, servants, employees, contractors, invitees and anyone else for whom that person or entity is responsible.

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

**Insolvent** has the meaning given to that term under the *Corporations Act 2001* (Cth).

**Land** means all of the Crown Land, the Community Partner Land and the Department Land as shown on Plan A.

**Law** means:

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

**Licences** means the Crown Licence, the Department Licence and the Community Partner Licence.

**Licence Fee** means the fee payable by the Community Partner to the School Council, or by the School Council to

the Community Partner, as the case may be, under this Agreement for the use of the Facility, as set out in Part D3 of the Schedule.

**Licence Term** means the period set out in Part D1 and running from the Date of Operation.

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

**Permitted Use** means the purposes for which the Facility can be used, as set out in Part E5 of the Schedule or as amended and agreed to by the School Council from time to time and notified in writing to the Community Partner, provided always that all use must be in accordance with the Act.

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

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

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

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

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

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

**School** means the School specified in Part A1 of the Schedule.

**School Day** means a day on which the School is open.

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

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

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

**Superintendent** means the superintendent appointed under the Building Contract.

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

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

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

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

## INTERPRETATION

- 2.1 In this Agreement, unless inconsistent with the context or subject matter:
- (a) a reference to any legislation or legislative provision:
    - (i) includes any statutory modification or re-enactment of, or legislative provision substituted for that legislation or legislative provision; and
    - (ii) includes any subordinate legislation, ordinances, by laws, regulations, rules, other statutory instruments issued and orders made under that legislation or legislative provision;
  - (b) any marginal notes or headings are included for convenience and do not affect the interpretation of this Agreement;
  - (c) a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
  - (d) the singular includes the plural and vice versa;
  - (e) if any day specified by this Agreement falls on a Saturday, Sunday or a day appointed under the *Public Holidays Act 1993 (Vic)* as a holiday for the whole day, that day will be the next day following the specified day which is not a Saturday, Sunday or day appointed under the *Public Holidays Act 1993 (Vic)*;

- (f) a reference to this Agreement includes all documents attached to it;
- (g) a reference to this Agreement or to any deed, agreement, document or instrument includes a reference to such documents as amended, novated, supplemented, varied, altered or replaced from time to time;
- (h) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (i) a reference to **dollars** or **\$** is reference to Australian currency; and
- (j) the word **include** in any form is not a word of limitation

## SECTION B: OBJECTIVES

### OBJECTIVES OF THE PARTIES

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

## SECTION C: GENERAL

### APPROVALS TO ENTER INTO THE AGREEMENT

- 4.1 The Minister approves the School Council entering into this Agreement and the construction of the part of the Facility on the Department Land, pursuant to the Act.
- 4.2 If the Community Partner is a local government authority, the Community Partner confirms that it has obtained, at its own cost, all necessary approvals and consents required under the *Local Government Act 1989 (Vic)* and the *Crown Land*



(Reserves) Act 1978 (Vic) to enable it to enter into this Agreement and to comply with its obligations under the Agreement.

- 4.3 If the Community Partner is not a local government authority, the Community Partner confirms that it has the power under, and has obtained all necessary consents and authorisations required by, its constitution or equivalent document to enable it to enter into this Agreement and to comply with its obligations under this Agreement.

#### ACKNOWLEDGEMENT BY THE COMMUNITY PARTNER

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

#### NO GRANT OF PROPRIETARY RIGHTS IN THE LAND

- 6.1 The rights conferred by this Agreement rest in contract only and do not grant:
- to the School Council, the Community Partner or any other person any proprietary interest in the part of the Facility on the Department Land or in the Department Land. The Minister is the owner or manager of the Department Land and the part of the Facility on the Department Land;
  - to the School Council, the Minister or any other person any proprietary interest in the part of the Facility on the Community Partner Land or in the Community Partner Land. The Community Partner is the owner of the Community Partner Land and the part of the Facility on the Community Partner Land; and
  - to the School Council, the Minister or any other person any proprietary interest in the part of the Facility on the Crown Land or in the Crown Land.

#### ACTING ON BEHALF OF THE MINISTER

- 7.1 Any act, deed, document or thing to be made, done, executed or performed (excluding the

execution of this Agreement) and right, duty or power (including the right to issue a notice or give any consent) of the Minister, to be exercised under this Agreement, may be made done on behalf of the Minister by any employee of the Department authorised to do so by the Minister.

#### ASSIGNMENT

- 8.1 The Community Partner must not assign or transfer any or all of its rights or obligations under this Agreement without the written consent of the Minister. Such consent must not be unreasonably withheld.
- 8.2 The Minister and School Council may in good faith assign or transfer their respective rights or obligations under this Agreement at any time during the Licence Term. The Minister or the School Council, as the case may be, must give written notice to the Community Partner of such assignment.

#### DISSOLUTION OF THE SCHOOL COUNCIL

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

#### 10 CHANGE OF SCHOOL COUNCIL NAME

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

#### LEGAL COSTS

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

#### NOTICES

##### Method of giving Notices

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

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

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

**Time for Receipt**

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

- (a) in the case of delivery by hand, on the day of delivery;
- (b) in the case of a posted letter, on the second (seventh, if posted to or from a place outside Australia) day after posting; or
- (c) in the case of facsimile, on the day the facsimile was sent, subject to production of a transmission report showing successful transmission of the whole of the notice.

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

**13 GOVERNING LAW**

13.1 This Agreement is governed by the law of the State of Victoria.

**14 VARIATION OF THIS AGREEMENT**

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

**15 WAIVER**

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

**16 CONFIDENTIALITY**

16.1 Except as expressly provided in clause 16.3 below, the parties must treat as confidential the terms and conditions of this Agreement and all other

information which comes into their possession as a result of or in the performance of this Agreement.

16.2 The School Council and the Community Partner:

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

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

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

**17 CONFLICT OF INTEREST**

17.1 The Community Partner warrants that, to the best of its knowledge and belief after due inquiry as at the date that the Community Partner signs the Agreement, it has no duties or interests that create or might reasonably be anticipated to create a conflict with its duties and obligations under this Agreement.

17.2 The Community Partner must notify the School Council and Minister in writing if at any time after the date that the Community Partner signs the Agreement it becomes aware of any actual or potential conflict of interest and must comply with any reasonable direction of the Minister to manage any risk in connection with such conflict.

**18 ENTIRE AGREEMENT**

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

**COUNTERPARTS**

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

**GST**

- 20.1 Where a party to this Agreement (the Supplier) makes a Taxable Supply under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement to another party to this Agreement (the Recipient) and the consideration otherwise payable for the Taxable Supply does not include GST, the Supplier shall be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Recipient the amount of any GST on the Taxable Supply.
- 20.2 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the Taxable Supply (taking into account any Adjustment Events that occur in relation to the Taxable Supply), an adjustment will be made. If the amount paid by the Recipient exceeds the GST on the Taxable Supply, the Supplier must refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the Taxable Supply, the Recipient must pay the deficiency to the Supplier.
- 20.3 Where a party to this Agreement is entitled, under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credits available in respect of those costs.
- 20.4 A party is not obliged to pay any amount in respect of GST to the other party unless and until a valid tax invoice (being an invoice that complies with the GST Legislation) has been issued in respect of that GST.

**SECTION D: OVERARCHING REQUIREMENTS**

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

21.1 Each party must do all things reasonably necessary to assist any other party to discharge

any obligations that party may have under this Agreement and any relevant Law.

**22 COMMUNITY PARTNER'S GENERAL OBLIGATIONS AND PROHIBITIONS IN RESPECT OF THE LAND AND THE FACILITY**

- 22.1 The Community Partner must:
  - (a) perform all its activities under this Agreement safely so as to protect persons and property;
  - (b) use the Land and the Facility in an appropriate manner;
  - (c) keep the Facility, and the Land tidy and free from rubbish caused by the Community Partner or its Personnel, to the satisfaction of the Principal;
  - (d) at its own cost, comply with all relevant Laws in relation to the Community Partner's rights and obligations under this Agreement;
  - (e) comply with all relevant Department policies or guidelines, as notified by the School Council in writing to the Community Partner;
  - (f) at its cost, comply with any direction given by the Principal in relation to the Community Partner's rights and obligations under this Agreement, if the Principal in his or her absolute discretion considers there is a risk to people or damage to property;
  - (g) obey all reasonable rules from time to time made by the School Council with regard to the management of the School and the Facility;
  - (h) enter or leave the Facility only by the route and park its motor vehicles in the area nominated by the School Council, unless this Agreement outlines specific arrangements;
  - (i) observe fire precautions;
  - (j) if applicable, ensure that all external doors and windows at the Facility are secured and locked after the Community Partner's use or access of the Facility; and
  - (k) at all times exercise due care, skill and judgement and act in good faith.
- 22.2 The Community Partner must not:

- (a) use or permit the Facility to be used other than for a Permitted Use;
- (b) alter the parts of the Facility on the Department Land without the written approval of the School Council, such approval not to be unreasonably withheld, and subject to the Community Partner being responsible for the cost of the alteration unless otherwise agreed between the parties;
- (c) allow the use of advertising at the Facility or the School without the written approval of the School Council;
- (d) cause or permit any Contamination;
- (e) cause or permit any disturbance or nuisance to people at or entering the Facility or the School or to the owners or occupiers of neighbouring premises, including the School Council, and any person using the grounds of the School, except to the extent reasonably necessary to carry out the Community Partner's obligations under this Agreement.
- (f) cause or permit any damage, injury or danger to people at or entering the Facility or the School or to the owners or occupiers of neighbouring premises, including the School Council, and any person using the grounds of the School.

22.3 To the extent applicable, the Community Partner must ensure that its Personnel comply with the obligations and prohibitions contained in this clause.

22.4 Nothing in this clause 22 shall oblige the Community Partner to carry out Capital Works or otherwise incur Capital Expenditure, unless necessary as a consequence of the Community Partner's use of the Facility or as provided for by clause 60 of this Agreement.

**OCCUPATIONAL HEALTH & SAFETY**

23.1 The Community Partner must:

- (a) establish and maintain systems to assess, manage and eliminate risks and hazards at the Facility and the Land, in connection with its rights and obligations under this Agreement, to the standard required by occupational health and safety law; and

- (b) provide appropriate training and supervision for all persons employed or engaged by it in connection with its rights and obligations under this Agreement.

23.2 The Community Partner must ensure that its Personnel comply with the systems and training referred to above.

23.3 The Community Partner must notify the School Council immediately if it breaches any of its obligations under this Agreement with respect to occupational health and safety and provide the School Council with a copy of all relevant information on request.

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

**AUDIT**

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

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

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

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

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

**25 PERMISSIBLE DEALINGS WITH THE DEPARTMENT LAND**

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

**26 RIGHT OF PARTIES TO UNDERTAKE WORKS AT THE FACILITY**

- 26.1 The Minister and the School Council reserve the right to undertake any works and take any other steps which are necessary to comply with any Law or to ensure the safe and proper use of the part of the Facility on the Department Land and the Department Land.
- 26.2 The School Council and the Minister must exercise their rights under clause 26.1 at a reasonable time and in a way which minimises any interference with the Community Partner's use of the Facility. The School Council or the Minister must give the Community Partner reasonable notice if the School Council or the Minister intends to enter the Facility during the Community Partner's Hours or any other times the Community Partner is entitled to use the Facility. If there is an emergency, the Minister or the School Council or any person authorised by the Minister or the School Council may enter the Facility at any time without notice.
- 26.3 The Community Partner reserves the right to undertake any works and take any other steps which are necessary to comply with any Law or to ensure the safe and proper use of the parts of the Facility on the Community Partner Land and the Crown Land, and the Community Partner Land and the Crown Land.
- 26.4 The Community Partner must exercise its rights under clause 26.3 at a reasonable time and in a way which minimises any interference with the School Council's use of the Facility. The Community Partner must give the School Council and the Minister reasonable notice if the Community Partner intends to enter the Facility during the School Council's Hours or any other times the School Council is entitled to use the Facility. If there is an emergency, the Community Partner or any person authorised by the

Community Partner may enter the Facility at any time without notice.

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

- 27.1 Each party is responsible for damage to the Facility to the extent caused or contributed to by the negligent, unlawful act or omission, gross negligence or wilful misconduct of that party or its Personnel.
- 27.2 Subject to clause 27.3, the responsible party must reimburse the other parties for any costs reasonably incurred by those parties in respect of such damage within 28 days of receiving a written notice from the other parties specifying the damage and the costs.
- 27.3 Where the party responsible for the damage is responsible for carrying out maintenance and repair works to the part of the Facility which is damaged, that party must rectify the damage at its own expense without any contribution from the other parties, regardless of any other provision of this Agreement.

**28 DAMAGE TO THE FACILITY NOT COVERED BY INSURANCE**

- 28.1 If any part of the Facility or any plant, equipment or property located in the Facility suffers damage which arises from an event or risk that is not covered by any of the insurances required to be obtained by the parties under this Agreement, or under any other applicable insurance (including insurance obtained by a Hirer), and clause 28.2 does not apply, then the party responsible for carrying out maintenance and repair works in respect of the part of the Facility which is damaged must rectify the damage in the first instance with the other party (excluding the Minister) to reimburse 50% of this cost within 30 days of receipt of written notice specifying the damage and the cost incurred. If the cost of rectification is likely to exceed \$5,000 (excluding GST) then the party responsible for rectifying the damage in the first instance must obtain the prior approval of the other party (excluding the Minister, unless the cost of rectification is greater than \$50,000) before carrying out the rectification works.
- 28.2 Clause 28.1 does not apply if the amount is not recoverable under a policy of insurance because:

- (a) The School Council or the Community Partner has failed to meet a condition, requirement or warranty forming part of the policy. In such a situation, the defaulting party is responsible for the cost of rectifying the damage.
- (b) The Community Hiring Party has failed to ensure that a Hirer obtains the insurance required by clause 58.3(d) of this Agreement. In such a situation, the Community Hiring Party is responsible for the cost of rectifying the damage.

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

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

## 29 INDEMNITY

- 29.1 This clause applies if the Community Partner is not a local government authority.
- 29.2 The Community Partner indemnifies the School Council, the Minister and the State of Victoria against all of their liability, loss, damages, costs (including, without limitation, all legal costs), claims, proceedings and demands (Loss) which they suffer or incur in connection with;
  - (a) any loss of or damage to any property (real or personal) of the School Council, or its Personnel, the State of Victoria and any staff or students of the School as a result of any action or omission of the Community Partner, its Personnel or Hirers if the

Community Partner is the Community Hiring Party;

- (b) personal injury to or the death of any person as a result of any action or omission of the Community Partner, its Personnel or Hirers if the Community Partner is the Community Hiring Party; and
- (c) any breach of this Agreement by the Community Partner, its Personnel or Hirers if the Community Partner is the Community Hiring Party;

29.3 The liability of the Community Partner under clause 29.1 is reduced to the extent that negligence of the School Council or its Personnel contributed to the Loss.

29.4 Any indemnities given by the Community Partner in this Agreement are continuing obligations, separate and independent from the other obligations of the Community Partner, and survive termination of this Agreement.

## SECTION E: PEOPLE

### 30 ONLY PROPER PERSONS ARE PERMITTED

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

### 31 REQUIREMENT FOR WORKING WITH CHILDREN AND POLICE CHECKS

- 31.1 The Community Partner must ensure that all persons engaged or used by it to work at the Facility:
  - (a) have undertaken a satisfactory working with children check, unless the Principal has agreed in writing that this check is not required because the employee or contractor is not performing 'child-related work' as that term is defined in the *Working With Children Act 2005* (Vic) or the check is

not required due to some other exemption listed in the *Working With Children Act*; and

- (b) have undertaken a satisfactory police records check if the Principal requires this check; and
- (c) have met any additional relevant legal requirements and policies of the Department in relation to the suitability of persons to work with school children or within the precinct of the School as advised by the School Council or the Principal to the Community Partner.

31.2 The Community Partner must ensure the terms and conditions of employment of any staff or of engagement of any contractor used by it for the purpose of carrying out work at the Facility are consistent with the above obligations.

## SECTION F: BREACH, DISPUTES AND TERMINATION

### 32 DEFAULT BY THE COMMUNITY PARTNER AFTER CONSTRUCTION OF THE FACILITY

- 32.1 If the Community Partner commits a substantial breach of this Agreement, the School Council or the Minister may give the Community Partner written notice that the Community Partner is in breach and require the Community Partner to rectify the breach within the time specified in the notice, which must be a reasonable time.
- 32.2 If the Community Partner becomes Insolvent or fails to rectify the breach to the reasonable satisfaction of the School Council or the Minister within the time specified, the School Council or the Minister may:
- (a) do anything that the School Council or the Minister reasonably believes is necessary to rectify the breach; or
  - (b) terminate this Agreement by written notice to the Community Partner.
- 32.3 All costs incurred by the School Council or the Minister in rectifying the breach shall be a debt due from the Community Partner to the School Council or the Minister, payable 30 days from receipt by the Community Partner of an invoice provided by the School Council or the Minister to the Community Partner in respect of the costs.

- 32.4 Nothing in this clause 32 affects any of the School Council's or the Minister's other rights under or in connection with this Agreement.
- 32.5 Termination in accordance with this clause will be effective from the date of receipt of the written notice referred to above.
- 32.6 The parties agree that no compensation is payable to the Community Partner if this Agreement is terminated in accordance with this clause.

### DISP

- 33.1 All disputes between any of the parties in connection with this Agreement (except for a dispute under clause 35.6 below) must be resolved in the manner set out in this clause.

#### Notice of Dispute

- 33.2 The parties agree to consult in good faith with each other but if a dispute arises between any of the parties in connection with this Agreement (except for a dispute under clause 35.6 below) any party may serve on the other parties a written notice of the dispute (Notice of Dispute). The Notice of Dispute must adequately identify and give reasonable details of the nature of the dispute.

#### Meeting of Senior Representatives

- 33.3 If the dispute set out in a Notice of Dispute is not settled within 7 days of receipt of the Notice of Dispute, then the parties to the dispute must each nominate a senior representative (the Senior Representatives) who must meet within 35 days of receipt of the Notice of Dispute (or such other time as agreed between the parties to the dispute) and use their best endeavours to negotiate a resolution of the dispute.

#### Mediation

- 33.4 If :
- (a) the dispute set out in a Notice of Dispute is not settled by the meeting of Senior Representatives referred to in clause 33.3 above; or
  - (b) the Senior Representatives do not meet,
- within 35 days of receipt of the Notice of Dispute (or such other time as agreed between the parties to the dispute), then the party which issues the Notice of Dispute must refer the dispute to mediation.

- 33.5 The mediation must be conducted by a mediator agreed between the parties to the dispute or, failing agreement within 7 days of the referral to mediation, appointed by the Chairperson or acting Chairperson of the Victorian Chapter of the Institute of Arbitrators and Mediators, Australia, who must be requested to appoint an independent person reasonably expert in the matters the subject of the dispute. The mediation must be held within 60 days of receipt of the Notice of Dispute unless all parties to the dispute agree in writing to a longer period.
- 33.6 The parties to the dispute must share the mediator's costs and any other administrative costs associated with the mediation equally.

#### Litigation

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

#### Performance of obligations pending resolution of a dispute

- 33.8 Pending the resolution of a dispute in connection with this Agreement:
- the parties must continue to perform their obligations under this Agreement; and
  - each party must pay all amounts under this Agreement when due in accordance with this Agreement without regard to the pending dispute and regardless of whether the dispute relates to payment of money.

### 34 MINISTER'S RIGHTS OF TERMINATION

#### Minister requires Department Land

- 34.1 At any time the Minister may terminate this Agreement on notice in writing to the other parties if the Minister requires the Department Land or part of it for:
- the construction or redevelopment of school buildings;
  - disposal of the Department Land or the part of it that includes the part of the Facility on the Department Land;
  - closure of the School; or
  - any other reason.
- 34.2 If the Minister elects to terminate this Agreement pursuant to this clause, the Minister must provide

as much notice in writing to the other parties as is practicable in the circumstances but using best endeavours to ensure that at least 3 months' notice is given.

#### Destruction of Facility

- 34.3 If the Facility is damaged or destroyed so as to render it or part of it unfit for use and it is, in the opinion of the Minister, impractical or undesirable to reinstate the Facility or part of the Facility on the Department Land, then the Minister may terminate this Agreement on notice in writing to the parties. Such notice must be given within 6 months after the damage or destruction becoming known to the Minister and termination is effective from the date stated in the notice.

### 35 MINISTER'S OPTIONS FOLLOWING MINISTER'S TERMINATION

#### Options

- 35.1 If this Agreement is terminated by the Minister under clause 34 then the Minister must promptly consult with the Community Partner and, as soon as practicable but no later than 90 days, unless the parties agree otherwise, after such consultation, offer to the Community Partner in writing one of the following options:

##### Option 1:

- The subdivision of the whole or part of the Department Land to create a separate saleable parcel of land containing the part of the Facility on the Department Land and, provided the Government Land Monitor or successor has approved the sale, first offer the parcel for sale to the Community Partner at a price to be agreed by the parties or, failing agreement, as determined by the Valuer-General Victoria or successor.

##### Option 2:

- The entering into a lease of the whole or part of the Department Land and the part of the Facility located on the Department Land between the Minister and the Community Partner consistent with the terms and conditions of this Agreement, with the rent as agreed by the parties, or failing agreement, as determined by the Valuer-General.

##### Option 3:



- (c) The payment by way of compensation to the Community Partner of such amount as the Minister determines in accordance with clause 35.4 below.

35.2 The Community Partner acknowledges that the choice of an option under clause 35.1 is entirely at the discretion of the Minister and cannot be the subject of a dispute or review.

**Determination of Compensation**

35.3 No compensation shall be paid on termination of this Agreement by the Minister under clause 34 except in accordance with clause 35.4.

35.4 If this Agreement is terminated by the Minister under clause 34 and the Minister chooses Option 3 in clause 35.1, then the amount of any compensation payable to the Community Partner shall be the amount determined by the Minister in his or her discretion but acting in good faith and taking into consideration the following:

- (a) The Construction Contribution made by the Community Partner for the part of the Facility on the Department Land, adjusted to reflect the present day value as at the date of the determination by the Minister and reduced to reflect the portion of the Licence Term which has then expired; and
- (b) Any amount which the Community Partner has received or is entitled to receive under a contract of insurance entered into by the Community Partner in respect of the part of the Facility on Department Land as required by this Agreement (or, in the case where the Community Partner has failed to take out or make a claim under such insurance, the amount it would have been entitled to receive) or any amount which the Community Partner has received or is entitled to receive by way of damages in respect of the loss or destruction of the part of the Facility on Department Land.

35.5 To avoid doubt, in determining the compensation under clause 35.4 the Minister is not required to take into account any in kind contributions towards the cost of developing, operating or maintaining the Facility made by or on behalf of the Community Partner.

**Dispute in connection with Minister's termination offer under the selected option**

35.6 If the Community Partner disputes:

- (a) the price at which the parcel of the Department Land is to be offered to the Community Partner under Option 1;
- (b) the basis of the lease and terms and conditions under Option 2; or
- (c) the compensation payable to the Community Partner under Option 3,

then the dispute must be resolved by expert determination in accordance with clauses 35.7 to 35.11 below.

35.7 The Community Partner must give the Minister and the School Council written notice of the dispute referred to in clause 35.6, which must adequately identify and give reasonable details of the dispute.

35.8 If the Community Partner and the Minister cannot agree on an expert within 14 days of receipt of the Notice of Dispute, either the Community Partner or the Minister may ask the Chairperson (or acting Chairperson) of the Victorian Chapter of the Institute of Arbitrators and Mediators Australia to nominate an expert who is reasonably expert in the matters the subject of the dispute.

35.9 A determination made by the expert will be final and binding on the parties to this Agreement.

35.10 The parties agree that they may be represented by a duly qualified legal practitioner in connection with the expert determination.

35.11 The parties must share the expert's costs and any other administrative costs associated with the expert determination equally.

**SECTION G: CONSTRUCTION**

**RESPONSIBILITY FOR CONSTRUCTION**

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

- (a) enter into the Building Contract to carry out the Works with the Contractor;
- (b) use reasonable endeavours to ensure that the Works are commenced, carried out and completed in accordance with the Building Contract;
- (c) do everything which a reasonably prudent principal (as defined in the Building Contract) would do to enforce the Building Contract and ensure that the rights and entitlements of the principal under the

Building Contract are exercised in a proper and timely manner;

- (d) use reasonable endeavours to ensure that the Works are progressed diligently and are brought to Practical Completion by the Date for Practical Completion in the Building Contract.

### 37 ACCESS TO DEPARTMENT LAND IN PHASE

37.1 If the Community Partner is the Constructing Party, the Minister and the School Council grant a licence to:

- (a) the Community Partner and its Personnel; and  
(b) the Contractor and its Personnel;

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

### 38 COMPLYING WITH THE LAW

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

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

### 39 CONSTRUCTION CONTRIBUTIONS

39.1 The Minister agrees to contribute towards the development of the Facility by contributing the Department Land.

39.2 The Minister, the School Council and the Community Partner agree to make the Construction Contributions as set out in Part B2 of the Schedule towards the cost of the Works.

### 40 CONSTRUCTION SECURITY

40.1 Clause 40.2 applies if the Community Partner is the Constructing Party and the Community Partner is not a local government authority.

#### Provision of Community Partner's Construction Security

40.2 The Community Partner must, by the date nominated by the Department, or failing such

nomination by the date of execution of the Building Contract, provide the School Council with security for the performance by the Community Partner of its construction obligations (**Community Partner's Construction Security**). The Community Partner's Construction Security must be in the amount of 10% of the Construction Costs and be in the name of the School Council and the Minister in the form of an unconditional undertaking from a financial institution approved by the Department.

#### Access to Community Partner's Construction Security

40.3 The School Council or the Minister may access the Community Partner's Construction Security without notice to the Community Partner if a Default Event under clause 49 has occurred or if, in the reasonable opinion of the School Council or the Minister:

- (a) the Community Partner or its Personnel has caused loss, cost, damage or expense to the School Council or the Minister or the Community Partner or owes the School Council or the Minister money; and  
(b) the School Council or the Minister makes a written demand on the Community Partner for the amount of such loss, cost, damage, expense or money; and  
(c) the Community Partner has failed to either pay the School Council or the Minister the amount demanded, or to provide the School Council or the Minister with adequate reasons in writing why the Community Partner should not be held liable for such loss, cost, damage or expense by the time for payment set out in the demand, which must be reasonable in the circumstances.

#### Release of Community Partner's Construction Security

40.4 Subject to the rights of the School Council and the Minister to call on the Construction Security, the School Council or the Minister must notify the financial institution which issued the security that one half of the Community Partner's Construction Security is no longer required within 14 days of the issue of the Certificate of Practical Completion under the Building Contract.

40.5 Subject to the rights of the School Council and the Minister to call on the Construction Security, the School Council or the Minister must notify the financial institution which issued the security that

the remainder of the Community Partner's Construction Security is no longer required within 14 days of the issue of the Final Certificate under the Building Contract.

**41 ADDITIONAL CONSTRUCTION COSTS**

- 41.1 If it becomes apparent that the cost of the Works exceeds the Construction Costs before the acceptance of the tender for the Works, then the parties must as soon as practicable consider the cost increase and may either:
  - (a) agree to change the Specifications in order to reduce the cost of the Works; or
  - (b) meet the additional cost of the Works as agreed between them and recorded in writing.
- 41.2 If the parties cannot reach agreement under clause 41.1 about how to share the cost of the Works before the acceptance of the tender for the Works, then the Minister may terminate this Agreement upon written notice to the other parties. The termination is effective 14 days after receipt of the letter from the Minister. The parties agree that no compensation is payable by any party to any other party in the event of such termination.
- 41.3 If, after the Works have commenced, the cost of carrying out the Works exceeds the Construction Costs for reasons other than the default of the Constructing Party, the parties agree to fund the additional construction costs as set out in **Part B5** of the Schedule, unless clause 41.4 applies.
- 41.4 If the cost of carrying out the Works under the Building Contract exceeds the Construction Costs due to a Variation requested by any of the parties, then the party requesting the Variation must pay the additional costs.
- 41.5 The Constructing Party must ensure that the Superintendent promptly notifies all parties in writing if it appears that the cost of carrying out the Works under the Building Contract will exceed the Construction Costs.

**42 TIME FOR PAYMENT OF CONSTRUCTION CONTRIBUTIONS AND ADDITIONAL COSTS**

- 42.1 If the Minister is not the Constructing Party, the Minister must make payments on account of his or her Construction Contribution (if any) and any additional costs payable pursuant to this Agreement to Constructing Party at such times as

determined by Department policy, such policy to be advised by the School Council to the Community Partner prior to payment.

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

**43 REPAYMENT OF CONSTRUCTION CONTRIBUTIONS**

- 43.1 If the Constructing Party:
  - (a) receives payment in whole or in part of the Construction Contributions made by other parties or additional costs required to be paid by other parties pursuant to clause 41; and
  - (b) for any reason is not required to pay that amount or part of that amount to any of the Contractor under the Building Contract, a consultant in connection with the works or for legal costs associated with this Agreement,

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

**44 CONSTRUCTION INSURANCE**

- 44.1 The Constructing Party must ensure that the provisions of the Building Contract require either the Contractor or the Constructing Party to obtain and maintain the following insurances:
  - (a) A public liability policy of insurance covering the Constructing Party, the Contractor and all sub-contractors engaged in relation to the Works for their respective rights and interests and covering their liabilities to third parties. The policy must also cover the liability of the Contractor and the Constructing Party to each other for loss of or damage to property (other than property required to be insured under sub-clause 44(b) below) and the death of or injury to

any person other than a liability which is required to be insured under a workers' compensation policy of insurance. The public liability policy must be for an amount of \$20 million in respect of any one occurrence.

- (b) An insurance policy in the joint names of the Constructing Party, the Contractor and all subcontractors engaged in relation to the Works covering the Works against loss or damage resulting from any cause whatsoever.
- (c) Workers' compensation insurance as required by State or Federal Law.

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

#### INS

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

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

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

#### TENDERING

46.1 This clause applies if the Community Partner is the Constructing Party.

46.2 The Community Partner must notify the School Council and the Department of the planned dates for the tender and evaluation process for the Works and they must discuss and agree on the extent of

their relative involvement in the tender and evaluation process before issuing the request for tender documents.

46.3 If tenders for the Works are to be called for by public notice, the Community Partner must provide a copy of the notice to the School Council and the Department for approval prior to it being advertised.

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

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

46.5 For the purposes of clause 46.4, if a ministerial direction conflicts with a supply policy within the meaning of the *Financial Management Act 1994* (Vic), the ministerial direction will prevail.

46.6 If the Community Partner is a local government authority, the Community Partner must ensure that the Community Partner's Construction Contribution complies with any requirements or standards contained in the *Local Government Act 1989* (Vic).

#### 47 INSPECTION OF THE WORKS

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

47.2 If the Community Partner is not the Constructing Party, the Community Partner may inspect the Works at any time prior to the Date of Practical Completion of the Works, on reasonable notice to the School Council.

#### 48 PRACTICAL COMPLETION

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

48.2 The Constructing Party must provide the other parties with a copy of the Certificate of Practical

Completion issued by the Superintendent within 7 days of receiving the certificate.

- 48.3 If the Community Partner is the Constructing Party, then, within 14 days of the Date of Practical Completion of the Works or any earlier termination of this Agreement, the Community Partner must remove all materials and equipment brought onto the Facility or the Land for the purpose of carrying out the Works and make good any damage to the Facility and the Land.
- 48.4 If the Community Partner is the Constructing Party, the Community Partner must provide a complete copy of all 'as built' plans and drawings to the Department within 14 days of the Date of Practical Completion.

**DEFAULT BY THE COMMUNITY PARTNER DURING THE CONSTRUCTION PHASE**

- 49.1 A Default Event will have occurred if the Community Partner becomes Insolvent or the Community Partner:
- (a) commits a substantial breach of this Agreement; or
  - (b) has failed to use reasonable endeavours to ensure the Works are commenced, carried out or completed within a reasonable time (where it is responsible for construction); and
- the School Council or the Minister has requested the Community Partner in writing to remedy the breach or failure with 35 days of receipt of the request, and the Community Partner fails to remedy, or commence to remedy, the breach or failure within such time.
- 49.2 If a Default Event occurs, then the Minister or the School Council may by written notice to the Community Partner:
- (a) terminate this Agreement; or
  - (b) where applicable, take over the Community Partner's construction obligations under this Agreement in order to complete the Works.
- 49.3 The termination or taking over pursuant to this clause will be effective from the date of receipt by the Community Partner of the written notice issued under clause 49.2.
- 49.4 If the Minister or the School Council elects to take over and complete the Works under clause 49.2, then the Community Partner must immediately on

written notice from the Minister or the School Council:

- (a) novate the Building Contract, and any other agreements relevant to the completion of the Works, to the Minister or the School Council, as directed in the notice; and
  - (b) provide to the Minister or the School Council any other documents necessary to complete the Works.
- 49.5 If the Minister or the School Council has exercised its right to terminate the Agreement or take over the Works under clause 49.4 and construction security has been provided by the Community Partner in accordance with clause 40 of this Agreement, then the Minister or the School (as the case may be) may access the Community Partner's Construction Security in accordance with the relevant provisions of this Agreement.

**SECTION H: LICENCES**

**LICENCE TERM AND LICENCE FEE**

**Department Licence**

- 50.1 The Minister and the School Council grant a licence to the Community Partner to use the parts of the Facility on the Department Land on the terms and conditions of this Agreement.
- 50.2 The parties acknowledge that use of the parts of the Facility on the Department Land by the Community Partner and members of the public is not exclusive and is subject to the provisions of this Agreement.

**Community Partner Licence**

- 50.3 The Community Partner grants a licence to the Minister and the School Council to use the parts of the Facility on the Community Partner Land on the terms and conditions of this Agreement.
- 50.4 The parties acknowledge that use of the parts of the Facility on the Community Partner Land is not exclusive and is subject to the provisions of this Agreement.

**Crown Licence**

- 50.5 The Community Partner grants a licence to the Minister and the School Council to use the parts of the Facility on the Crown Land on the terms and conditions of this Agreement.

50.6 The parties acknowledge that use of the parts of the Facility on the Crown Land is not exclusive and is subject to the provisions of this Agreement.

**Licence Fees**

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

50.8 If demanded, the School Council must pay the Licence Fee as set out in Part D3 of the Schedule.

**Initial Term of the Licences**

50.9 The Initial Term of the Licences is for the period set out in Part D1 of the Schedule and run from the Date of Operation.

**Further Term of the Licences**

50.10 Not Used

**51 NOT USED**  
**52 OBTAINING AND COMPLYING WITH PERMITS**

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

**53 REINSTATEMENT OBLIGATIONS AT THE END OF THE LICENCE TERM**

53.1 The Community Partner must, at the request of the School Council, at its own cost within one month of the end of the Licence Term:

- (a) remove all materials and equipment brought into the part of the Facility on the Department Land by the Community Partner or its Personnel and make good all damage to the Facility caused by such removal;
- (b) remove all signs and writing from the part of the Facility located on the Department Land, whether permanent or temporary, installed by the Community Partner and make good any damage;
- (c) ensure that the part of the Facility on the Department Land is in a condition consistent with the Community Partner having fulfilled all of its maintenance obligations and obligations with regards to

Capital Works and Capital Expenditure under this Agreement; and

- (d) do all other acts and things reasonably necessary to enable the School Council or the Minister to use the part of the Facility on the Department Land with minimum disruption or expense.

**4 SUB-LICENSING**

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

**SECTION I: USE**

**55 USE OF THE FACILITY BY THE SCHOOL COUNCIL AND COMMUNITY PARTNER**

**School Council's Use of the Facility**

- 55.1 The School Council is entitled to use the Facility during School Hours.
- 55.2 The School Council and the Community Partner must in good faith negotiate the use of the Facility by the School Council during school holiday periods.
- 55.3 The School Council may use the Facility, or a part of it, free of charge outside School Hours on up to 8 occasions each year at such times to be agreed with the Community Partner.
- 55.4 The School Council may negotiate additional use of the Facility outside School Hours (but within the Facility Operating Hours) with the Community Partner subject to such terms and conditions as agreed with the Community Partner, including fees. Such fees must be reasonable and in no case may exceed fees charged by the Community Partner to other community users of the Facility.

**Community Partner's Use of the Facility**

- 55.5 The Community Partner is entitled to use the Facility during the Community Partner's Hours.
- 55.6 The School Council and the Community Partner must in good faith negotiate the use of the Facility by the Community Partner during school holiday periods.

55.7 The School Council and the Community Partner may agree in writing to amend the Community Partner's Hours provided the Community Partner's Hours are not outside the Facility Operating Hours and provided such use is at a time when the Facility is not required for ordinary school purposes.

**56 USE OF THE FACILITY BY COMMUNITY GROUPS**

56.1 The School Council and the Community Partner will encourage use of the Facility by community groups, provided that such use is only permitted when the Facility (or relevant part thereof) is not required by the School Council for ordinary school purposes or by the Community Partner for its use. The Community Hiring Party must ensure that any use by the community is a Permitted Use.

**57 APPOINTMENT OF A MANAGER**

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

- (a) manage the use of the Facility during the Community Partner's Hours and any other times the Community Partner is entitled to use the Facility; and
- (b) manage the Community Partner's obligations in respect of the Facility (or some of the obligations), in accordance with this Agreement.

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

- (a) inform the School Council of its proposed manager and give the School Council at least 30 days to consider the proposed appointment; and
- (b) give the School Council reasonable details of the proposed arrangement, including a copy of the proposed management agreement between it and the manager which meets the requirements of clause 57.5;
- (c) give the School Council details of any management fees payable to the Manager; and
- (d) provide the School Council with any other information which the School Council may reasonably require.

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

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

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

- (a) are consistent with the Community Partner's obligations under this Agreement;
- (b) require the manager to comply with any direction from the Community Partner;
- (c) stipulate that the Management Agreement will terminate at the end of the Licence Term;
- (d) include the same obligations for employees or contractors of the manager to obtain working with children and police checks as are contained in clause 31 of this Agreement;
- (e) include a clause which provides that, if the Principal forms the reasonable opinion that a person employed or engaged by the manager for the purposes of the Facility is not a Proper Person, the Community Partner may require the manager to remove such person from the Facility and replace him or her with someone of appropriate competence and/or experience who is a Proper Person; and
- (f) stipulate that where an inconsistency exists between the Management Agreement and this Agreement, the terms of this Agreement will prevail.

57.6 The Community Partner must give the School Council a copy of the executed Management Agreement.

57.7 The appointment of a manager does not in any way derogate from or affect the obligations of the Community Partner under this Agreement.

**HIRING****Hire by the School Council during School Hours**

- 58.1 The Community Partner acknowledges that the School Council may:
- (a) hire out the Facility or part thereof during School Hours or any other times that the School Council is entitled to use the Facility or part thereof. Any fees charged by the School Council in respect of such hire belong to the School Council unless otherwise agreed between the School Council and the Community Partner; and
  - (b) permit other government or non-government schools and not for profit users to use the Facility or part thereof during School Hours or any other times that the School Council is entitled to use the Facility or part thereof.

**Community hire outside School Hours**

- 58.2 The Community Hiring Party must ensure that it:
- (a) only hires the Facility out for use by members of the public during the Community Partner's Hours or any other times the Community Partner is entitled to use the Facility;
  - (b) sets terms and conditions for the use of the Facility provided they meet the requirements of clause 58.3;
  - (c) collects fees for the hire of the Facility; and
  - (d) instructs all Hirers as to what constitutes appropriate behaviour and how to ensure security is maintained during the hire period.
- 58.3 The terms and conditions for the use of the Facility by Hirers must:
- (a) be consistent with the current guidelines of the Department, a copy of which must be provided by the School Council to the Community Partner if the Community Partner is the Community Hiring Party;
  - (b) require that all Hirers leave the Facility in a clean and tidy condition ready for use, unless the Community Hiring Party makes its own arrangements for the Facility to be cleaned following use by a Hirer or Hirers;
  - (c) where applicable, require all Hirers to ensure that all external doors and windows

at the Facility are secured and locked following their use of the Facility;

- (d) require that all Hirers enter into and maintain at all times during the use of the Facility public liability insurance and produce evidence of such insurance unless current Department policy does not require the particular user to obtain public liability insurance; and
- (e) only allow the Facility to be used during the Community Partner's Hours and any other times the Community Partner is entitled to use the Facility.

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

**SECTION J: OPERATIONAL SECTION J:  
OPERATIONAL RESPONSIBILITIES****59 MAINTENANCE**

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

**60 CAPITAL WORKS AND CAPITAL  
EXPENDITURE****Capital Works**

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

**Responsibility for Capital Expenditure**

- 60.2 The Community Partner must pay for all Capital Expenditure in relation to the Facility

**61 CAPITAL WORKS PLAN**

- 61.1 Within 3 months of the Date of Operation the Community Partner and the School Council must together prepare a 5 year rolling Capital Works plan for the Facility and update it annually.



**62 UTILITIES****Metering**

- 62.1 The parties agree that electricity supplied to the Facility must be separately metered from the other buildings or facilities located on the Land.
- 62.2 The parties agree that mains water supplied to the Facility must be separately metered from the other buildings or facilities located on the Land unless this is not feasible and this has been discussed between the parties.
- 62.3 Any changes to the metering or payment arrangements contained in this clause which occur after this Agreement is executed must be recorded in a document signed by both parties and a copy of this document must be sent to the Department.

**Water**

- 62.4 The Community Partner must pay for the cost of mains water supplied to the Facility.

**Electricity**

- 62.5 The Community Partner must pay for the cost of electricity supplied to the Facility.

**63 ADDITIONAL FINANCIAL OBLIGATIONS OF THE COMMUNITY PARTNER AND THE SCHOOL COUNCIL****Additional financial obligations of the Community Partner**

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

**Additional financial obligations of the School Council**

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

**INSU****Public liability insurance**

- 64.1 The Community Partner must enter into and maintain at all times during the Licence Term a public liability insurance policy as described in Part F1 of the Schedule.
- 64.2 Unless the Community Partner is a local government authority, the Community Partner must promptly produce this policy of insurance for inspection by the School Council within 28 days from the Date of Practical Completion of the Facility and annually thereafter.
- 64.3 If the Community Partner is not a local government authority, this insurance must be with an insurer approved by the School Council. Such approval must not be unreasonably withheld.
- 64.4 If the Community Partner does not meet any of its obligations under clauses 64.1 or 64.2 the School Council may suspend the Department Licence until such obligations have been met.

**Property damage insurance**

- 64.5 The parties have agreed to insure the Facility in respect of property damage as set out in Part F3 of the Schedule.
- 64.6 The party responsible for obtaining property damage insurance, as specified in Part F2 of the Schedule, must provide the other parties with a copy of the policy of insurance for inspection if requested to do so.
- 64.7 The parties have agreed to share the cost of such insurance as set out in Part F4 of the Schedule.

- 64.8 If the property damage insurance selected and specified in Part F3 of the Schedule does not include cover for equipment and apparatus belonging to or used by the Community Partner and the School Council which is kept in or on the Facility, then each of the School Council and the Community Partner is responsible for separately insuring the equipment and apparatus belonging to or used by it.
- 64.9 If the Community Partner is not a local government authority and is responsible for obtaining property damage insurance in respect of the Facility, the insurance must be with an insurer approved by the School Council. Such approval must not be unreasonably withheld.
- 64.10 If the Community Partner does not meet its obligations under clauses 64.6 or 64.7 (if applicable), the School Council may suspend the Department Licence until such obligations have been met.

#### **Workers' compensation insurance**

- 64.11 The Community Partner must enter into and maintain at all times during the Licence Term workers' compensation insurance or similar insurance as required by State or Federal Law, including in respect of any volunteer workers.

#### **Not to void insurance**

- 64.12 The Community Partner must not do or permit any act, matter or thing to be done which may invalidate, make void or voidable any insurance in relation to the Facility or which increases the premium of any insurance which is payable by the School Council.

### **SECTION K: CONSULTATION**

#### **65 MEETINGS OF REPRESENTATIVES OF SCHOOL COUNCIL AND COMMUNITY PARTNER**

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

## SCHEDULE

A THE SCHOOL AND THE FACILITY		
A1	The School – Clause 1	Mansfield Secondary College
A2	The Facility - Clause 1	<p>Multi-purpose playing field as shown on Plan B including:</p> <ul style="list-style-type: none"> <li>• irrigation system, AFL goal posts, soccer goals and soccer nets (Shown on Plan B at B)</li> <li>• Soccer field (Shown on Plan B at D)</li> <li>• Synthetic Cricket Pitch (Shown on Plan B at H)</li> <li>• Toilet block (Shown on Plan B at F)</li> <li>• 5 bay Shed, incorporating storage and changing facilities and water tanks (Shown on Plan B at E)</li> <li>• 2 Car-parks, access driveway and access pathways, including pedestrian solar security lighting (Shown on Plan B at A, C, G and I)</li> <li>• Surrounding Area (within the Facility boundary outlined by a red broken line and coloured light green on Plan B )</li> </ul>
A3	Works – clause 1	<p>Upgrade and develop playing field for multi-use sports, including:</p> <ul style="list-style-type: none"> <li>• the installation of an irrigation system</li> <li>• Construction of a permanent Soccer field including: ]               <ul style="list-style-type: none"> <li>○ Contour levelling;</li> <li>○ installing perimeter and radial drainage;</li> <li>○ installing an irrigation system;</li> <li>○ top dress and sod installed grass playing surface;</li> <li>○ line marking; and</li> <li>○ Installation of goals</li> </ul> </li> <li>• Refurbishment of existing toilet block and new extension to include a universal access toilet</li> <li>• Construction of a 5 bay Shed incorporating storage and changing facilities and installation of water tanks</li> <li>• Construction of a gravel car-park with access driveway via Bellview Road and construction of access paths including the installation of pedestrian solar security lighting</li> <li>• Upgrade and extension of a car-park and access driveway via View Street</li> </ul>
B CONSTRUCTION		
B1	Constructing Party - Clause 1 and 36.1	Community Partner

B2	Construction Contributions (ex GST) - Clause 1 and 39.2	Party	Contribution (\$)
		Minister	Nil
		School Council	Nil
		Community Partner	\$ 420,000
		<b>Total</b>	<b>\$ 420,000</b>
B3	Construction Costs (ex GST) - Clauses 1 and 41	\$420,000 - <i>includes consultants' fees related to construction and excludes legal costs</i>	
B4	Legal Costs (ex GST) [if legal costs are not included in the Construction Contributions and Construction Costs] Clause 11	Party	Percentage (%)
		School Council	Nil
		Community Partner	100% <i>[estimated at \$ 7,000]</i>
B5	Responsibility for additional Construction Costs - Clause 41.3	Party	Percentage (%)
		Minister	Nil
		School Council	Nil
		Community Partner	100%
		<b>Total</b>	<b>100%</b>
<b>C DATE OF OPERATION</b>			
C1	Date of Operation - Clauses 1 and 50.9	The Date of Practical Completion of the Works	
<b>D LICENCES</b>			
D1	Licence Term - Clauses 1 and 50.9	10 years	
D2	Not Used	Not Used	
D3	Licence Fee - Clauses 1 and 50.7	\$1.00 per annum if demanded	

<b>E USE OF THE FACILITY</b>			
<b>E1</b>	<b>School Hours - Clauses 1 and 55</b>	8:00 am to 4:00 pm on School Days	
<b>E2</b>	<b>Community Partner's Hours - Clauses 1 and 55</b>	4:00 pm to 8:00 pm or daylight hours from 4:00pm Monday to Friday 9:00 am to 5:00 pm, Saturday, Sundays & Public Holidays	
<b>E3</b>	<b>Facility Operating Hours - Clauses 1 and 55</b>	8:00 am to 8:00 pm or daylight hours, Monday to Friday 9:00 am to 5:00 pm, Saturday, Sundays & Public Holidays	
<b>E4</b>	<b>Community Hiring Party - Clauses 1 and 58</b>	Community Partner	
<b>E5</b>	<b>Permitted Use - Clauses 1 and 22.2</b>	The playing, performing or conducting of educational, recreational and sporting activities relating to soccer, football, hockey, baseball, softball, croquet, cricket and any other use as approved by the School Council and as permitted by the Act.	
<b>F PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE</b>			
<b>F1</b>	<b>Public liability insurance - Clause 64.1</b>	<b>Scope of policy</b>	Insurance which provides the Community Partner, including its employees while acting in the course of their employment, with at least \$20 million cover per event against any liability resulting from death or personal injury or the destruction of or damage to property occurring in or on the Facility or arising out of or in relation to the use of the Facility.
<b>F2</b>	<b>Property Damage Insurance for the Facility – Clause 64.5</b>	<b>Party responsible for obtaining</b>	Community Partner

F3		Scope of policy	<p>Insurance which provides cover for the reinstatement or replacement value of the Facility and against the destruction of or damage to the Facility. If the policy is obtained by the Community Partner then the School Council and the State of Victoria must also be named as insureds in the policy</p> <p><i>Policy only covers damage to the Facility. Each of the School Council and the Community Partner is responsible for equipment and apparatus belonging to it, pursuant to clause 64.8</i></p>
F4		Reimbursement arrangements	<p>Not Applicable</p> <p>Community Partner responsible for 100% for Property Damage Insurance</p>

**G ADDRESSES FOR NOTICES – Clause 12.1**

Minister	Addressee	<p>Executive Director          Infrastructure &amp; Sustainability Division          Department of Education and Early Childhood Development</p>
	Street Address	<p>2 Treasury Place          East Melbourne          Victoria, 3002</p>
	Postal Address	<p>GPO Box 4367          Melbourne          Victoria 3001</p>
	Fax	<p>9637 3060</p>

<b>School Council</b>	<b>Addressee</b>	The Executive Officer Mansfield Secondary College Council
	<b>Street Address</b>	15 View Street Mansfield Victoria, 3722
	<b>Postal Address</b>	PO Box 203 Mansfield Victoria 3722
	<b>Fax</b>	5775 1484
<b>Community Partner</b>	<b>Addressee</b>	Chief Executive Officer Mansfield Shire Council
	<b>Street Address</b>	33 Highett Street Mansfield Victoria 3722
	<b>Postal Address</b>	PB 1000 Mansfield Victoria 3722
	<b>Fax</b>	5775 2677

# EXECUTION

EXECUTED AS AN AGREEMENT.

Signed by Anna Giannacos A/Manager,  
Property Management Unit

.....this 10<sup>th</sup> day of

January 2014 for and on behalf of  
**Martin Dixon** in his capacity as Minister for  
Education, in the presence of:

P. Grani  
Signature of witness

PAULNA GRANI  
Name of witness in full

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

[Signature]  
Signature of President of School Council

SANDRA ANNE O'BRIEN  
Name of President of School Council in full

[Signature]  
Signature



[Signature]  
Signature of authorised appointee

TIMOTHY WAYNE HALL  
Name of authorised appointee in full

The common seal of **Mansfield Shire Council** was  
affixed in the presence of:

[Signature]  
Signature of Councillor

RAYMOND WILLIAM ROBINSON  
Name of Councillor in full

[Signature]  
Signature of Chief Executive Officer

DAVID WINTON ROFF  
Name of Chief Executive Officer in full





# ANNEXURE A – PLAN A

PLAN OF THE LAND

# Map 1: Land Ownership



**Malcolm St & High School land  
approximately to scale**



**MANSFIELD SHIRE**

## **ANNEXURE B – PLAN B**

PLAN OF THE FACILITY

# MANSFIELD SECONDARY COLLEGE PROPOSED ADDITIONAL PLAYING FIELD AND FACILITIES - CONCEPT PLAN



- (A) PROPOSED GRAVEL PARKING LOT WITH ACCESS VIA BELLVIEW RD
  - (B) PROPOSED FLEXIBLE SPORTS FIELD SPACE TO ACCOMMODATE FORMAL AND INFORMAL GAMES OF SOCCER, FOOTBALL, HOCKEY ECT.
  - (C) PROPOSED 2.4M WIDE GRAVEL COMMUNITY PATHWAY
  - (D) PROPOSED PERMANENT SOCCER FIELD
  - (E) PROPOSED 5 BAY SHED TO ACCOMMODATE STORAGE ROOM AND BASIC CHANGING FACILITIES
  - (F) EXISTING TOILET BLOCK WITH RENOVATIONS FOR UNIVERSAL ACCESS AND IMPROVED AESTHETICS
  - (G) PROPOSED EXTENSION OF VIEW ST CARPARK WITH GRAVEL SURFACING, SOFT LANDSCAPING AND VEHICLE BARRIER
  - (H) PROPOSED CRICKET PITCH
  - (I) PROPOSED 1.5M ACCESS PATH
  - (J) EXISTING SECONDARY COLLEGE BUILDING AND GROUNDS
- EXTENT OF MANSFIELD SHIRE RESPONSIBILITY



Section A-A  
1:200



Section B-B  
1:500



Section C-C  
1:200



MANSFIELD SECONDARY COLLEGE  
PROPOSED ADDITIONAL PLAYING FIELDS AND FACILITIES  
CONCEPT PLAN



SCALE  
1:750 @ A1  
1:1500 @ A3



DRAWN BY: A.D  
DATE: 15/07/2013