
School Council Agreement for the Provision of Services

Between

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

and

The Service Provider listed in Item 1(b) of Schedule 1 (**Service Provider**)

Background

- A. The School Council wishes to engage the Service Provider to provide the Services on and subject to the terms of this Agreement.
- B. The School Council hereby engages the Service Provider and the parties mutually acknowledge that it is their common intention to work together throughout the Term to continuously seek improvements in value, efficiency and productivity in connection with the supply of Services under this Agreement to the mutual benefit of both parties.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions

In this agreement, unless the context otherwise requires:

Agreed Terms means clauses 1 to 27 of this Agreement.

Agreement means this School Council Agreement for the Provision of Services comprising the documents specified in clause 1.5.

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

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 section 4 of the Ministerial Order.

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

Code of Conduct means the Code of Conduct for Victorian Public Sector Employees 2015 (as amended from time to time) issued by the Public Sector Standards Commissioner pursuant to section 61 of the *Public Administration Act 2004* (Vic).

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

Commencement Date means the date set out in Item 2 of Schedule 1.

Completion Date means the date set out in Item 2 of Schedule 1 or any revised date notified by the School Council pursuant to clause 3.3(c), or if no date is inserted, the date when the provision of the Services have been completed and all payments required to be made under this Agreement have been made.

Commissioner means the Commissioner for Privacy and Data Protection appointed under section 96 of the PDP Act.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, the School Council, the State or their Ministers, 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 Service Provider in connection with this Agreement, but excludes information which is in or which subsequently enters the public domain other than as a result of a breach of an obligation of confidentiality. Confidential Information includes any information (regardless of its form) that is:

- (a) Personal Information relating to students of the School;
- (b) Personal Information and business information relating to the School and/or School Council and either of their Personnel; and

- (c) all copies of the information, notes or other records referred to in paragraphs (a) and (b) above.

Contract Materials means any materials (including any part of a Deliverable) which the Service Provider creates (whether alone or jointly with any other person) in performing the Services, except Intellectual Property Rights in Data or materials created solely for the Service Provider's internal operational purposes.

Contract Publishing System means the system of the Victorian Government for publication of details of contracts entered into by Victorian Government departments or agencies (or any successor to that system).

Data means all data, information, text, drawings, statistics, analysis and other materials embodied in any form which is:

- (a) supplied by or on behalf of the School Council in connection with this Agreement (Input Data); or
- (b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data, the Services or the Deliverables,

unless created for the Service Provider's internal operational purposes

Deliverable means any item or material (including reports and other documentation) produced or delivered by the Service Provider as outputs of the Services.

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

Dispute means a dispute arising under or in connection with this Agreement.

Dispute Notice means a notice setting out details about a Dispute that is given under clause 19.1.

Fees means the fees payable to the Service Provider for the provision of Services, as set out in or calculated in accordance with Schedule 2.

Health Privacy Principles means the health privacy principles set out in the HR Act.

HR Act means the *Health Records Act 2001* (Vic).

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.

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.

Laws means:

- (a) the law in force in the State and the Commonwealth of Australia, including common law, legislation and subordinate legislation; and
- (b) ordinances, regulations, orders and by-laws of relevant government, semi-government or local authorities.

Losses has the meaning given to that term in clause 13(a).

Ministerial Order means Ministerial Order 870 entitled "Child Safe Standards – Managing the risk of child abuse in schools" (as amended from time to time).

Moral Rights has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute, and that exists or comes into existence anywhere in the world.

Notice of Delay has the meaning given to that term in clause 3.3(a)(i).

Panel means a panel of approved service providers established by the Department.

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

Personal Information has the meaning given to that term in the PDP Act and includes, for the purposes of this Agreement, health information, as that term is defined in the *Health Records Act 2001* (Vic).

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of that party, who are involved in providing, or supporting the provision of, the Services.

Pre-Existing IP means all materials owned by or licensed to a party which are made available, provided, or used by a party under this Agreement, excluding Contract Materials or Data.

Privacy Obligations has the meaning given to that term in clause 18.3(a).

Protective Data Security Standard means any standard issued under Part 4 of the PDP Act.

Public Sector Employee has the same meaning as in the *Public Administration Act 2004* (Vic).

Records means written records held, produced or created by the Service Provider (or its Personnel) under or in the course of performing the Service Provider's obligations under this Agreement.

Records Act means the *Public Records Act 1973* (Vic).

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 section 5 of the Ministerial Order.

School Council Representative means the person nominated by the School Council pursuant to clause 8.1(a)(i) for the time being.

School Staff has the meaning given to it in section 4 of the Ministerial Order.

Service Provider Representative means the person nominated by the Service Provider pursuant to clause 8.1(a)(ii) for the time being.

Services means the services to be provided by the Service Provider under this Agreement, as specified in Schedule 2.

Special Conditions means the special conditions (if any) contained in Schedule 3.

Specified Personnel means the Personnel designated in Item 5 of Schedule 1 (or any replacement Personnel under clause 4.4).

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

State means the Crown in right of the State of Victoria.

Tax Invoice has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Tender Documentation (where applicable) means the documentation submitted by the Service Provider in response to a request for tender or request for proposal, in the form finally accepted by the School Council and more particularly described in Item 6 of Schedule 1.

Term means a term of this Agreement determined in accordance with clause 2.

Victorian School Term means a Victorian school term as published on the Department's website from time to time.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (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) 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;

- (f) the obligations of the Service Provider, if more than one person, under this Agreement are joint and several and each person constituting the Service Provider acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Agreement, of the other as if those acts or omissions were its own;
- (g) the rights of the Service Provider, if more than one person, under this Agreement, including the right to payment, jointly benefit each person constituting the Service Provider (and not severally or jointly and severally);
- (h) 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 Service Provider (as the case requires); and
- (i) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

1.4 Consents or approvals

The School Council may give or withhold any consent or approval, or exercise any discretion, under this Agreement in its absolute discretion unless express provision to the contrary is made.

1.5 Priority of documents

If there is any inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in accordance with the following order of priority:

- (a) the Special Conditions (if any);
- (b) the Agreed Terms;
- (c) the Schedules in numerical order; and

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- (d) any other documents created under this Agreement or incorporated into it by reference (including the documents specified in Item 10 of Schedule 1).

2. Term

2.1 Term

- (a) This Agreement commences on the Commencement Date and ends on the Completion Date, unless terminated earlier or extended in accordance with clause 2.2 of this Agreement.
- (b) If the Service Provider fails to deliver to the satisfaction of the School Council by the Completion Date any Services or Deliverables that it is required to deliver under this Agreement then this Agreement will continue, without the Service Provider being entitled to any additional payment, until:
 - (i) the Service or Deliverable is delivered to the satisfaction of the School Council;
 - (ii) the School Council waives the right to insist on delivery of the Service or Deliverable; or
 - (iii) the School Council elects to end this Agreement by notice to the Service Provider.

2.2 Extension of Term

- (a) The School Council may elect, by notice in writing to the Service Provider not later than two months prior to the expiry of the then current Term, to extend the Term of this Agreement for one or more further periods, as set out in Item 2 of Schedule 1.
- (b) Any such further term or terms will be on the same terms and conditions as this Agreement (other than any changes to the Fees agreed by the parties for the further term and excluding, in respect of the final further period, this clause 2.2).

3. Performance of Services

3.1 Provision of Services

The Service Provider must provide the Services to the School Council during the Term, on and subject to the terms of this Agreement.

3.2 Service Obligations

The Service Provider must:

- (a) provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
- (b) perform the Services in a manner that complies with all Laws applicable to the Service Provider in respect of the provision of the Services;
- (c) without limiting clause 3.2(b), if, in the course of providing the Services, the Service Provider or its Personnel:

- (i) supervises Public Sector Employees;
- (ii) undertakes work that is of a similar nature to the work undertaken by Public Sector Employees at premises or a location general regarded as a public sector workplace; or
- (iii) uses or has access to public sector resources or information that are not normally accessible or available to the public,

the Service Provider must comply, or ensure that its Personnel comply (as applicable), with the Code of Conduct as if the Service Provider or its Personnel were a Public Sector Employee;

- (d) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (e) act in good faith and in the best interests of the School Council;
- (f) keep the School Council informed of all matters of which it ought reasonably be made aware, and provide such information in relation to the provision of the Services as may reasonably be required by the School Council; and
- (g) carry out its obligations and duties and complete the provision of the Services to the reasonable satisfaction of, and in accordance with the requirements of, the School Council.

3.3 Delay

- (a) If the Service Provider is aware of any delay or possible delay in the supply of the Services in accordance with this Agreement, including any failure to provide the Services by the Completion Date, the Service Provider:
 - (i) must advise the School Council immediately upon becoming aware of such delay or possible delay (**Notice of Delay**); and
 - (ii) may make an application in writing to the School Council Representative requesting an extension of time.
- (b) The Notice of Delay must set out, in reasonable detail:
 - (i) the circumstances giving rise to such (possible) delay, including the cause of the (possible) delay;
 - (ii) the likely length of such (possible) delay;
 - (iii) the steps the Service Provider intends to take to overcome or minimise the (possible) delay; and
 - (iv) such other information as the School Council Representative may reasonably request.
- (c) The School Council Representative may agree to extend the date for performance of the Service Provider's obligations (including the Completion Date) if, in the reasonable opinion of the School Council Representative, the circumstances giving

rise to the delay are legitimate and may warrant an extension of time.

- (d) The School Council Representative will promptly notify the Service Provider in writing of any revised date for performance agreed by the School Council under clause 3.3(c).
- (e) In the absence of agreement by the School Council under clause 3.3(c), the Services must be performed in accordance with this Agreement without such variation.
- (f) If the Service Provider fails to supply the Services by any date for performance specified in this Agreement, including the Completion Date, such failure will constitute a breach by the Service Provider and the School Council may terminate this Agreement by notice in writing to the Service Provider.

3.4 Acceptance

- (a) After delivery of a Deliverable or performance of a Service, the School Council will undertake such reviews as it considers necessary to determine whether the Deliverable or Service, as the case may be, is fit for purpose and has been performed or delivered in accordance with this Agreement. Within a reasonable time following its review of a Deliverable or Service, the School Council may notify the Service Provider in writing:
 - (i) of its acceptance of that Deliverable or Service if it is satisfied that the Deliverable or Service is fit for purpose and complies with this Agreement; or
 - (ii) if the Deliverable or Service is not fit for purpose or does not comply with this Agreement, in which case clause 3.4(b) will apply.
- (b) Following a receipt of a notice from the School Council under clause 3.4(a)(ii), the Service Provider must promptly rectify the non-compliance in the Deliverable or Service, as the case may be, at no additional cost to the School Council, and resubmit the Deliverable or Service to the School Council for review in accordance with clause 3.4(a). This process will continue until, at the School Council's discretion, the School Council:
 - (i) waives, in writing, the requirement for the Deliverable or Service to comply with this Agreement;
 - (ii) is satisfied that the Deliverable or Service complies with this Agreement and accepts the Deliverable or Service, as the case may be, in accordance with clause 3.4(a)(i);
 - (iii) conditionally accepts the Deliverable or Service, subject to the Service Provider agreeing to rectify the non-compliance in the Deliverable or Service, as the case may be,

within a fixed timeframe on such terms as the School Council requires; or

- (iv) subject to the School Council having provided the Service Provider with at least one opportunity to rectify the non-compliance pursuant to clause 3.4(a)(ii), immediately terminate this Agreement by written notice to the Service Provider. If the School Council terminates this Agreement under this clause 3.4(b)(iv), the School Council will be entitled to a full refund of all moneys paid to the Service Provider in respect of the relevant Deliverable or Service, as the case may be, and any other Deliverables which the School Council is unable to use following termination.
- (c) No act or omission on the part of the School Council in connection with this clause 3.4 constitutes deemed acceptance of a Service or Deliverable.

3.5 Service Provider to provide equipment

The Service Provider must, at its own cost, provide any and all plant, equipment, tools (including computer hardware or software and any ancillary support) or other equipment necessary for its performance of the Services. All such equipment must be properly maintained and be appropriate for the purpose for which it is used or intended to be used.

3.6 Inability to provide Services

Without limiting clause 3.3, if, at any time during the Term, the Service Provider is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, the Service Provider must immediately notify the School Council Representative of that fact.

3.7 Variations

- (a) The School Council may at any time give written notice to the Service Provider proposing a variation to the scope of the Services.
- (b) The Service Provider must, within five Business Days of such notice, provide a written proposal as to the varied Fees that would apply with respect to the provision of the varied Services.
- (c) The School Council may accept such proposal in writing within 5 Business Days of its receipt from the Service Provider. In the absence of such acceptance, the Services must be performed in accordance with this Agreement without such variation.

3.8 Time of the essence

Time will be of the essence in the performance of the Services.

4. Service Provider's Personnel

4.1 Responsibility for Personnel

- (a) The Service Provider must ensure that its Personnel are suitably qualified to undertake their work and

comply with all the Service Provider's obligations under this Agreement.

- (b) Without limiting clause 4.1(a), the Service Provider must ensure that all of its Personnel involved in providing, or supporting the provision of, Services:
 - (i) act with proper diligence and in good faith, and in a manner which is consistent with the Service Provider's obligations under this Agreement; and
 - (ii) comply with all directions and instructions of the School Council while on School Council premises.
- (c) The Service Provider warrants to the School Council that, to the best of its knowledge after making reasonable enquiries, none of the Service Provider's Personnel have engaged in, or are reasonably believed to have engaged in, fraud, collusion or improper, dishonest or corrupt conduct in connection with this Agreement or in any other dealings with the School Council.
- (d) The School Council may require the Service Provider to:
 - (i) remove any of its Personnel from the provision of the Services at any time; and
 - (ii) replace the relevant Personnel at no additional cost with another person who has the appropriate skills, qualifications and experience.

4.2 Service Provider to notify School Council

The Service Provider must immediately notify the School Council if any of the Service Provider's Personnel engages in, or is reasonably believed to have engaged in, fraud, collusion or improper, dishonest or corrupt conduct in connection with this Agreement or in any other dealings with the School Council.

4.3 Specified Personnel

The Service Provider must ensure that the Specified Personnel:

- (a) are involved in, or perform the Services as described in Item 5 of Schedule 1 and are absent only for normal periods of leave;
- (b) do not engage in any other activity in the course of their employment with or engagement by the Service Provider which may, or may be likely to, hinder the performance of the Services; and
- (c) are available to meet with the School Council as reasonably required by the School Council from time to time.

4.4 Replacement of Specified Personnel

- (a) If any of the Service Provider's Specified Personnel are unavailable or otherwise unable to provide the Services, the Service Provider must promptly notify the School Council of that fact and provide details of alternate, suitably qualified and experienced

Personnel to replace the Service Provider's Specified Personnel (**Replacement Staff**).

- (b) The School Council must notify the Service Provider in writing within five Business Days as to whether or not it accepts the Replacement Staff proposed by the Service Provider pursuant to clause 4.4(a). The Service Provider acknowledges and agrees that the School Council will be under no obligation to accept any person proposed by the Service Provider if the School Council is not satisfied as to the qualifications and experience of such person.
- (c) The Service Provider must ensure that its Personnel observe and comply with this Agreement.
- (d) Without limiting any other clause in this Agreement, the Service Provider must ensure that all Personnel engaged by it to provide the Services comply with the *Working with Children Act 2005* (Vic).

5. Non-exclusivity

This Agreement is entered into on a non-exclusive basis.

6. Price for the Services

- (a) Subject to this Agreement, the Fees are fixed for the Term and inclusive of:
 - (i) all costs incurred by the Service Provider in the provision of the Services; and
 - (ii) all other taxes payable in connection with the Services (excluding GST).
- (b) Expenses or other disbursements may only be charged by the Service Provider in accordance with Schedule 2

7. Invoicing and payment

7.1 Invoicing

- (a) The Service Provider must submit to the School Council a Tax Invoice in respect of the Services as soon as practicable after acceptance of a Service or Deliverable by the School Council, or as otherwise specified in Schedule 2.
- (b) A Tax Invoice submitted for payment pursuant to clause 7.1(a) must be sent to the School Council Representative at the address specified in Item 3 of Schedule 1.

7.2 Payment of invoice

- (a) Subject to the remainder of this clause 7.2, the School Council will pay the invoiced amount to the Service Provider within 30 days of receipt of the invoice.
- (b) If the School Council receives an invoice from the Service Provider outside a Victorian School Term, the School Council will pay the invoiced amount to the Service Provider within 30 days of the commencement of the next Victorian School Term.
- (c) An invoice will not be paid until such time as the invoice is certified for payment by the School

Council Representative. An invoice will not be certified for payment unless the School Council Representative is satisfied that it is correctly calculated with respect to the Services and that Services have been provided as required under this Agreement.

- (d) If the School Council Representative disputes the invoiced amount (whether in whole or in part) for any reason, the School Council must pay the undisputed amount of such invoice (if any), and notify the Service Provider of the amount the School Council believes is due for payment. If the School Council and the Service Provider are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 19. If requested, the Service Provider will withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.
- (e) Payment of an invoice is not to be taken as:
 - (i) evidence or an admission that the Services have been provided in accordance with this Agreement;
 - (ii) evidence of the value of the Services supplied; or
 - (iii) an admission of liability,but must be taken only as payment on account.

7.3 Rates

- (a) If authorised under Schedule 2, the Service Provider may provide the Services on a Time and Materials Basis.
- (b) If a Time and Materials Basis applies, the Service Provider's right to claim payment is subject to strict compliance with the following conditions:
 - (i) the Service Provider must provide progressive work in progress reports to the School Council from time to time as requested by the School Council;
 - (ii) The Service Provider must not charge the School Council any amount in excess of the estimate or amount specified in Schedule 2 or otherwise approved by the School Council in writing;
 - (iii) the Service Provider may only charge the School Council for the time reasonably spent by its Personnel in providing the Services, calculated at the Rates and not including travel time, holidays or other leave entitlements; and
 - (iv) the Service Provider must ensure that its Personnel record daily timesheets recording all Services provided (in a form approved by the School Council from time to time) and provide copies of those timesheets to the School Council on request.

7.4 Fair Payment

- (a) The School Council will, on demand by the Service Provider, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (b) For the purposes of clause 7.4(a), **overdue amount** means an amount (or part thereof) that:
 - (i) is not, or is no longer, disputed in accordance with this Agreement;
 - (ii) is due and owing under a Tax Invoice (properly rendered by the Service Provider in accordance with this Agreement); and
 - (iii) has been outstanding for more than 30 days from the date of receipt of the invoice (or, in accordance with clause 7.2(b), from the commencement of the next Victorian School Term) or the date that the amount ceased to be disputed, as the case may be.

8. Contract management

8.1 Parties' representatives

- (a) For the purposes of ensuring a productive and efficient relationship between the School Council and the Service Provider under this Agreement:
 - (i) the School Council nominates the person or persons specified as such in Item 3 of Schedule 1 as its School Council Representative; and
 - (ii) the Service Provider nominates the person or persons specified as such in Item 3 of Schedule 1 as its Service Provider Representative.
- (b) The School Council Representative and the Service Provider Representative have authority to:
 - (i) exercise all of the powers and functions of his or her party under this Agreement other than the power to amend this Agreement; and
 - (ii) bind his or her party in relation to any matter arising out of or in connection with this Agreement.
- (c) The Service Provider must comply with all reasonable instructions given by the School Council Representative.
- (d) Either party may change its then current representative by giving written notice to the other.

8.2 Reports

The Service Provider must provide the School Council Representative with all reports, data or other information that the School Council Representative may request to enable it to adequately assess the performance of the Service Provider.

9. Competitive pricing

The Service Provider must ensure the Fees are (and will remain, for the Term) commercially competitive in terms of:

- (a) the prices offered by the Service Provider to other customers whose orders for services are comparable to the order for Services placed by the School Council under this Agreement; and
- (b) prices, and terms and conditions, offered by other service providers in the market for services which are the same as or equivalent to the Services.

10. Intellectual Property

10.1 Ownership of Pre-Existing IP and Contract Materials

The School Council's and the Service Provider's Pre-Existing IP will remain vested in each of them (or the third party who owns it). Contract Materials will remain vested in the Service Provider.

10.2 Licence of Pre-Existing IP and Contract Materials

- (a) The Service Provider hereby irrevocably and unconditionally grants to the School Council, a perpetual, non-exclusive, royalty-free, worldwide, irrevocable licence (including the right to sub-licence) to exercise all Intellectual Property Rights in:
 - (i) the Contract Materials; and
 - (ii) any of the Service Provider's Pre-Existing IP incorporated in or otherwise required to use the Contract Materials or any Deliverables.
- (b) The School Council grants the Service Provider a non-exclusive, non-transferable, royalty-free licence to use the School Council's Pre-Existing IP for the sole purpose of performing, and only the extent required to perform, the Services and complying with its obligations under this Agreement for the Term.

10.3 Moral rights

The Service Provider warrants that any Service or Deliverable may be used in any way by the School Council, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.

10.4 Data

- (a) Data will remain (and, if necessary, will become) the property of the School Council. The Service Provider irrevocably and unconditionally assigns to the School Council, including by way of an assignment of future Intellectual Property Rights, all of its Intellectual Property Rights in any Data created by or on behalf of the Service Provider on creation. For the avoidance of doubt, Data includes data that does not form part of the Deliverables.
- (b) If the Service Provider or a sub-contractor is deemed to be the first owner of any database right

or other Intellectual Property Rights in the Data, it must assign those Intellectual Property Rights to the School Council.

- (c) The Service Provider must only use the Data to the extent necessary to perform its obligations under this Agreement.
- (d) The Service Provider must:
 - (i) subject to any more stringent requirements imposed pursuant to this Agreement, prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to the Data; and
 - (ii) comply with any policies of the School Council in effect from time to time in respect of the secure disposal of equipment and destruction of records and the Data.
- (e) If the Service Provider suspects that any Data has (or may) become lost or corrupted or there is unauthorised access to that Data, it will immediately notify the School Council and propose remedial action, including action to ensure that this does not recur.
- (f) The Service Provider must not, and must ensure that its Personnel and sub-contractors do not, without the School Council's prior written consent:
 - (i) remove Data or allow the Data to be removed from the School Council's premises or equipment; or
 - (ii) take, disclose or make available the Data or allow the Data to be taken, disclosed or made available outside of Victoria.

11. Access to Records

11.1 Service Provider to retain records

The Service Provider must implement and administer a recordkeeping system that maintains complete and accurate Records for all Services supplied under this Agreement. The recordkeeping system must comply with all applicable standards issued under the Records Act.

11.2 Storage

The Service Provider must securely store and ensure the integrity of all Records in accordance with all applicable standards issued under the Records Act.

11.3 Right to access and audit

- (a) The School Council or its duly authorised representatives may, after giving reasonable notice at any time during business hours, inspect and/or audit the Records of the Service Provider and of all other documents or information relevant to the performance of this Agreement. Such representatives will be entitled (at the expense of the School Council) to take copies of or extracts from any such Records, documents or information.
- (b) The right of access and audit granted under clause 11.3(a) may be exercised by the School Council at

any time during the Term or in the seven year period following the expiry of the Term.

- (c) The Service Provider must provide the School Council with all assistance needed to allow the School Council to perform the audit, including providing access to office space, computers, telephone and photocopy facilities at the premises.
- (d) The School Council must provide the Service Provider with reasonable notice of an audit, unless the School Council determines that notice is not practicable or appropriate in the circumstances, and where reasonably practicable, provide an indication of the documents or class of documents the auditor may require access to.
- (e) The Service Provider must immediately take such corrective action required by the School Council to remedy any error, non-compliance or inaccuracy identified in any audit in relation to the manner in which the Service Provider has:
 - (i) provided the Services; or
 - (ii) calculated any Rates and/or Fees or any other amounts or fees billed to the School Council.
- (f) Each party will bear its own costs with respect to any audit under clause 11.3.

11.4 Transfer of certain Records to the School Council

[Option: This clause is appropriate where the Service Provider is being engaged to perform a function on behalf of the School Council and where the School Council will require the Records to continue the performance of that function after the Agreement end. Where the Service Provider is providing basic services to the School Council (e.g., maintenance services, professional advice) this clause may not be appropriate and can be deleted.]

If requested by the School Council during the Term or within one month of expiry or termination of this Agreement, the Service Provider must transfer all Records (excluding Records created solely for the Service Provider's internal operational purposes) to the School Council in a format and manner which allow the transferred Records to be quickly and easily retrieved, reviewed and utilised by the School Council.

11.5 School Council Records

Where the Service Provider has custody of any records or information of the School Council (**School Council Records**) in the course of performing its obligations under this Agreement, the Service Provider must retain, store and otherwise handle those School Council Records as though the School Council Records were the Records for the purposes of this Agreement.

11.6 After termination or expiry

The Service Provider must only dispose of Records in accordance with the standards issued under the Records

Act and must not dispose of any Records for at least seven years after termination or expiry of this Agreement.

12. Failure to perform

- (a) Without limiting any other remedy the School Council may have, if the Service Provider fails to provide or perform any of the Services in accordance with the requirements of this Agreement, the School Council will not be required to pay for those Services and may, by notice in writing to the Service Provider, require the Service Provider to:
 - (i) remedy any default (if the default is capable of being remedied) at the Service Provider's own expense; or
 - (ii) re-perform the Services (if the Services are capable of being re-performed by the Service Provider),within the time specified in the notice (which must be reasonable having regard to the nature of the Services).
- (b) If the default referred to in clause 12(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Service Provider fails within the time specified to remedy the default or re-perform the Services, the School Council may either:
 - (i) remedy that default or re-perform the Services itself; or
 - (ii) have the Services remedied or re-performed by a third party,and in either case, the Service Provider must pay the reasonable costs incurred by the School Council in doing so.

13. Indemnity

- (a) The Service Provider at all times indemnifies and will continue to indemnify, hold harmless and defend the Department, the School Council and its Personnel (in this clause, each an **Indemnified Party**) against any liability, loss, damage, claim, action or expense (including all legal costs determined on a full indemnity basis) (**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) any loss or damage to property;
 - (iii) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (iv) any loss or corruption of data;

- (v) any claim by any person for loss or damage in respect of a breach of the recordkeeping requirements specified in clause 11;
- (vi) any wrongful, fraudulent, unlawful or negligent acts or omissions of the Service Provider or its Personnel;
- (vii) any wilful misconduct or unlawful act or omission by the Service Provider or its Personnel;
- (viii) any third party claim arising out of a breach of this Agreement by the Service Provider or its Personnel (including breach of warranty) or any negligent act or omission of the Service Provider or its Personnel; or
- (ix) any infringement or alleged infringement of the Intellectual Property Rights, Moral Rights or any other rights of any person, including any third party,

except to the extent that any such Loss is caused by the negligence or other wrongful act or omission of the Indemnified Party.

- (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) It is not necessary for the School Council to incur expense or make a payment before enforcing a right of indemnity conferred by this Agreement.
- (d) If any indemnity payment is made by the Service Provider under this clause 13, the Service Provider must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.

14. Warranties

- (a) The Service Provider warrants to the School Council that:
 - (i) it will comply with all Laws and applicable State government policies which are referred to in this Agreement or made known by the School Council to the Service Provider;
 - (ii) the provision of the Services will be carried out with all due care and skill and in accordance with all applicable Laws, standards, principles and practices;
 - (iii) it and its Personnel are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with this Agreement;
 - (iv) whilst on premises owned or controlled by the School Council, the Service Provider and its Personnel will at all times comply with the School Council's lawful directions and policies of which the Service Provider is notified or is otherwise aware, including any applicable

occupational health and safety and security policies;

- (v) where the School Council has, either expressly or by implication, made known to the Service Provider any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
 - (vi) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services and Deliverables and to grant to the School Council the licences contemplated by this Agreement;
 - (vii) the provision of the Services and the possession or use of any Deliverable will not infringe any right of any third party (including any Intellectual Property Right) or any Laws;
 - (viii) to its knowledge, there are no claims or investigations pending or threatened by or against it which may have a material effect on its ability to perform its obligations under this Agreement; and
 - (ix) all representations made by the Service Provider in or in connection with the Tender Documentation (if applicable) were and remain accurate.
- (b) The Service Provider must notify the School Council in writing if anything happens or may happen that may:
- (i) make the Service Provider no longer comply with any of the warranties given by the Service Provider under this Agreement; or
 - (ii) affect the Service Provider's ability to perform or satisfy any of its obligations under this Agreement.

15. Termination

15.1 Grounds for termination by the School Council

The School Council may immediately terminate this Agreement by notice in writing to the Service Provider if:

- (a) the Service Provider fails to remedy, to the satisfaction of the School Council, any breach of this Agreement (which in the reasonable opinion of the School Council is able to be remedied) within 14 days after the date on which the School Council issues the Service Provider a written notice requiring the Service Provider to remedy the breach;
- (b) the Service Provider breaches any material provision of this Agreement and in the reasonable opinion of the School Council such breach cannot be remedied;
- (c) the Service Provider or any of its Personnel or sub-contractors have engaged in, or are reasonably believed by the School Council to have engaged in, fraud, collusion, improper, dishonest or criminal

conduct or any other serious misconduct in connection with this Agreement or in any other dealings with the School Council;

- (d) the Service Provider commits any act or does any thing that is, in the opinion of the School Council, contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Service Provider into disrepute and as a consequence the School Council believes that its continued association with the Service Provider will be prejudicial or otherwise detrimental to the reputation of the School Council or the State;
- (e) the Service Provider goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors;
- (f) if the Service Provider has been engaged under a Panel, the Department suspends or revokes the Service Provider's membership of the Panel; or
- (g) the parties have entered into a licence by which the School Council licences an area of land to the Service Provider from which the Service Provider provides the Services, the licence ends for any reason (whether by agreement, breach, expiry or otherwise), provided that, in respect of expiry of such licence, the School Council may not terminate this Agreement for a period of 3 months from the date of expiry of the licence referred to if negotiations are then underway for the renewal of the licence.

15.2 Termination without cause

- (a) The School Council may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Service Provider a minimum of 5 Business Days notice in writing.
- (b) Where this Agreement is terminated by the School Council pursuant to clause 15.2(a), the School Council will pay the Service Provider:
 - (i) for the Services performed in accordance with this Agreement up to the date of the termination; and
 - (ii) the unavoidable and substantiated costs incurred by the Service Provider as a direct result of the termination, excluding any loss of profit,

and the School Council has no other liability to the Service Provider in relation to that termination.

- (c) When the School Council issues a notice under clause 15.2(a), the Service Provider will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of this Agreement.

15.3 Grounds for termination by the Service Provider

- (a) The Service Provider may terminate this Agreement by giving at least 30 Business Days written notice to the School Council if the School Council fails to pay amounts due under this Agreement which have the following characteristics:
 - (i) are the subject of Tax Invoices complying with this Agreement;
 - (ii) are due and payable in accordance with this Agreement;
 - (iii) are not the subject of a good faith dispute;
 - (iv) are overdue for a period of at least 60 Business Days; and
 - (v) are amounts for which a demand has been made, provided that the demand clearly states that the amount has been overdue for a period of at least 60 Business Days and that the Service Provider will have the right to terminate this Agreement on 30 Business Days' notice after the expiration of five Business Days following service of the demand if the demand is not met within that five Business Day period.
- (b) Clause 15.3(a) constitutes the Service Provider's sole and exclusive right to terminate this Agreement.

15.4 Consequences of termination or expiry

- (a) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- (b) On termination or expiration of this Agreement, the Service Provider must (at no additional cost to the School Council) immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any Data or Confidential Information and, at the election of the School Council:
 - (i) if requested by the School Council, provide reasonable assistance to the School Council to facilitate the transfer of responsibility for the Services to the School Council or another person nominated by the School Council; and
 - (ii) immediately cease using all materials that contain any Data or Confidential Information, and at the School Council's discretion either:
 - (A) delete or destroy the materials, as applicable; or
 - (B) return the materials to the School Council in the format in which they were first provided by the School Council and, in addition, if required by the School Council, in a non-proprietary and open access file format (such as .txt, .csv, .rft, etc) as specified by the School Council,

at no additional cost to the School Council.

15.5 Survival

Clauses 1, 7, 10, 10.4, 11, 13, 14, 15.4, 18, 22, 23, 24 and 26 survive the termination or expiry of this Agreement or the completion of the Services and may be enforced at any time.

16. Insurance

- (a) The Service Provider must (and must ensure that any sub-contractors appointed by it under clause 20) obtain and maintain for the Term the insurances specified in Item 4 of Schedule 1 with an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia that is acceptable to the School Council.
- (b) Unless otherwise agreed in writing, the Service Provider must provide the School Council with evidence of the currency of any insurance it is required to obtain on the Commencement Date and annually as at each anniversary of the Commencement Date (and as otherwise requested by the School Council).

17. Accident compensation

The Service Provider must ensure that, in respect of its Personnel and any other persons engaged by the Service Provider to provide the Services, it:

- (a) complies with the provisions of the *Accident Compensation Act 1985 (Vic)*;
- (b) insures against its liability to pay compensation whether under Law or otherwise; and
- (c) produces to the School Council on request any certificates or like documentation required by the *Accident Compensation Act 1985 (Vic)*.

18. Confidentiality, privacy and data protection

18.1 Use and disclosure of Confidential Information

- (a) The Service Provider will keep the Confidential Information confidential and secure and will (and will ensure that its Personnel and advisers will):
 - (i) use and reproduce Confidential Information only to the extent necessary to perform its obligations under this Agreement;
 - (ii) not disclose or otherwise make available Confidential Information other than to its Personnel who have a need to know the information to enable the Service Provider to perform its obligations under this Agreement;
 - (iii) ensure that the Confidential Information is stored in a safe and secure manner, and protect it against unauthorised copying, use, disclosure, access and damage or destruction, at all times; and
 - (iv) comply with all applicable Laws and the School Council's policies in relation to the Confidential Information (and take all necessary precautions to prevent any

unauthorised access to the Confidential Information).

- (b) All Confidential Information will remain the property of the School Council.
- (c) The Service Provider 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 Service Provider of this clause 18 and without the need on the part of the School Council to prove any special damage.
- (d) Notwithstanding anything in this clause 18.1, the Service Provider may disclose the Confidential Information:
 - (i) if required by Law; or
 - (ii) to the Service Provider's financial or legal advisers for the purposes of obtaining professional advice or assistance.
- (e) The Service Provider must immediately notify the School Council in writing in the event of any suspected, threatened or actual unauthorised use or disclosure of any of the Confidential Information, and must include in the notice:
 - (i) the nature and content of the Confidential Information; and
 - (ii) the details of the person to whom the Confidential Information has been (or may be) disclosed to.
- (f) If requested by the School Council, the Service Provider must ensure that all of its Personnel involved in providing the Services who may have access to the Confidential Information execute a deed of confidentiality in a form acceptable to the School Council prior to providing the Services under or in connection with this Agreement.
- (g) Except as otherwise permitted by this Agreement, the Service Provider agrees not to publish, advertise, promote or acknowledge activities relating to this Agreement or use any logo or trademark or any other Intellectual Property Rights of the School Council without the prior written consent of the School Council.

18.2 Service Provider's consent to disclosure

- (a) The Service Provider consents to the School Council disclosing or publishing any information of or about this Agreement as follows:
 - (i) all such information as is necessary 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 the use of the Services;

- (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 Service Provider;
- (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.

18.3 Privacy

- (a) The Service Provider agrees to 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 Service Provider in connection with this Agreement 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 Service Provider must:
 - (i) assist the School Council to comply with its obligations set out in the Privacy Obligations;
 - (ii) immediately notify the School Council upon becoming aware of any suspected, threatened or actual breach of the Privacy Obligations and comply with all directions of the School Council in respect of the suspected, threatened or actual breach;
 - (iii) provide the School Council with such co-operation as the School Council requires in relation to resolving any complaint concerning privacy; and
 - (iv) provide access to or amendment of any record as directed by the School Council.
- (c) The Service Provider also agrees to comply with any directions made by the Commissioner, the Office of the Australian Information Commissioner or the Victorian Health Complaints Commissioner relevant to this Agreement.
- (d) Without limiting clauses 18.3(a) to 18.3(c), in relation to any Personal Information obtained by the Service Provider in connection with this Agreement, the Service Provider must:
 - (i) not collect, use, disclose, store, transfer or handle the information except in accordance with the Privacy Obligations;
 - (ii) not, without the prior consent of the School Council, disclose the information to a person who is outside Victoria;

- (iii) take all reasonable steps to ensure that the information is protected from misuse, interference or loss, and from unauthorised access, modification or disclosure;
- (iv) take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of this Agreement;
- (v) co-operate with any reasonable request or direction the School Council makes which relates to the protection of the information or the exercise of the functions of the Commissioner, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner;
- (vi) ensure that access to the information is limited to those of its Personnel who are required to access that information for the purposes of this Agreement; and
- (vii) comply with any reasonable direction of the School Council in relation to a complaint concerning privacy received by either party.

18.4 Evidence of compliance

If requested by the School Council, the Service Provider must provide to the School Council within five Business Days evidence of its compliance with the obligations in relation to privacy under clause 18.3.

18.5 Data Protection

- (a) The Service Provider agrees to be bound by the Protective Data Security Standards and 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 Service Provider on behalf of the School Council under or in connection with this Agreement.
- (b) The Service Provider 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 Service Provider in writing;
 - (iii) prohibit and prevent access to any person who does not have the appropriate level of security clearance from gaining access to the Data;
 - (iv) comply with any of the School Council's or the State's policies in relation to the secure retention and destruction of Data; and
 - (v) immediately notify the School Council if the Service Provider suspects that any Data has (or may be) lost or corrupted or there is unauthorised access to the Data, proposing remedial action it will take or specifying the

actions that will be taken to prevent recurrences.

19. Disputes

19.1 Dispute Notice

A party claiming that a dispute has arisen must promptly give the other party a Dispute Notice.

19.2 Dispute resolution before court proceedings

- (a) Subject to clause 19.2(b), the parties must attempt to resolve all Disputes under this clause before starting any court proceedings, other than court proceedings for interlocutory relief.
- (b) If a Dispute remains unresolved 60 Business Days after the Dispute Notice date, either party may commence court proceedings in relation to the Dispute.

19.3 Parties to meet

- (a) The parties must use reasonable endeavours to resolve a Dispute by escalation through the following process:
 - (i) within 10 Business Days of the Dispute Notice date, the parties' representatives must meet and attempt to resolve the Dispute.
 - (ii) If the parties' representatives are not able to resolve the Dispute within 20 Business Days of the Dispute Notice date, a nominated senior executive officer (or equivalent) of each of the parties must meet and attempt to resolve the Dispute in good faith.
- (b) If the senior executive officers (or equivalent) of the parties are not able to resolve the Dispute within 30 Business Days of the Dispute Notice date, the School Council may refer the Dispute to mediation in accordance with clause 19.4.

19.4 Mediation

If any Dispute is referred to mediation by the School Council under clause 19.3(b):

- (a) the mediation will be administered by the Australian Disputes Centre (ADC) in accordance with its mediation guidelines;
- (b) the parties will agree on a mediator within 10 Business Days of the referral, failing which the mediator will be appointed by the ADC;
- (c) the parties must conduct the mediation within 20 Business Days of the mediator being appointed;
- (d) each party must bear its own costs in relation to attendance at, and participation in, the mediation; and
- (e) the costs of the mediator will be borne equally by the parties.

19.5 Performance during Dispute resolution

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement.

19.6 Confidentiality

Any information or documents disclosed by a party during the Dispute resolution process:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

20. Sub-contracting

- (a) Except as expressly provided in this Agreement, the Service Provider must not sub-contract to any third person any of its obligations under this Agreement without the prior written consent of the School Council.
- (b) The Service Provider must ensure that any person engaged by it complies with all obligations imposed on the Service Provider by this Agreement. The Service Provider will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Service Provider itself.
- (c) The School Council may revoke its approval of a sub-contractor at any time without cause by giving at least 10 Business Days notice to the Service Provider in which case the Service Provider must immediately stop using the sub-contractor and make alternative arrangements for the Services being provided by the sub-contractor.

21. Access and safety

21.1 Access to premises

If the Service Provider requires access to the premises of the School Council in connection with the provision of the Services, the School Council will, subject to its usual security requirements, permit the Service Provider reasonable access to the premises at such times as may be reasonably necessary to enable the Service Provider to provide the Services.

21.2 Obligations

If the Service Provider enters the premises of the School Council, the Service Provider must and must ensure that its Personnel will:

- (a) protect people and property;
- (b) prevent nuisance and unnecessary noise and disturbance;
- (c) act in a safe and lawful manner and comply with the safety standards and policies of the School Council (as notified to the Service Provider);
- (d) comply with any lawful directions of the School Council; and

- (e) comply with all applicable health and safety laws including *the Occupational Health and Safety Act 2004 (Vic)* and any applicable regulations made under that Act.

21.3 No occupier's liability

Neither the Department nor the School Council or their respective Personnel and invitees will be responsible for any damage done to the property of the Service Provider's or its Personnel or sub-contractors or for any personal injury sustained by any of the Service Provider's Personnel or sub-contractors occurring on the School Council's premises to the extent that such personal injury or property damage occurred as a result of:

- (a) the negligence or recklessness of the Service Provider or its Personnel or sub-contractors; or
- (b) the Service Provider or its Personnel or sub-contractor's failure to comply with the occupational health and safety and security policies of the Department or School Council (as notified to the Service Provider).

21.4 Repairs

- (a) If the Service Provider needs to access the School Council's premises and/or use of the School Council's property (both requiring the School Council's consent) in order to carry out the Services, then, the Service Provider is responsible for and must promptly repair any damage to the School Council's property and/or premises to the extent caused or contributed to by the Service Provider.
- (b) If the Service Provider fails to properly repair any such damage it is responsible for under this clause 21.4 within a reasonable time then the School Council may do so and the Service Provider must immediately reimburse the School Council the cost of such repairs.

21.5 No Warranty

The School Council does not warrant that the School Council's premises accessed by the Service Provider and/or School Council's property used by the Service Provider under this clause 21 is suitable for the Service Provider's use and to carry out its Services.

22. Notices

22.1 Method of delivery

A notice, demand, certification, process or other communication relating to this Agreement must be in writing and may be sent by post, courier or by electronic mail as follows:

- (a) to the School Council: to the School Council Representative, at the address which is set out in Item 3 of Schedule 1; and
- (b) to the Service Provider: to the Service Provider Representative, at the address which is set out in Item 3 of Schedule 1.

22.2 Time of delivery

A notice or document will be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post, two (seven if posted to or from a place outside Australia) Business Days after the date of posting; and
- (c) in the case of electronic mail, if the receiving party has agreed to receipt in that form under this Agreement 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.

22.3 After hours communications

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00 pm in the place of receipt; or
- (b) 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.

23. GST

23.1 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)*.

23.2 Consideration is inclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are inclusive of GST. If GST is imposed on any supply made under or in accordance with this Agreement 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 Agreement.

23.3 Reimbursement

If this Agreement 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.

23.4 Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Agreement, the Service Provider must recalculate the amount payable on account of GST under clause 23.2 to take account of the adjustment event. The Service Provider 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 Service Provider to the School Council, or by the School Council to the Service Provider, as the case may be.

23.5 Other taxes

Subject to the other provisions of this Agreement, the 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 Agreement, to the extent applicable.

24. Staff Costs

- (a) The Service Provider will indemnify and keep indemnified the School Council from and against all liability for the Staff Costs in any way relating to the Services.
- (b) If the School Council is or becomes liable to pay any Staff Costs, the School Council may deduct the amount of its liability for the Staff Costs from any amount due by the School Council to the Service Provider, whether under this Agreement or otherwise.

25. Requirement for Working with Children and Police Checks

- (a) If the Service Provider enters the premises of the School Council, the Service Provider must (and must ensure that all persons engaged or used by it to enter the School Council's premises, including its Personnel):
 - (i) have undertaken a satisfactory working with children check if required pursuant to the *Working With Children Act 2005 (Vic)* or as otherwise requested by the School Council;
 - (ii) have undertaken a satisfactory police records check, if requested by the School Council; 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 school children or within the precinct of the School as advised by the School Council.
- (b) The Service Provider must ensure the terms and conditions of employment of any staff or of engagement of any contractor for the purpose of entering the School Council's premises under this Agreement are consistent with the above obligations.

26. Child Safe Standards

- (a) The parties acknowledge and agree that Victorian Government schools are committed to:
 - (i) creating child safe environments;
 - (ii) protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with their legal obligations, including Child Safety Laws.
- (b) This clause only applies to the extent that the Service Provider (and its Personnel) are engaged in Child-connected work.
- (c) The Service Provider 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 Service Provider 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 Service Provider (or its Personnel).
- (e) The Service Provider (and its Personnel) must:
 - (i) if applicable (whether or not the Service Provider 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 Service Provider with any Child Safety Laws or any relevant School Council Child Safety Policies.
- (f) The School Council may terminate this Agreement 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 Service Provider or its Personnel; or
 - (ii) the Service Provider or any of its Personnel 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.

27. General

27.1 Costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and

	expenses of negotiating, preparing, executing and performing its obligations under this Agreement.		affecting this subject matter are superseded by this Agreement and have no effect.
27.2	Amendment	27.13	Publicity
	This Agreement may only be varied or replaced by agreement in writing.		The Service Provider must not make any public announcement or media release in respect of any aspect of this Agreement or the Services without the prior written approval by the School Council. Without limitation, if permission to publish is granted pursuant to this clause 27.13, the Service Provider must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.
27.3	Waiver and exercise of rights	27.14	Relationship of parties
	A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.		This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties. Nothing in this Agreement will constitute or deem a party to be the employee of another party.
27.4	Further assurance	27.15	No inducements
	Each party must promptly execute and deliver all documents and take all other actions necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.		(a) The Service Provider will not, and will ensure that its Personnel 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 Agreement.
27.5	Severability		(b) The School Council may terminate this Agreement immediately on notice to the Service Provider if the Service Provider or any of its Personnel is found to have engaged in any conduct under clause 27.15(a) and recover the amount of any loss resulting from such termination as a debt due from the Service Provider.
	Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.	27.16	Conflict of interest
27.6	Rights cumulative		(a) The Service Provider warrants that it does not, and will ensure that its Personnel 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 interests under this Agreement.
	Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.		(b) The Service Provider 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.
27.7	Set off		(c) The Service Provider acknowledges and agrees that failure to comply with this clause 27.16 will constitute a breach of a fundamental term of this Agreement.
	The School Council may set off against any sum owing to the Service Provider under this Agreement any amount then owing by the Service Provider to the School Council.		
27.8	Governing law and jurisdiction		
	This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.		
27.9	Assignment of rights		
	The Service Provider must not assign any right under this Agreement without the prior written consent of the School Council.		
27.10	No merger		
	The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.		
27.11	Counterparts		
	This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.		
27.12	Entire understanding		
	This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments expressed or implied,		

Executed as an agreement.

Signature of School Council President
Name of School Council President (print)

Signature of Witness
Name of Witness

Date:

<insert date that School Council signs>

<Use this signing clause when the Service Provider is a company incorporated in Australia with more than one director, delete if Service Provider is an individual or is a company incorporated in Australia with a sole director>

Executed by ACN
Signature of director
Name of director (print)

Signature of director/company secretary (Please delete as applicable)
Name of director/company secretary (print)

<Use this signing clause when the Service Provider is a company incorporated in Australia with a sole director, delete if Service Provider is an individual or is a company incorporated in Australia with more than one director>

Executed by ACN
Signature of Sole Director and Company Secretary
Name of Sole Director and Company Secretary (print)

Signature of witness
Name of witness (print)

<Use this signing clause when the Service Provider is an individual, delete if Service Provider is a company incorporated in Australia>

Signed by in the presence of:

--

Signature of witness
Name of witness (print)

Signature of Service Provider

Date:

<insert date that Service Provider signs>

Schedule 1 Contract Variables

Item 1: Parties to Agreement

(a) School Council

<insert details>

Name:	
ABN:	
Address:	

(b) Service Provider

<insert details>

Name:	<insert registered name of Service Provider>
ABN:	
Address:	

Item 2: Term (Clause 2)

<insert details>

Commencement Date:	
Completion Date:	
Further Term(s):	

Item 3: School Council Representative and Service Provider Representative 8.1(a)(i)

(a) School Council Representative

<insert School Council details>

Name:	
Title:	
Telephone:	

Mobile:	
Email:	
Address:	

(b) Service Provider Representative

<insert service provider details>

Name:	
Title:	
Telephone:	
Mobile:	
Email:	
Address:	

Item 4: Insurance (Clause 16)

<amend as considered appropriate having regard to the transaction >

(a) Subject to paragraph (b), the Service Provider is required to obtain and maintain during the Term:

Type of coverage	Amount (AUD)
Public liability insurance	\$20 million [per event / in the aggregate]

(b) The Service Provider is only required to maintain:

- (i) product liability insurance if it supplies goods to the School Council; or
- (ii) professional indemnity insurance if it supplies skilled, professional services to the School Council.

Item 5: Service Provider’s Key Staff (Clause 4)

<Insert names and role of key staff if School Council requires specific staff to provide the services>

Item 6: Tender Documentation (Clause 1.1)

<insert details of tender documentation provided by the Service Provider>

Schedule 2 Services and Fees

Item 1: Services

<Insert or attach details of services>

Item 2: Fees

<insert or attach details of Fees>

Schedule 3 Special Conditions

Nil

<If Special conditions are required, delete this sentence and insert details >