

Standard terms

THIS AGREEMENT is made on the dated referred to in the Schedule BETWEEN the School identified in the Schedule for and on behalf of the State of New South Wales through its Department of Education (ABN 40 300 173 822) AND the Community User identified in the Schedule.

It is agreed that:

1. Definitions

In this Agreement:

“**Consent**” is defined in clause 8.2 of this Agreement.

“**Claims**” refers to, in relation to a party, an allegation, demand, claim, action, proceeding or suit made or brought by or against that party.

“**Premises**” refers to the area set out in the Schedule.

“**Equipment**” refers to the equipment provided by the School for use by the Community User (including its Personnel and invitees) as set out in the Schedule.

“**EPAA**” means the Environmental Planning and Assessment Act 1979 (NSW) and any regulations and other statutory instruments issued under it.

“**Law**” means any applicable federal or state statute, regulation or subordinate legislation, present or future.

“**Liabilities**” refers to Claims, losses, liabilities, damages, charges, costs, outgoings, payments and expenses of any kind (including legal costs on a full indemnity basis).

“**Personnel**” refers to:

a) in relation to the State, the State’s officers, employees, contractors, representatives, agents, and students;

b) in relation to the Community User, the Community User’s officers, employees, contractors, representatives, and agents. “**School**” refers to the NSW government school identified in the Schedule.

“**Principal**” refers to the person occupying the position of, or acting as, principal of the School.

2. License to use

The State grants to the Community User a licence to use the Premises and the Equipment for the purpose described in the Schedule and for no other purpose. The Community User agrees to abide by the Conditions of Use set out in clause 8 below. This licence is not transferable.

3. Duration of use

This Agreement shall commence and terminate on the dates set out in the Schedule. During that period, the Community User, subject to this Agreement, has authority to use the Premises and the Equipment at the times and on the date(s) set out in the Table of Agreed Usage.

4. Fees

The Community User shall pay to the School the fees set out in the Schedule at the times and in the manner set out in the Schedule.

5. Public liability insurance

The Community User must take out and maintain a broad form contractual third party liability insurance (also known as public liability insurance) appropriate to the Community User’s activities for at least \$20 million for any one occurrence in respect of any liability for personal injury and property damage arising out of, or in connection with, or caused by the Community User’s occupation and use of the Premises and Equipment. The interest of the State must be noted on the policy.

That insurance policy must be with a body corporate authorised to carry on insurance business under the **Insurance Act 1973**. Details of the insurance policy are set out in the Schedule.

6. Workers compensation insurance

The Community User must take out and maintain workers compensation insurance coverage with a licensed insurer under the **Workers Compensation Act 1987 (NSW)** in respect of any employees of the Community User who are employed in connection with the use of the Premises and Equipment.

(Clause 6 does not apply if the Community User does not have any employees)

7. Proof of insurance

The Community User shall provide a copy of the insurance policies or a certificate of currency in respect of the insurance policies referred to in clauses 5 and 6 to the Principal, and will provide a certificate of currency in respect of those policies to the Principal on the reasonable request of the Principal made from time to time.

8. Conditions of use

8.1 The Community User shall:

a) not use the Premises or Equipment other than for the purpose stated in the Schedule and the Table of Agreed Usage (where applicable);

- b) not use the Premises at any other time and day other than stated in the Schedule and the Table of Agreed Usage unless agreed in writing between the Community User and the Principal;
 - c) not engage in any activity which is considered by the Principal to be inconsistent with the values of Public Education or the School's purpose and goals;
 - d) not use the Premises on any public holiday or during school vacations unless agreed in writing by the Principal;
 - e) ensure that all users who enter and exit the School grounds do so according to the Principal's directions;
 - f) not interfere in any way with the operation of the School or Equipment or with records and materials of the School, staff or pupils and in particular not to use any machinery or equipment other than Equipment specified in the Schedule and the Table of Agreed Usage and not remove any Equipment from the School premises;
 - g) not make any structural alterations to the Premises or Equipment including the attachment of nails, screws or any other fastenings to walls or fittings without the permission of the Principal;
 - h) ensure that after each use all furniture and Equipment is replaced in its original position unless otherwise specified by the Principal;
 - i) ensure that all persons allowed on the Premises or permitted by the Community User to use Equipment shall properly conduct themselves and ensure that any person not authorised by the Principal to use the Premises or Equipment does not do so;
 - j) ensure that any children allowed to enter under this Agreement are properly supervised at all times and only use the Premises specified in the Schedule and the Table of Agreed Usage;
 - k) ensure that smoking does not occur;
 - l) ensure that no game of chance or gambling is carried out on the Premises unless an appropriate authority or licence has been obtained from the Office of Liquor Gaming and Racing or other regulatory body;
 - m) not engage in any activity which breaches the Copyright Act 1968 (Cth);
 - n) notify the Principal immediately in writing of any accident to any person while on the Premises under this Agreement and provide such statements from witnesses and the person/s injured as the Principal or the Department of Education's Legal Services Directorate may require;
 - o) leave the Premises and any toilets or other parts of the School buildings and all entrance and exit routes in a clean and tidy condition after each use or arrange and pay for the cleaning of the Premises;
 - p) not do anything to hinder the right of the Principal or the Principal's nominee to enter the Premises at any time for the purpose of inspecting the Premises or Equipment;
 - q) vacate the Premises on or before the authorised time and ensure that the Premises are locked and secured at the end of each use. Power, heating and cooling are to be switched off after use;
 - r) not continue to use the Premises beyond the expiration of the term of this Agreement. Return any keys to the Premises to the Principal upon expiration of the Agreement;
 - s) comply with any reasonable request by the Principal concerning the use of the Premises and Equipment and use them in accordance with the documentation and instructions provided;
 - t) comply with or obey any reasonable request, command or order by emergency services personnel if and when necessary;
 - u) comply with any other additional conditions and school specific rules, if any, set out in the Schedule;
 - v) use the Premises and ensure that activities at the Premises are conducted in a safe and responsible manner, and in accordance with applicable laws, including work health and safety legislation. This includes ensuring that the Community User's Personnel are licensed and qualified to use any equipment or carry out any activities permitted under this Agreement;
 - w) ensure that any use of alcohol complies with the **Liquor Act 2007 (NSW)** and alcohol is not left at the School.
 - x) ensure that it, including its Personnel and invitees, do not leave anything at the School (including the Premises) which may cause injury to any person.
- 8.2.1**
- If the Community User intends to use the Premises for any purpose which requires consent(s), approval(s) and/or licenses under the EPAA and/or any Law ("**Consents**"), then the Community User must:
- a) advise the Principal of this prior to such use; and
 - b) not use the Premises for that purpose unless and until all Consents have been obtained;
- 8.2.2**
- a) The Community User is responsible for obtaining at its own cost all Consents, other than Consents that can only be obtained by the School.
 - b) The Consents obtained by the Community User must not place any obligation on the State of New South Wales or any person on behalf of the State of New South Wales to perform any work or incur any costs.
 - c) The Community User must provide the Principal with a copy of all Consents the Community User has obtained prior to such use.
- The Principal will communicate its decision to the Community User within a reasonable time after it is made aware of the necessary Consent by the Community User under clause 8.2.1a).

8.2.3

If a Consent can only be obtained by the School, the Principal has absolute discretion whether or not to obtain the Consent. The Principal will communicate its decision to the Community User within a reasonable time after it is made aware of the necessary Consent by the Community User under clause 8.2.1a).

8.2.4

The Community User must not use the Premises in any manner which:

- (a) is contrary to or in breach of any Consents; and
- (b) breaches the EPAA and/or any other Law.

9. Indemnities and releases

9.1

The State does not warrant that the Premises and the Equipment are now or will remain suitable for all or any of the purposes of the Community User.

9.2.1

The Community User agrees to occupy and use the Premises, Equipment, machinery, utility or other equipment services and facilities at the School at its own risk.

9.2.2

To the full extent permitted by law and subject to clause 9.4, the Community User releases the State from all Claims the Community User may have against the State arising from or in connection with:

- (a) the use by the Community User (including its Personnel and visitors) of the Premises, Equipment, machinery, utility, other equipment, services or facilities at the School; or
- (b) loss or damage to the equipment of the Community User (including its Personnel and visitors)

9.3

The Community User indemnifies the State (including its Personnel) from and against all Liabilities the State becomes liable for arising from or in connection with the following:

9.3.1

The negligent or unlawful use by the Community User (including its Personnel and visitors) of the Premises, Equipment, machinery, utility or other equipment services and facilities at the School;

9.3.3

Personal injury or property damage inside or outside the School (including the Premises) caused or contributed to by an act or omission by the Community User (including its Personnel and visitors); and

9.3.4

a breach of this Agreement by the Community User.

9.4

A party's liability to the other party under or in connection with this Agreement will be reduced proportionately by the extent, if any, to which the other party's negligent act or omission caused or contributed to the liability.

10. Keys

The Principal will make available to the Community User keys to open any gates or doors to the School to access the Premises for each day of use under this Agreement. The Community User must at the conclusion of the Access Hours on each day of use lock such gates or doors. The Community User agrees not to copy any of the Keys. Lost keys will be replaced at the expense of the Community User and if the Principal acting reasonably believes that locks need to be replaced after the Community User has lost keys the Community User must pay for the cost of new locks.

11. Termination

11.1

At any time the State has the right to immediately suspend or terminate this Agreement in the event of:

- (a) an emergency where the Premises are urgently needed to house students or provide accommodation during disaster periods;
- (b) a federal, state or local election or a referendum.
- (c) where the Premises or any part becomes unsafe;
- (d) where an essential School need arises requiring exclusive use of the Premises;
- (e) where the School is closed and the land is scheduled for disposal;
- (f) in situations where the activity engaged in by the Community user is detrimental to the School and its students;
- (g) where there has been a significant breach or repeated breaches of the Agreement.

Should there be no default by the Community User at the date of suspension or termination, any fees paid for the period of the suspension or for a period beyond the termination will be refunded.

11.2

Either party may terminate this Agreement at any time by giving the other two week's notice in writing.

11.3

Should there be no default by the Community User at the date of termination, any fees paid for a period beyond the termination will be refunded.

12. Child safety, welfare and wellbeing

Note: This clause applies when the community user is engaged in activities involving:

- *child development (which includes mentoring and counselor services for children);*
- *the provision of cultural, recreational or sporting activities for children by a club, association, movement, society or other body;*
- *private coaching or tuition of children for educational purposes;*
- *religious services;*

but not including when the children participating in those activities are under the direct supervision of their parents or carers.

Where this clause applies the Licensee will need to complete the Community Use of School Facilities Child Protection Declaration and submit it to the principal.

12.1 Comply with the CP Act

Where the use of the premises involves workers of the Licensee having direct contact with children, the Licensee must be aware of and comply with any requirements of the Child Protection (Working with Children) Act 2012 and the Child Protection (Working with Children) Regulation 2013 and the Children (Education and Care Services) National Law (NSW) (collectively the CP Act) and any other ancillary legislation and the policies of the Licensor on child protection.

12.2 Extent of obligation

The Licensee will ensure that all persons who are engaged in child related work in relation to the Permitted Use, as defined in the CP Act, which include subcontractors and volunteers, comply with the requirements of the CP Act.

12.3 Notify Police

The Licensee must notify the Police if an allegation is made against one of its workers or invitees of disqualifying offences within the meaning of Schedule 2 of the CP Act.

12.4 Notification to Principal

The Licensee must notify the Principal within 1 working day when it becomes aware that one of its workers or invitees:

12.4.1

has been referred to the Police in relation to a disqualifying offence within the meaning of Schedule 2 of the CP Act;

12.4.2

has been charged by the Police in relation to a disqualifying offence within the meaning of Schedule 2 of the CP Act; or

12.4.3 has been found guilty of a disqualifying offence within the meaning of Schedule 2 of the CP Act.

12.5 Further Notification to Principal

The Licensee must provide the Principal with information it receives relating to the safety, welfare or wellbeing of a particular child or a class of children who the Licensee knows attends the School where the Licensee reasonably believes this information would assist the Principal to make any decision, assessment or plan, or conduct any investigation or provide any service, relating to the safety, welfare or wellbeing of the child or a class of children. This obligation may include but is not restricted to the following information:

12.5.1

educational records, assessments, welfare reports and counselling records;

12.5.2

reports of health-related incidents where:

- (a) medication, such as asthma reliever medication, was administered to the child;
- (b) the child was transported to a hospital or the parents of the child were advised to take the child to a health care professional or to a hospital; and
- (c) medical attention was provided at the Premises by an ambulance officer or health care professional;

12.5.3

apprehended personal violence orders or apprehended domestic violence orders or information that a child attending the School may have been exposed to domestic violence; and

12.5.4

allegations that a child has been or is at risk of being physically or sexually abused or ill-treated unless the Licensee is specifically advised by NSW Police not to provide this information to the Principal or by the Joint Investigation Response Team and in those circumstances the Licensee must write to NSW Police or the Joint Investigation Response Team to provide this advice and request that NSW Police inform the Principal as soon as they deem it appropriate to do so.

12.6 Acknowledgments in relation to child protection

The Licensee acknowledges that:

12.6.1

the Principal will advise the Director Educational Leadership, or such other departmental authority as identified from time to time by the Licensor, of any information provided under clause 12.4;

12.6.2

the safety, welfare and wellbeing of children and young people and in particular protecting them from child abuse, will be the paramount consideration when the Director Educational Leadership considers what further use or disclosure will be made of the information received. This will include informing various other persons in compliance with the Licensor's requirements and may include informing members of the School community of the information

provided under clause 12.4 where those community members may be directly affected by the information;

12.6.3

it is responsible after consulting with the Police and/or the Department of Community Services for advising the parents of any children who use their service of the matters set out in clause 12.4;

12.6.4

it must provide the Principal with evidence of the contact it has made with such parents; and

12.6.5

no obligation placed on the Licensee to inform any person should be regarded as removing the right of the Principal to take any additional action considered necessary to contact the Police or other appropriate authority or inform members of the School community.

12.7 Verification of compliance

The Licensee must complete and sign the Child Protection Declarations as required under the CP Act or by the Licensor. The Licensee must verify workers Working with Children Check clearance numbers where required under the CP Act.

12.8 Persons to be excluded

The Licensee must not employ, or continue to employ as a worker a person in child related work if the Licensee knows or has reasonable cause to believe that:

12.8.1

the worker is not the holder of a Working with Children Check clearance that authorises that work or contact with children and that there is no current application by the worker to the Children's Guardian for a clearance of a class applicable to that work; or

12.8.2

the worker is subject to an interim bar.

12.9 Other notification requirements

The Licensee will provide the Principal with information it obtains relating to the safety, welfare or well-being of a particular child or class of children the Licensee knows to attend the School where it reasonably believes this information would assist the Principal to make any decision, assessment or plan or conduct any investigation or provide any service relating to the safety, welfare or well-being of the child or a class of children. This may include but is not restricted to the following information:

12.9.1

educational records, assessments, welfare reports and counselling records;

12.9.2

reports of health-related incidents where:

- (a) medication (for example, asthma reliever medication) was administered to the child;
- (b) the child was transported to a hospital or his or her parents were advised to take the child to a health care professional to a hospital; and
- (c) medical attention was provided on site by an ambulance officer or health care professional;

12.9.3

apprehended personal violence orders or apprehended domestic violence orders or information that a child may have been exposed to domestic violence;

12.9.4

allegations that a child has been or is at risk of being physically or sexually abused or ill-treated unless the Licensee is specifically advised not to provide this information to the Principal by the Police or a Joint Investigation Response Team. In such circumstances the Licensee must write to the Police or the Joint Investigation Response Team and request that the Police inform the Principal as soon as the Police deem it appropriate to do so.

12.10 Change in Licensor requirements

The Licensor may in his absolute discretion at any time change the provisions of this agreement in relation to child protection. Upon notification of any change, the Licensee must comply with the changes as notified within such reasonable time as is specified in the notice.

12.11 Application of clause

For the purposes of this clause:

12.11.1

"child" means a person under the age of 18 years;

12.11.2

"worker" includes a person who is engaged in work in any of the following capacities:

- (a) employee;
- (b) self-employed person or is a contractor or subcontractor;
- (c) volunteer;
- (d) undertaking practical training as part of an educational or vocational course (other than as a school student undertaking work experience);