



Lease

between

**James Merlino MP in his capacity as the Minister administering
the Education and Training Reform Act 2006**

and

**Greater Shepparton City Council
ABN 59 835 329 843**

**Property: Integrated Early Learning Centre located at
Mooroopna Primary School, 16-18 O'Brien Street,
Mooroopna VIC 3629**

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Dated**2020****James Merlino MP in his capacity as the Minister administering the Education and Training Reform Act 2006**

of Level 2, 2 Treasury Place, East Melbourne, Victoria 3002

(Landlord)**and****Greater Shepparton City Council (ABN 59 835 329 843)**

of 90 Welsford Street, Shepparton, Vic, 3630

(Tenant)**Background**

- A. The Landlord is the registered proprietor of the Land.
- B. The Landlord has agreed, as part of the standard kindergarten funding agreement, to:
 - a. fund the construction of the Facility;
 - b. contribute towards the items of the FF&E as detailed in Attachment 2; and
 - c. fund six kindergarten places for 2021 and 2022 at the Facility (**Kindergarten Places**).
- C. The Landlord grants this Lease pursuant to his powers under section 5.2.4(2) of the *Education and Training Reform Act 2006* (Vic).
- D. The Landlord leases the Property to the Tenant on the terms and conditions set out in this Lease.

1. Definitions and Interpretation**1.1 Definitions**

In this Lease, unless the context otherwise requires:

Approval means any licence, permit, consent, grant, certificate, authority or other approval obtained or required to be obtained from a Government Agency in relation to the Property and/or the use or occupation of the Property and/or the improvements on the Property and includes any planning approval and any requisition, condition or requirement from a Government Agency.

Associates means any officer, employee, agent, contractor, subcontractor, consultant, advisor, invitee, licensee or servant to the extent that such person or entity is performing an act or a function directly related to the Lease and, in the case of the Landlord, includes the Crown in right of the State of Victoria and any other person, committee or delegate (including any Government Agency or statutory body corporate or committee for the time being responsible for the administration, care and management of the Land) from time to time responsible for carrying out functions, including the functions of the Landlord, under this Lease.

Building Contract means the contract or contracts entered into by the Landlord in relation to the Landlord Works.

Business Day means any day that is not a Saturday, Sunday or a public holiday in Melbourne, Victoria.

Child Safe Standards means the standards introduced by the *Child Wellbeing and Safety Amendment (Child Safe Standards) Act 2015 (Vic)* as amended from time to time or any replacement regime for child safety and protection.

Children's Service means "children's service" as defined in section 3 of the CS Act.

Claim includes any claim, demand, remedy, suit, injury, damage, loss, Cost, Liability, action, proceeding and right of action.

Commencement Date means the commencement date of this Lease set out in Item 5.

Common Area means those parts of the Land intended for common use, as delineated green on the Plan.

Common Area Expenses means the following expenses incurred by the Landlord in respect of the Common Area:

- (a) charges made for the supply and use of gas, electricity, water;
- (b) rates, levies, taxes and assessments imposed by a Government Agency;
- (c) insurances including excesses paid or payable on claims;
- (d) the cost of maintaining, repairing and replacing the Landlord's fixtures and fittings;
- (e) maintenance and repair costs;
- (f) costs incurred in complying with the requirements of any Government Agency (including under the *Building Act 1993 (Vic)* and the *Occupational Health and Safety Act 2004 (Vic)*);
- (g) the costs of providing security, lighting, cleaning, toilet requisites and waste collection;
- (h) landscaping and gardening costs (indoor and outdoor) including the provision by purchase or hire of plans and garden displays and their maintenance; and
- (i) management fees, including salaries and administrative costs.

Contaminant or Contamination means anything (including a solid, a liquid, a gas, an odour, temperature, sound, vibration or radiation) which makes or may make the Property, the Land or the Environment:

- (a) unsafe, unfit or harmful for humans or animals;
- (b) degraded in any way including in its capacity to support plant life;
- (c) materially diminished in value; or
- (d) assessable as being in a condition that contravenes the Environmental Laws.

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature.

CS Act means the *Children's Services Act 1996*.

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

Dispute Notice means a notice in writing given by either party to the other where a dispute arises between the Landlord and the Tenant, in relation to this Lease.

Education and Care Service means an "education and care service" as defined in section 5 of the National Law.

Environment means the physical factors of the surroundings of, human /non-human life forms, including, without limitation, the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social and aesthetic values of landscapes.

Environmental Laws means any law (including statutes, regulations, by-laws, ordinances, codes and other delegated legislation and any rule of common law or tort) past, present or future, regarding or relating to the Environment.

Facility means the integrated early learning centre located on the Property.

FF&E means the furniture, fixtures and equipment installed at the Facility, as listed in Attachment 2.

Further Term means the further term(s) set out in Item 7.

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

GST means the Goods and Services Tax as defined in the GST Act.

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

Infrastructure and Services means any roads, footpaths, bridges, electricity, gas, water, drainage, sewerage, telephone cabling, signalling cabling, and other communications and infrastructure or equipment required for or in connection with the Landlord Works.

Item means an item in Schedule 1, unless specified otherwise.

Kindergarten Places has the meaning given to that term in paragraph B of the Background.

Land means the land described in Item 4.

Landlord means the Landlord specified in Item 1 and includes, where appropriate, the employees or agents of the Landlord or other persons authorised by the Landlord.

Landlord Works means the building and construction works (and any related works) required to establish the Facility on the Property.

Law means:

- (a) principles of law or equity established by decisions of courts within the Commonwealth of Australia;
- (b) statutes, regulations, by-laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, State of Victoria, or any Government Agency;
- (c) the Constitution of the Commonwealth;
- (d) binding requirements and mandatory approvals (including conditions) of the Commonwealth, the State of Victoria or another Government Agency which have the force of law; and
- (e) guidelines of the Commonwealth, the State of Victoria or another Government Agency which have the force of law.

Lease means this lease and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

Lease Money means the Rent, Outgoings, Common Area Expenses, Rates and Taxes and all other money payable by the Tenant to the Landlord under this Lease.

Lease Year means the period from 1 January to 31 December of each year during the Term.

Liability means any debt, obligation, Cost, expense, Loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Loss means any liability (including legal expenses) of any kind whatsoever and includes, but is not limited to, direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other claim arising from any cause whatsoever, whether or not the loss, damage or claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.

Mandatory Services means the provision of kindergarten programs in accordance with National Law.

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

Ministerial Determination means the determination made by the Minister for Small Business under section 5(1)(c) of the *Retail Leases Act 2003* dated 6 October 2014 and notified to the public in the Victorian Government Gazette No S 362 13 October 2014.

National Law means the *Education and Care Services National Law Act 2010* (Vic).

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

Outgoings means all costs incurred by the Landlord in connection with the Property, including:

- (a) charges made for the supply and use of gas, electricity, water;
- (b) excess water, telecommunications, sewerage and drainage services and other similar services on the Property;
- (c) any other utilities exclusively used in or charged against the Property including fire service levies or other levies imposed by any Government Authority;
- (d) removal of waste and garbage;
- (e) cost of operating plant and equipment;
- (f) costs of and incurred in cleaning, lighting, servicing, operating, managing, equipping, caretaking and maintaining the Property; and
- (g) costs for providing security services.

Permitted Use means the use of the Property as specified in Item 10 and includes the Mandatory Services.

Plan means the plan annexed to this Lease as Attachment 1.

Principal Contractor has the same meaning as 'principal contractor' or 'main contractor' as defined or used in the WHS Laws.

Property means the land described in Item 3 and all improvements located on that land on the Commencement Date, or subsequently constructed under this Lease and includes the plant and equipment, fixtures and fittings and furniture on the Property owned or supplied by the Landlord.

Rates and Taxes means all existing and future rates (including any special rates or levies), taxes (including land tax on a single holding basis), duties, charges, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the Land, the Property or the Landlord or the Tenant or payable by the owner or occupier of the Land.

Rent means the rent specified in Item 8.

Requirement includes any Notice, order or direction received from or given by any Government Agency or pursuant to any Law, in writing or otherwise, and notwithstanding to whom such Requirement is addressed or directed, but if not addressed to the Tenant, the Tenant must be given a copy.

Schedule means any schedule(s) to this Lease, unless specified otherwise.

School means the Mooroopna Primary School on which the Facility is co-located.

State means the State of Victoria.

Supplier means the party who gives a *taxable supply* under this Lease (where the expression in italics has the meaning given to that term in the GST Act).

Tenant means the Tenant specified in Item 2 and includes, where appropriate, the employees or agents of the Tenant or other persons authorised by the Tenant.

Tenant's Common Area means that area of the Common Area which the Tenant will use for the following Lease Year, as determined in accordance with clause 9.2(c).

Tenant's Property means all the Tenant's fixtures, fittings, equipment, furniture, furnishings and other property at the Property, and includes:

- (a) all alterations and additions to the Property made by the Tenant; and
- (b) any FF&E listed as the Tenant's Property in Annexure 2.

Term means the period of this Lease specified in Item 6, including any extension of it or any further period during which the Tenant has possession of the Property.

WHS Laws means the legislation, regulation or by-law dealing with occupational or workplace health and safety in the State of Victoria.

1.2 Interpretation

In this Lease, unless the context otherwise requires:

- (a) a reference to this Lease or any other document referred to in this Lease includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) headings are for guidance only and are to be ignored in interpreting this Lease;
- (e) a reference to a person includes a firm, a body corporate, an unincorporated association or a responsible authority, as constituted from time to time;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes, assigns, employees, servants, agents, consultants, contractors, advisers, financiers, subcontractors, licensees and invitees;
- (g) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (h) words importing any gender include all other genders, as applicable;
- (i) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (j) a reference to a recital, clause, item, schedule or annexure is to a recital, clause, item, schedule or annexure in or to this Lease, unless a contrary intention is expressed;
- (k) day means the period of time commencing at midnight and ending 24 hours later;

- (l) the payment of money within a specified time is a reference to the full clearance of any personal cheque into the account of the payee within that time;
- (m) words or phrases derived from a defined word have a corresponding meaning;
- (n) 'dollars' or '\$' refers to Australian currency;
- (o) a reference to any professional body, association or institute includes any succeeding body, association or institute with similar objects;
- (p) a covenant, promise, undertaking or agreement by the Tenant to perform or to refrain from performing some act or thing, includes a covenant by the Tenant to procure that its employees, officers, agents and servants also perform or refrain from performing such act or thing;
- (q) no rule of construction will apply to disadvantage a party because that party proposed a provision of this Lease or the Lease itself;
- (r) if anything to be done under this Lease falls on a day which is not a Business Day, it must be done on the next Business Day;
- (s) in respect of any warranty given by the Tenant under this Lease, the Tenant indemnifies the Landlord and the Landlord's Associates for any reasonably foreseeable Loss, damage or expense arising out of or associated with a breach of that warranty; and
- (t) the Background forms part of this Lease.

2. Grant of Lease

The Landlord grants to the Tenant a lease to occupy the Property for the Term beginning on the Commencement Date, subject to:

- (a) the terms and conditions of this Lease;
- (b) the encumbrances affecting the Land; and
- (c) any reservations contained in this Lease.

3. Moratorium

To the extent permitted by law, the application to this Lease or to any party of any Law or any Requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of the Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any party is excluded and negated.

4. Exclusion of Statutory Provisions

The Tenant acknowledges that the *Retail Leases Act 2003* does not apply to this Lease by virtue of the following factors referred to in paragraph 1(a)(i) of the Ministerial Determination:

- (a) the Rent is not greater than \$10,000 per annum; and

- (b) under the Lease, the Property is to be used wholly or predominantly for public or municipal purposes.

5. Landlord Delegation

- (a) The Landlord may elect to delegate any power, function or responsibility that the Landlord has under this Lease or perform or exercise such power, function or responsibility himself, in the Minister's complete discretion.
- (b) Any such delegation may be:
 - (i) revoked, changed or sub-delegated; and
 - (ii) limited or may be subject to such conditions as the Landlord determines from time to time.
- (c) Where the Landlord delegates any powers, functions or responsibilities under this Lease to an individual, the Landlord must give notice of such delegation to the Tenant, including the identity and address of any person to whom such powers, functions or responsibilities are delegated and any changes in the identity and address of such person. The notification by the Landlord may contain details of the delegation of any powers, functions or responsibilities. Where such notice has been given by the Landlord, the Tenant may rely upon such notice unless and until given notice of revocation of that delegation.
- (d) The Tenant is entitled to request details of the delegation of any power, function or responsibility under this Lease where a person purports to be acting under such a delegation. Once the Tenant obtains such details, it may rely on them unless and until given notice of the revocation of that delegation.
- (e) Any person to whom powers, functions or responsibilities are delegated by the Landlord has, subject to the extent of that delegation and compliance with the terms of such delegation, the full power and authority to act for and on behalf of and to bind the Landlord under this Lease.

6. Landlord's Reservations and Exercise of Rights

- (a) Subject to clause 6(b), the Landlord reserves the right for the Landlord and the Landlord's Associates to:
 - (i) remain on the Property to view the state of repair of the Property;
 - (ii) carry out any repairs, maintenance, works or alterations at the Property that may be required to comply with any applicable Law or Requirement, including any works that the Tenant is required to carry out under this Lease and has not carried out;
 - (iii) rectify any default by the Tenant under this Lease;
 - (iv) create any registered or unregistered easement or other right over the Land or Property, as long as it does not materially or adversely affect the Tenant's rights under this Lease; and
 - (v) enter the Land and the Property for the purposes set out in this clause 6.

- (b) Except in an emergency, the Landlord must:
 - (i) give the Tenant reasonable notice of the Landlord's intended exercise of the rights set out in clause 6;
 - (ii) only exercise the rights set out in clause 6, at reasonable times; and
 - (iii) minimise interference to the Tenant when exercising the rights set out in this clause 6.

7. Rent

The Tenant must pay the Rent to the Landlord:

- (a) at the Landlord's address specified in Item 1 (or to any other address or in any other way that the Landlord notifies to the Tenant); and
- (b) without demand by the Landlord at the times and in the manner set out in Item 8.

8. Reimbursement of Costs

The Tenant must reimburse the Landlord within (30) thirty days of demand on a full indemnity basis:

- (a) the stamp duty payable on this Lease (including penalties and fees);
- (b) the Landlord's reasonable costs in considering any request for consent or approval under this Lease (regardless of whether the Landlord actually gives such consent or approval); or
- (c) the Landlord's costs (including legal expenses on a solicitor-own client basis) incurred as a result of the Tenant's breach of this Lease.

Each party will pay its own costs in respect of the preparation, negotiation and execution of this Lease.

9. Rates and Taxes and Outgoings

9.1 Rates and Taxes

- (a) The Tenant must pay the Rates and Taxes:
 - (i) to the assessing Government Agency or the supplier before the due date if assessed directly against the Tenant or the Property; or
 - (ii) to the Landlord within 10 Business Days of the date of receipt of an invoice from the Landlord.
- (b) If the Property is not separately assessed for Rates and/or Taxes, the Tenant must reimburse the Landlord for Rates and Taxes as follows:
 - (i) in the proportion that the area of the Property bears to the total area assessed, in square metres; or

- (ii) where use of this method of apportionment is not practicable in the circumstances, in accordance with such other formula as is nominated by the Landlord acting reasonably.

9.2 Outgoings

- (a) The Tenant must pay all Outgoings supplied to the Property directly to the assessing Government Agency or the supplier on time, on and from the Commencement Date.
- (b) If the Outgoings cannot be separately metered, the Tenant must reimburse the Landlord for Outgoings as follows:
 - (i) in the proportion that the area of the Property bears to the area of the Land that derives a benefit from the subject of the relevant Outgoing; or
 - (ii) where use of this method of apportionment is not practicable in the circumstances, in accordance with such other formula as is nominated by the Landlord acting reasonably.
- (c) The Landlord will use best endeavours to install a check meter to measure electricity, water and gas usage for the Property as separate from the electricity, water and gas usage of the Common Area. The Tenant agrees to provide access to Property to the Landlord (if required) after the Commencement Date if the Landlord has not installed the check meter before practical completion of the Facility.

9.3 Outgoings for Common Area

- (a) The Tenant acknowledges that the Common Area Outgoings will be shared with the School and the Tenant must reimburse the Landlord for the Tenant's share of the Common Area Outgoings.
- (b) The parties agree and acknowledge that the Tenant's share of the Common Area Outgoings during the Term is 25%, unless otherwise agreed between the parties in writing.

9.4 Receipt for payment

The Tenant must provide to the Landlord:

- (a) copies of all notices, assessments or invoices for any rates, taxes, charges and levies specified in clause 9.1(a)(i) received by the Tenant directly from the Government Agency within 14 days of receipt; and
- (b) receipts for any payments made under clause 9 within 7 days of request by the Landlord.

9.5 Review meeting between parties

- (a) The parties must meet within 30 days of the first anniversary of the Commencement Date to discuss in good faith the following matters (and any other matters in relation to the Lease which the parties agree):
 - (i) the operating framework for the Facility (which includes the use of the Property and the Common Area);

- (ii) the Permitted Use (in particular the Tenant's provision of the Mandatory Services and long day care);
 - (iii) whether the area of the Property needs to be amended;
 - (iv) the Tenant's share of the Common Area Outgoings pursuant to clause 9.3(b); and
 - (v) maintenance, repair and capital expenditure obligations pursuant to clause 17.
- (b) Thereafter, on or about each successive anniversary of the Commencement Date, the parties must meet and discuss any amendments required to the Lease to reflect any changes to the operating framework for the Facility.
- (c) If a variation to the Lease is required due to the outcome of the meeting that occurs under clauses 9.5(a) or (b), the parties must record the variation of Lease in writing, signed by or on behalf of all parties.
- (d) For the avoidance of doubt, if the parties cannot reach an agreement to a variation of the Lease during the meeting that occurs under clauses 9.5(a) or (b), then the Lease will remain unaltered and in full force and effect.

10. Use of Property

- (a) The Tenant must use the Property, and must ensure that the Property is used to provide the Mandatory Services for the duration of the Term.
- (b) In providing the Mandatory Services, the Tenant must use best endeavours to ensure:
- (i) all Kindergarten Places funded by the Department are full before unfunded places are made available; and
 - (ii) the Tenant offers the maximum places permitted by Law.
- (c) The Tenant must not use or allow the Property to be used for any purpose other than the Permitted Use.
- (d) The Tenant acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the Landlord regarding the suitability of the Property for the conduct of the Permitted Use or for any other use, other than as expressly contained in this Lease.
- (e) The Tenant acknowledges and agrees that it must make its own enquiries as to the suitability of the Premises for the Mandatory Services and the Permitted Use.

11. Compliance with Laws

- (a) The Tenant must at its own expense in all respects observe and comply with all Approvals, Laws and Requirements relating to this Lease, the Property, the Permitted Use and any approved development which the Tenant may undertake on the Property.

- (b) The Tenant must keep in force and available for inspection all Approvals (including licences, permits and registrations) required for the carrying on of any business use or other activity conducted by the Tenant in or upon the Property, and must obtain the Landlord's prior written consent before varying any Approval, or applying for any Approval.

12. Works

- (a) The Landlord will procure the construction of the Landlord Works in accordance with the Landlord's obligations under the Building Contract and this Lease.
- (b) The Tenant must not, and must not permit any other person to, construct any works on the Property without the Landlord's prior written consent, which consent must not be unreasonably withheld.
- (c) In seeking the Landlord's consent, the Tenant must submit any plans and specifications for the proposed works to the Landlord for approval. If the Landlord initially declines to grant consent, the Tenant must re-submit revised plans and specifications for the Landlord's consideration.
- (d) The Landlord may give consent subject to the Tenant satisfying the following requirements:
 - (i) in carrying out any works, the Tenant must comply with all reasonable directions from the Landlord, including Requirements in relation to materials and contractors, sub-contractors or tradespersons to be used to effect the works;
 - (ii) the works must be completed promptly and in a proper and workmanlike manner, using all due care and skill, in accordance with the plans and specifications approved by the Landlord, the Approvals for the works, all applicable Laws and Requirements of Government Agencies, and the terms of the consent given by the Landlord;
 - (iii) the Tenant must pay on demand all Costs incurred by the Landlord in considering or inspecting the works and their supervision, including the fees of architects, engineers or other building consultants engaged by or on behalf of the Landlord for this purpose acting reasonably; and
 - (iv) the Tenant must obtain and keep current and comply with the terms of any Approvals from Government Agencies which are required for the works and must on request by the Landlord produce for inspection copies of all such Approvals;
- (e) The Tenant must effect and maintain, or ensure that any contractor under a building contract for any works effects and maintains, at a minimum, the following insurances:
 - (i) a public liability policy covering the Tenant, the contractor and all sub-contractors engaged in relation to the works for their respective rights and interests and covering their liabilities to third parties. The policy must also cover the liability of the contractor and the Tenant to each other for loss of or damage to property (other than property required to be insured under clause 12(e)(ii))

- and the death of or injury to any person other than a liability which is required to be insured under a workers' compensation policy. The public liability policy must be for an amount of \$20 million in respect of any one occurrence and note the interest of the Landlord; and
- (ii) an insurance policy in the joint names of the Tenant, the contractor and all sub-contractors engaged in relation to the works covering the works against loss or damage resulting from any cause whatsoever.
- (f) The Tenant must ensure that all contractors, sub-contractors and tradespersons undertaking the works are suitably qualified and registered with the relevant regulatory bodies and/or Government Agencies.
 - (g) The Tenant must ensure that all construction vehicles, machinery and equipment brought on to the Property are operated, parked or stored (as the case requires) in a manner which:
 - (i) is safe and workmanlike; and
 - (ii) prevents damage to the Property and the adjacent areas and does not create a hazard to property, persons, materials or equipment.
 - (h) Within 30 days of completion of the works, the Tenant must produce to the Landlord, copies of any unconditional certificates of compliance or satisfactory completion (as applicable and if such certificates are required for the relevant works) issued by the relevant Government Agency and a certificate from a consultant approved by the Landlord confirming that the works have been carried out in accordance with the plans and specifications approved by the Landlord.
 - (i) The works must be completed within the time period (if any) specified by the Landlord or such other time period as mutually agreed in writing by the parties.
 - (j) If any dispute arises in relation to this clause 12, it must be resolved in accordance with clause 28 (Disputes) of this Lease.

13. Construction Works

- (a) If the Tenant, or a contractor engaged by the Tenant, undertakes any construction works at the Property that is a 'construction project' as defined in the WHS Laws (**Construction Works**), the Landlord hereby appoints the Tenant or the contractor nominated by the Tenant (**Tenant's Contractor**) as the Principal Contractor in accordance with the WHS Laws for the relevant Construction Works on and from the date the Construction Works commence.
- (b) The Tenant hereby acknowledges and accepts its appointment as Principal Contractor, and covenants to discharge the obligations of a Principal Contractor contained in the WHS Laws and accepts all liability in respect thereof.
- (c) The Tenant hereby acknowledges that it has the management and control of the Property, to the extent necessary to discharge the duties imposed on a Principal Contractor by the WHS Laws.

- (d) The Tenant may authorise the Tenant's Contractor to have the necessary level of management or control of the Property so as to discharge its duties as Principal Contractor for the purposes of the WHS Law so long as the Tenant:
- (i) provides the Landlord with evidence to the Landlord's satisfaction that the person is able to fulfil the duties of a Principal Contractor under the WHS Law and that the person accepts the engagement;
 - (ii) acknowledges that the Landlord has not undertaken any obligation or assumed any duty of care in relation to any approval (implied or otherwise) of the Tenant's engagement of a Principal Contractor; and
 - (iii) procures that the Tenant's Contractor complies with the obligations under clause 13(e).
- (e) The Tenant or the Tenant's Contractor (where engaged as Principal Contractor in accordance with clause 13(d)) acknowledges and agrees that the Tenant or the Tenant's Contractor (as the case may be):
- (i) must ensure the health safety and welfare of all other persons performing the Construction Works;
 - (ii) is the person responsible for the Construction Works for the purposes of the WHS Law at all times until the Construction Works are completed;
 - (iii) must ensure that in carrying out the Construction Works or causing the Construction Work to be carried out, it complies with its obligations under the WHS Law, including, in respect of the Construction Works, as Principal Contractor;
 - (iv) must provide to the Landlord all notices and correspondence concerning work health and safety (including, without limitation, in respect of any notifiable incidents) in connection with the Construction Works promptly after the dispatch and/or receipt of any such notice or correspondence;
 - (v) must comply with any direction on safety issued by a relevant authority;
 - (vi) has control and management of the area of the Construction Works; and
 - (vii) is responsible for all costs associated with performing the role of Principal Contractor.
- (f) The Tenant must ensure that the Tenant's Contractor complies with its obligations as Principal Contractor contained in the WHS Laws.
- (g) If the Tenant's Contractor ceases to be Principal Contractor for any reason, the Tenant acknowledges and agrees that it will discharge the duties of Principal Contractor.

14. Further Term

- (a) If the Tenant wishes to renew this Lease at the expiration of the Term, the Tenant must notify the Landlord of its intentions no later than twelve (12) months prior to the end of the Term (**Renewal Notice**).
- (b) The Landlord must, upon receiving a Renewal Notice in accordance with clause 14(a), renew this Lease for a Further Term if:
 - (i) there is no unremedied breach of this Lease by the Tenant of which the Landlord has given the Tenant written notice; and
 - (ii) the Tenant has not persistently committed breaches of this Lease of which the Landlord has given the Tenant written notice.
- (c) The Further Term commences on the date after the Term would have ended had the Lease not being renewed and unless otherwise agreed:
 - (i) the starting Rent will remain the same as the Rent applicable on the Commencement Date; and
 - (ii) contain the same terms and conditions as this Lease but with the number of options to renew for further terms reduced by one, with no option for a further term where the last option for the Further Term has been exercised

15. Tenant's Obligations

The Tenant must:

- (a) not use the Property for any illegal purpose;
- (b) ensure the Property is kept secure, clean and free from debris and rubbish;
- (c) not do anything in or near the Property or the Land which is noxious, dangerous, offensive or a nuisance (in the Landlord's reasonable opinion) and not cause any injury or nuisance to neighbours;
- (d) not keep or use chemicals, inflammable liquids, acids or other hazardous things on the Property except for the Permitted Use provided that the Tenant complies with all Laws, Requirements and Approvals, or create fire hazards;
- (e) not overload the floor of the Property;
- (f) comply with all relevant policies or guidelines of any relevant Government Agency which deal with the safety or health of persons on the Property or otherwise under its control;
- (g) not erect, display, affix or exhibit on or at the Property any signs except for signs that comply with all Laws and then only after obtaining the Landlord's approval and necessary planning and building permits from the relevant Government Agency;
- (h) comply with all Laws and insurance requirements relating to sprinkler or fire alarms in respect of the Property and observe fire precautions;

- (i) not spread any damaging substances on any of the surface of the Property;
or
- (j) not permit in or upon the Property, the carrying out of any noxious, noisome, hazardous or offensive act, trade, business or occupation.

16. Common Area

- (a) The Tenant may use the Tenant's Common Area to access the Premises and for any other purpose for which it was intended, in common with the Landlord, the Landlord's Associates, the School and any other people the Landlord duly authorises.
- (b) The Tenant may use the Common Area (which is not within the Tenant's Common Area) subject to the School's prior consent and the Tenant's use of the Common Area under this sub-clause (b) is subject to the direction of the Landlord, the Landlord's Associates and/or the School.

17. Maintenance, Repairs and Capital Expenditure

- (a) The Tenant must:
 - (i) keep the Property in good order and repair;
 - (ii) maintain the exterior of the Property, including promptly attending to any necessary repairs, maintenance and/or capital replacements to:
 - (A) the structure of, or fixtures in, the Property;
 - (B) plant and equipment at the Property; or
 - (C) appliances or fittings relating to the provision of gas, electricity, water, drainage or other services to the Property;
 - (iii) keep the Property in the same condition as it was in at the date the Tenant first entered occupation of the Property (fair wear and tear excepted) including repairing or replacing anything in the Property (including all furnishings and floor coverings) which are damaged, worn or destroyed with items of at least the same quality;
 - (iv) paint and where appropriate paper, any parts of the Property previously painted or papered whenever reasonably required by the Landlord;
 - (v) maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Property;
 - (vi) treat in a proper and professional manner (including polishing or varnishing as appropriate) all interior surfaces of the Property (including wood, tile and metal surfaces);
 - (vii) repair all defective lights, fluorescent tubes, windows, doors and locks in or exclusively servicing the Property; and

- (viii) enter into maintenance and service contracts for regular maintenance and servicing of the Property (including plant and equipment),

at the Tenant's cost, whenever required.
- (b) Except as expressly set out in this Lease, the Tenant acknowledges that the Landlord has no responsibility for any repairs or maintenance, whether structural or otherwise, to the Property or the Infrastructure and Services, whatsoever.
- (c) The parties acknowledge that:
 - (i) the Landlord is responsible for all repairs, maintenance and capital replacement to (including the structure of, or fixtures in) the Common Area;
 - (ii) the Landlord is responsible for all repairs, maintenance, upgrades and capital replacement to all parts of the buildings, improvements, Infrastructure and Services at or on or servicing the Land which do not directly form part of the Property; and
 - (iii) the Landlord is responsible for any repairs and capital replacement required as a result of the latent conditions of the Land and any construction-related faults or any building, or arising in relation to the Property as a result of an issue with another part of the Land or the buildings on the Land which do not form part of the Property, including where any water leak or other issue arises in some other part of the building and then goes on to affect the Property.
- (d) Before carrying out any structural or capital repairs or maintenance to the Property, the Tenant must obtain the written approval of the Landlord (not to be unreasonably withheld) and all relevant Government Agencies, but the Tenant will not be required to obtain written or any other form of approval from the Landlord for maintenance or repairs which are not structural or capital in nature.

18. Insurance, Release and Indemnity

- (a) The parties acknowledge that:
 - (i) the Landlord is insured by the Victorian Managed Insurance Authority (**VMIA**) and the Tenant is a council within the meaning of the *Local Government Act 1989* and the *Local Government Act 2020* which is insured by Liability Mutual Insurance (**LMI**);
 - (ii) it is unnecessary to include a release or indemnity provision. The insurance of both the Landlord and the Tenant is adequate to cover foreseeable losses arising out of each of their own potential liabilities. The parties agree that any insurance or indemnity issue arising under this Lease will be determined having regard to the common law principles of liability; and
 - (iii) if the Landlord or the Tenant ceases to be a client of the VMIA or LMI (as the case may be), clauses 1.2(s), 18(b), 18(e)(i), (ii) and (iv), 35(b) and 35(c) will apply.

- (b) The Tenant must:
- (i) effect and maintain the insurance policies as set out in Item 11 at all times during the Term; and
 - (ii) on request by the Landlord, promptly produce for inspection, copies of all such insurance policies and certificates of currency for those policies.
- (c) The Tenant must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the Landlord.
- (d) The Tenant occupies and uses the Property at its own risk and releases the Landlord and its Associates from all Claims and demands of any kind for or resulting from or in connection with any accident, damage, Loss, injury or death occurring in or on the Property or economic and/or financial loss suffered by any person, except to any extent that the damage, injury, death or Loss giving rise to the Claim was directly caused or contributed to by the Landlord's breach of this Lease or the negligent or unlawful act or omission of the Landlord.
- (e) The Tenant indemnifies the Landlord and its Associates from and against all Claims, demands of any kind or economic and/or financial loss that the Landlord or its Associates suffer or incur in respect of or arising from:
- (i) any negligent or unlawful act or omission of the Tenant or its Associates;
 - (ii) any Loss, injury, illness or damage to persons (including death) including any member of the public or any third party, to the extent that it is caused by the act or omission, negligence or default of the Tenant or its Associates;
 - (iii) any Loss of or damage to property of any kind, to the extent that it is caused by the act or omission, negligence or default of the Tenant or its Associates; or
 - (iv) the Tenant's breach of this Lease,
- except to the extent that a Claim or liability results from:
- (v) any fraudulent or unlawful act or omission of the Landlord or its Associates; or
 - (vi) any breach of this Lease by the Landlord or its Associates.
- (f) Each indemnity in clause 18(e) is independent from the Tenant's other obligations and continues during the Term and after it expires or is terminated. The Landlord may enforce an indemnity before incurring expense.
- (g) If the Tenant does not meet any of its obligations under this clause 18, the Landlord may suspend this Lease until such obligations have been met, without being liable to pay any compensation to the Tenant.

19. Assignment and Subletting

- (a) The Tenant must not dispose of, deal with or assign its interest, rights or powers as Tenant under this Lease without obtaining the Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed, and if granted may be given subject to such reasonable conditions as the Landlord sees fit to impose.
- (b) The Tenant must pay all costs incurred by the Landlord in relation to any disposal, dealing or assignment of its interest, rights or powers as Tenant under this clause 19.
- (c) The Tenant must:
 - (i) when seeking expressions of interest for a proposed sub lease or licence, provide the Landlord with all documentation for approval prior to publication;
 - (ii) consult with the Landlord in relation to any potential subtenant or licensee;
 - (iii) involve the Landlord in any decision to select a subtenant or licensee; and
 - (iv) provide the Landlord with any details regarding a proposed subtenant upon request.
- (d) A proposed sub-lease or licence arrangement for any part of the Property must comply with the following parameters:
 - (i) the sub-lease or licence (as applicable) must include a provision prohibiting the sub-tenant or licensee from alienating their interest in the Property to a third party;
 - (ii) (if the sub-lease or licence relates to the kindergarten area forming part of the Property) the sub-lease or licence must include a provision requiring the sub-tenant or licensee to ensure that the relevant part of the Property is used to provide the Mandatory Services for the duration of the sub-lease or licence;
 - (iii) the use permitted under the sub-lease or licence must be consistent with the Permitted Use;
 - (iv) the duration of any sub-lease must be no longer than that of the Term less one day;
 - (v) the duration of any licence must be no longer than that of the Term;
 - (vi) the sub-lease or licence must include a provision confirming that if this Lease is terminated for any reason, the sub-lease or licence (as applicable) terminates automatically without the need for notice;
 - (vii) the terms and conditions of any sub-lease or licence must be consistent with the rights and obligations of the Tenant under the Lease;

- (viii) the Tenant must not purport to grant any sub-tenant or licensee rights in respect of the Property greater than those enjoyed by the Tenant;
- (ix) the sub-lease or licence must contain a provision stipulating that each release and indemnity in favour of the Tenant (in its capacity as sub-landlord or licensor as the case maybe) is to be read as a separate release and indemnity in favour of the Landlord (in its capacity as head-landlord); and
- (x) nothing in any sub-lease or licence will derogate from the Tenant's primary obligations to the Landlord as Tenant under this Lease.

Within 14 days of entering into the approved sub-lease or licence, the Tenant must give a copy of the fully executed sub-lease or licence (as the case may be) to the Landlord.

20. Destruction of the Property

- (a) If the Property is damaged or destroyed so as to render it or part of it unfit for use, the Tenant may within 3 months of the date of the event causing the damage or destruction rendering the Property unfit for use (**Notification Period**) notify the Landlord in writing that it intends to reinstate the Property at the Tenant's cost, or may elect to terminate this Lease.
- (b) If the Tenant does not give the Landlord a notice during the Notification Period that it intends to reinstate the Property at the Tenant's cost, the Landlord may, any time after the expiry of the Notification Period terminate this Lease.
- (c) If the Tenant notifies the Landlord under clause 20(a) that it wishes to reinstate the Property, the Tenant must:
 - (i) reinstate the Property to the same standard, quality and size as the Property prior to the damage or destruction;
 - (ii) commence reinstatement works within 12 months of the event causing the damage or destruction;
 - (iii) complete the reinstatement works within 24 months of the event causing the damage or destruction; and
 - (iv) comply with the requirements set out in clause 12 in relation to Tenant's Works.
- (d) The Landlord is under no obligation to reinstate the Property.
- (e) The Tenant must:
 - (i) use the proceeds of all insurance policies in respect of the reinstatement of the Property; or
 - (ii) pay the proceeds of all insurance policies in respect of the Property (excluding any insurance proceeds for the Tenant's property) to the Landlord if the Tenant elects not to reinstate the Property.

21. Termination by Landlord

- (a) The Landlord may terminate this Lease by notice in writing to the Tenant if the Landlord requires the whole or part of the Property for:
 - (i) the construction or redevelopment of school buildings;
 - (ii) the disposal of the Land or the part of it that includes the Property;
 - (iii) closure of the school located on the Land; or
 - (iv) any other reason.
- (b) If the Landlord elects to terminate this Lease pursuant to this clause 21, the Landlord must provide 2 years' notice in writing to the Tenant.

22. Not used

23. Right of Re-Entry

- (a) The parties acknowledge that if the Tenant:
 - (i) does not use the Property for the Mandatory Services;
 - (ii) disposes or assigns of any of its rights or obligations under this Lease other than in accordance with clause 19;
 - (iii) an approval or licence required under the National Law for the Mandatory Services is suspended, cancelled, terminated or expired, or the Tenant otherwise breaches this Lease and does not remedy the breach within 30 days of receipt of written notice from the Landlord;
 - (iv) vacates the Property; or
 - (v) breaches, or fails to comply with the Special Conditions,the Tenant has committed a material breach for the purposes of this Lease **(Material Breach)**.
- (b) Where the Tenant has committed a Material Breach and:
 - (i) the Material Breach is capable of remedy and the Tenant does not remedy that Material Breach within a reasonable time of receiving a notice from the Landlord requiring it to do so; or
 - (ii) the Material Breach is not capable of remedy,

without limiting any other right of action or remedy of the Landlord in respect of any prior breach of any of the Tenant's covenants, and in addition to any right or power for re-entry implied in this Lease, the Landlord or any person on its behalf may at any time re-enter the Property or any part of the Property in the name of the whole and determine this Lease but without relieving the Tenant from liability for any breach or non-observance of any of its covenants. The Landlord's right of re-entry is subject to the provisions of any statute from time to time in force, to the extent that such statute binds the Landlord.

- (c) If this Lease is terminated by the Landlord, the Tenant agrees to compensate the Landlord for any Loss or damage the Landlord suffers arising in connection with the Material Breach of this Lease including the loss of the benefit of the Tenant performing its obligations under this Lease up to the expiry of the Term.

24. Removal of Tenant's Property on Re-entry

- (a) The Landlord may on re-entry remove from the Property any property of the Tenant including any fixtures, fittings or chattels which are not the Landlord's property and place them outside the Property or store them at the Tenant's cost and sole risk.
- (b) The Landlord will not be liable for any Loss or damage caused to the Tenant or any third party in connection with the action described in clause 24(a) and the Tenant indemnifies and agrees to keep indemnified the Landlord in respect of any actions, proceedings and claims made against the Landlord by third parties in this respect.
- (c) If the Landlord does not remove any of the Tenant's property, upon re-entry such items will become the absolute property of the Landlord.

25. Essential Terms

Clauses 8, 9, 9.2(c), 11, 12, 14(a), 16, 18 and 19 and the Special Conditions 1 and 2 are essential terms of this Lease.

26. Re-Entry by Landlord not to Constitute Forfeiture

If the Tenant vacates the Property during the Term (whether or not the Tenant ceases to pay the Rent) then, in the absence of:

- (a) a written notice by the Landlord accepting a surrender of the Tenant's interest under this Lease; or
- (b) a formal notice of forfeiture or re-entry being served on the Tenant by the Landlord,

neither acceptance of the keys nor entry into the Property by the Landlord or by any person on the Landlord's behalf:

- (a) for the purpose of inspection;
- (b) for the purpose of showing the Property to prospective tenants or licensees; or
- (c) the advertising of the Property for reletting,

will constitute a re-entry or forfeiture or waiver of the Landlord's rights to recover in full all Rent payable by the Tenant under this Lease, and this Lease is deemed to continue in full force and effect until the date that a new licensee or tenant actually commences to occupy the Property or the date that the Term ends, whichever occurs first, and any entry by the Landlord until that date is deemed to be an entry with the permission of the Tenant. If a new licensee or tenant occupies the Property during the Term, the Tenant must pay the Landlord the difference (if any) between the Rent and the licence fee or rent paid by the new licensee or tenant until the end of the Term.

27. Landlord's Right to Remedy Tenant's Default

- (a) If the Tenant fails to pay any money or do anything which under this Lease it is obliged to do after the Landlord has given the Tenant a notice specifying the particulars of the failure to comply with this Lease and the time period available to remedy that failure (which will be such period as is reasonable in the circumstances), the Landlord may, but need not, pay such money or do such thing and:
 - (i) for the purpose of doing any such thing, the Landlord may enter and remain on the Property; and
 - (ii) the Landlord may recover on demand from the Tenant the amount paid and the resultant Costs incurred by the Landlord or any other person, together with all incidental expenses.
- (b) The Landlord's exercise of any right under clause 27 is without prejudice to any other right or remedy which it has or may have for any non-payment or non-performance by the Tenant.
- (c) If the Lease terminates under this clause 27, it is without prejudice to any right or liability of either party under any cause of action accruing before the termination.

28. Disputes

- (a) A party claiming that a dispute or disagreement has arisen under this Lease must give written notice to the other party, specifying the nature of the dispute (**Dispute Notice**).
- (b) A Dispute Notice may be withdrawn at any time by the party that gave the Dispute Notice.
- (c) Within 30 days of the date of issue of the Dispute Notice, the parties must enter into good faith discussions in an attempt to resolve the issues between them, involving the Authorised Officers specified for each party at Item 12.
- (d) Alternatively, if the parties wish to do so, discussions intended to resolve matters specified in a Dispute Notice may be initiated between Executive level employees of each party.
- (e) If the parties have not resolved the dispute within 60 days of the date that the Dispute Notice was issued, then the dispute must be resolved by an expert determination in accordance with the below clauses 28(e)(i) to 28(e)(iv).
 - (i) If the Tenant and the Landlord cannot agree on an expert within 14 days of the date which 28(e) is enlivened, either party may ask the Chair (or acting Chair) of the Victorian Chapter of the Resolution Institute to nominate an expert who is reasonably expert in the matters the subject of the dispute.
 - (ii) A determination made by the expert will be final and binding on the parties.

- (iii) The parties agree that they may be represented by a duly qualified legal practitioner in connection with the dispute determination.
- (iv) The parties must share the expert's costs and any other administrative costs associated with the expert determination equally.
- (f) Notwithstanding the existence of a dispute, the parties to the dispute must continue to perform their obligations under this Lease.

29. Interest

- (a) The Tenant must pay interest on any money payable by it under this Lease for the period from the due date for payment until the date of actual payment on demand or at times notified by the Landlord, calculated on daily balances.
- (b) The rate of interest to be applied to each daily balance is 2% per annum above the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983*.

30. Tenant's Obligations on the Expiry or End of Lease

- (a) At the expiration or the earlier determination of this Lease, the Tenant must surrender and yield up the Property (and all keys, including card-keys) to the Landlord:
 - (i) clean and free from rubbish; and
 - (ii) in a condition consistent with the Tenant's performance and observance of the terms of this Lease.
- (b) At the expiration or earlier determination of this Lease, unless the:
 - (i) Tenant has been granted a new licence or lease of the Property; or
 - (ii) Landlord otherwise directs in writing,the Tenant at its Cost must remove all Tenant's Property in a proper and workmanlike manner in compliance with the requirements of all Government Agencies and to the satisfaction of the Landlord.
- (c) Until the Tenant has removed the Tenant's Property where required under this Lease, it must continue to pay the Lease Money.
- (d) The Tenant must not cause or contribute to any damage to the Property or the Land while removing any of the Tenant's Property. If the Tenant does so, it must reinstate the damaged areas at the Tenant's cost and return the Property and the Land in a condition that is acceptable to the Landlord (acting reasonably) and all Government Agencies.
- (e) If the Tenant fails to comply with clause 30(d) within a reasonable time, the Landlord may make good that damage at the cost of and as agent for the Tenant. The Landlord may recover the actual Cost of doing so from the Tenant, as a liquidated debt, payable on demand.

- (f) If the Tenant fails to remove the Tenant's Property in accordance with this clause 30(a), or if the Landlord re-enters the Property (without prejudice to any other rights it may have), the Landlord may elect to:
- (i) remove the Tenant's Property;
 - (ii) treat the Tenant's Property as if the Tenant had abandoned its interest in them and they have become the property of the Landlord, and deal with them in such manner as the Landlord thinks fit without being liable in any way to account to the Tenant for them;
 - (iii) without being guilty of any manner of trespass, cause any of the Tenant's Property to be removed and stored in such manner as is reasonable at the risk and at the cost of the Tenant; and/or
 - (iv) sell them as the attorney of the Tenant and appropriate the proceeds of sale in payment of any Rent or other money owing by the Tenant to the Landlord and pay any residue without interest to the Tenant.
- (g) The Tenant must:
- (i) indemnify and keep indemnified the Landlord in respect of the Cost of the removal and storage of the Tenant's Property, and also in respect of all Claims which the Landlord may suffer or incur at the suit of any person (other than the Tenant) claiming an interest in the Property or the Tenant's Property by reason of the Landlord acting in any manner permitted by this clause 30; and
 - (ii) pay to the Landlord as a liquidated debt payable on demand any Costs incurred by the Landlord in exercising its rights pursuant to this clause 30, including any excess of Costs over moneys received in disposal of the Tenant's Property pursuant to the Landlord's rights contained in this clause 30(g).

31. Holding Over

If the Tenant continues to occupy the Property after the end of the Term with the Landlord's consent, except under a lease arising from the valid exercise of an option to renew, it does so as a monthly Tenant:

- (a) under the terms and conditions of this Lease with any changes necessary to convert this Lease into a monthly lease;
- (b) at a rent equal to one month's proportion of the Rent payable under this Lease immediately before the end of the Term, and payable monthly in advance, if demanded;;
- (c) either party may terminate the monthly tenancy by giving 1 months' notice to the other party expiring on any date; and
- (d) if the Tenant defaults in the performance of its obligations under the monthly tenancy, the Landlord may terminate the monthly tenancy by giving the Tenant 24 hours' notice

32. Confidentiality

32.1 General

Except as expressly provided in clause 32.3, the parties must treat as confidential the terms and conditions of this Lease and all other information which comes into their possession as a result of or in the performance of this Lease.

32.2 Tenant's obligation

The Tenant:

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

32.3 Permitted disclosure

Clause 32.1 and clause 32.2 do not apply where the:

- (a) disclosure is required in order for the relevant party to perform its obligations under this Lease;
- (b) disclosure is required by Law or any government policy, portfolio responsibilities or constitutional duty for the purposes of informing the relevant Minister, the Crown, the Victorian Auditor-General or Parliament;
- (c) information is already in the public domain (unless it is in the public domain because of a breach of confidence);
- (d) disclosure is required by the *Local Government Act 1989* and/or the *Local Government Act 2020*, or any policy adopted under either of those Acts, or any other Law relating to the Tenant;
- (e) disclosure is made by the Tenant for the purpose of communicating to the local community about the nature, size and use of the facilities that the Tenant will be entitled to access once construction of the Facility is complete and when that access will occur; or
- (f) disclosure is otherwise consented to by all the parties.
- (g) The Tenant acknowledges that so long as the Landlord is the Minister, this Lease may be published in accordance with the State's policy "Probity and Openness in Victorian Government Contracts", in any medium, including through the internet, except to the extent that the Landlord is satisfied, using as a guide the criteria specified in s 34 of the *Freedom of Information Act 1982* (Cth), that this Lease should be exempt from publication.
- (h) For so long as the Landlord is the Minister, the Landlord may for benchmarking purposes, disclose to any Government Agency (whether of Victoria or any other State or Territory of Australia) the terms and conditions of this Lease without identifying the Rent and Outgoings, provided that prior to making any such disclosure, the Landlord notifies the Tenant of the proposed recipient and the extent of the proposed disclosure.

33. Notices

- (a) A Notice must:
 - (i) be in writing;
 - (ii) signed by or on behalf of the party giving it; and
 - (iii) hand delivered to the address of the addressee or sent by post (airmail if posted to or from a place outside Australia) to the address of the addressee, which address of each party are set out in Item 12 or, if the addressee notifies another address, then to that address.
- (b) A Notice takes effect from the time it is received, unless a later time is specified in it. A Notice will be deemed to have been received by the addressee:
 - (i) in the case of hand delivery, upon delivery at the address of the addressee; and
 - (ii) in the case of post, on the third (seventh if posted to or from a place outside Australia) Business Day after posting.

34. Special Conditions

Any special condition set out in Item 13:

- (a) binds the parties; and
- (b) overrides any other provision of this Lease, to the extent of any inconsistency.

35. Environmental Matters

- (a) The Tenant acknowledges that:
 - (i) the Tenant will occupy the Property in its present condition and has entered into this Lease on that basis; and
 - (ii) the Landlord is not obliged to remove, empty, clean or take any action in relation to any underground storage tank or tanks or associated pipes, valves or appliances or any Contamination in, on, or under the Property.
- (b) The Tenant releases and discharges the Landlord, its successors, assigns, and the Landlord's Associates from all Claims, arising after the date of occupation under this Lease which the Tenant has, may have, or which may accrue in the future or which, but for the execution of this Lease, the Tenant would or might have had against the Landlord as a result of the presence of any Contamination in, on, under or over or emanating from the Property.
- (c) As from the date of occupation, the Tenant indemnifies and holds harmless the Landlord and the Landlord's successors, assigns and the Landlord's Associates against all Claims, resulting or arising after the date of occupation, from the presence of any Contaminant in, on, under or over or emanating from the Property (including, without limitation, any Costs or

expenses incurred in relation to any notice, direction or order issued or made under the Environmental Laws or any other Act or Regulation in force in Victoria relating to the protection of the environment).

- (d) The Tenant must not spill or deposit, or carry out any activities on the Property or Land which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Property, drainage or surrounding environment.
- (e) If any Contamination is found in or near the Premises, the Tenant must immediately:
 - (i) notify the Landlord and any appropriate Government Agency of the Contamination; and
 - (ii) remediate any Contamination caused or contributed to or exacerbated by the Tenant or the Tenant's Associates on the Property or the Land immediately in accordance with the Environmental Laws and to the standard to continue to use the Property for a sensitive use.
- (f) Clauses 35(b) and 35(c) do not apply to any Claims by any person arising from their exposure before the Tenant's date of occupation of the Property to any Contaminant on the Property.

36. Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right operate to preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

37. Entire Agreement

This Lease constitutes the entire agreement of the Landlord and Tenant on the subject matter and all representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Lease and have no effect.

38. Negation of Warranties

- (a) The Tenant acknowledges that it has entered into this Lease solely on the basis of the terms and conditions in this Lease and that no other warranties, representations or promises have been made by the Landlord or its agents.
- (b) Without limiting clause 38(a) the Tenant acknowledges that:
 - (i) no warranties have been given by the Landlord that the Property is suitable for the Permitted Use; and
 - (ii) subject to the terms and conditions of this Lease, the Tenant must do all things necessary to enable the Property to be used for the Permitted Use.

39. Severability

Any provision of this Lease which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Lease or affecting the validity or enforceability of that provision in any other jurisdiction.

40. Counterparts and Electronic Execution

- (a) This Lease may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.
- (b) Each party consents to the signing of this Lease by electronic means. The parties agree to be legally bound by this Lease signed in this way.

41. Further Assurance

Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and give full effect to this Lease and the rights and obligations of the parties under it.

42. Governing Law

This Lease is governed by the Law of the State of Victoria.

43. Submission to Jurisdiction

The Landlord and Tenant submit to the non-exclusive jurisdiction of the courts of the Law governing this Lease and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Lease.

44. Service of Process

Where the party being served is the Tenant, service must take place at the Tenant's registered office and:

- (a) the Landlord appoints the person nominated in Item 12 to receive service of process in connection with any proceedings, and any process served on that person is taken to be served on the Landlord; and
- (b) the Tenant appoints the person nominated in Item 12, to receive service of process in connection with any proceedings, and any process served on that person is taken to be served on the Tenant.

45. Variations

No addition to or variation of this Lease will be of any force or effect unless in writing and signed by or on behalf of all parties.

46. GST

- (a) In this clause, expressions set out in italics have the same meaning as those expressions in the GST Act.

- (b) An amount payable under this Lease by a party to the other party, in respect of a *supply* which is a *taxable supply*, represents the GST exclusive value of the *supply*.
- (c) The party who receives a *taxable supply* under this Lease from the Supplier must, upon receipt of a *tax invoice* from the Supplier, pay GST to the Supplier in addition to the GST exclusive value of the *supply*.
- (d) Any penalty or interest payable as a result of late payment of any GST payable under this Lease is payable by the party who causes the late payment.
- (e) If the Supplier is entitled to an *input tax credit* for any GST recoverable from the other party under this Lease, the amount of GST payable by the other party is to be reduced by the amount of the *input tax credit* which the Supplier has received or is entitled to receive.

47. Miscellaneous

- (a) The rights, powers and remedies set out in this Lease are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Lease.
- (b) Each indemnity in this Lease is a continuing obligation, separate and independent from the other obligations of the Tenant, and survives expiry or termination of this Lease.
- (c) Unless this Lease provides otherwise, the Landlord need not make demand for any amount payable by the Tenant under this Lease.
- (d) The expiry or termination of this Lease does not affect:
 - (i) the Landlord's rights for a breach of this Lease by the Tenant before the expiry or termination; or
 - (ii) the Tenant's obligation to make a payment under this Lease for periods before the expiry or termination.
- (e) This Lease does not constitute a partnership or a joint venture between the parties nor does it constitute one party the agent of the other party. This Lease creates only the relationship of Landlord and Tenant between the parties.

Executed as a deed

Signed sealed and delivered)
by....., Senior Manager)
Property Unit, Victorian School Building)
Authority, Department of Education and)
Training, this day of)
2020, for and on behalf of James Merlino,)
MP, in his capacity as **Minister for**)
Education:)

.....
Signature

SIGNED for and on behalf of the **GREATER**)
SHEPPARTON CITY COUNCIL)

.....
CHIEF EXECUTIVE OFFICER
Peter Harriott

.....
Date

Schedule 1 Lease Details

Item 1	Landlord's Name	The Minister for Education
	Address	2 Treasury Place, East Melbourne, Vic 3002
Item 2	Tenant's Name	Greater Shepparton City Council ABN 59 835 329 843
	Address	90 Welsford Street, Shepparton, Victoria, 3630
Item 3	Property - clause 1.1	That part of the Land and the improvements erected on the Land delineated on the Plan in red and situated at 16-18 O'Brien Street, Mooroopna VIC 3629
Item 4	Land - clause 1.1	The land delineated in Certificate of Title volume 9558 folio 219
Item 5	Commencement Date - clause 1.1	The date of practical completion for the Landlord Works
Item 6	Term - clause 1.1	20 years
Item 7	Further Term - clause 1.1	1 further term of 10 years
Item 8	Rent - clauses 1.1 and 7	\$1 per annum plus GST, on the Commencement Date and each successive anniversary, if demanded
Item 9	Review Date	Not Applicable
Item 10	Permitted Use - clauses 1.1 and 9.2(c)	<p>The Permitted Use is for:</p> <ul style="list-style-type: none"> (a) the operation of a Children's Service in accordance with the requirements of the CS Act and/or the operation of an Education and Care Service in accordance with the requirements of the National Law; (b) the provision of maternal and child health services that would normally be provided in Victoria at a facility similar to the Facility and which by Law are capable of being provided at the Facility; (c) the provision of long day care services that would normally be provided in Victoria at a facility similar to the Facility and which by Law are capable of being provided at the Facility; (d) the provision of complementary family and community based services and programs or preschool activity programs relating to children that would normally be provided in Victoria at a facility similar to the Facility and which by Law are capable of being provided at the Facility; (e) if applicable at any time during the Term, the

provision of occasional care services that would normally be provided in Victoria at a facility similar to the Facility and which by Law are capable of being provided at the Facility; in relation to the car parking in respect of the Facility, the provision of designated parking areas for the vehicles of staff and users of the Facility; and

- (f) in relation to the Common Area, use by the users of the Facility and enter to and egress from the various parts of the Facility, in common with other persons authorised by the Landlord.

PROVIDED ALWAYS that such use is for a purpose specified in the Ministerial Determination and is permitted by the *Education and Training Reform Act 2006*.

Item 11 Insurance - clauses 1.1 and 18

Subject to clause 18, the Tenant will take out and maintain the following policies of insurance:

- (a) Public liability insurance which provides the Tenant including its employees (while acting in the course of their employment) with at least \$20,000,000 cover per event against any liability resulting from death or personal injury or the destruction of or damage to property occurring in or on the Property or arising out of or in relation to the use of the Property;
- (b) Insurance which provides the Tenant with cover for the reinstatement or replacement value of the plant, equipment or property belonging to or used by the Tenant which is housed, stored, kept or used in or on the Property, as a result of destruction or damage;
- (c) Workers' compensation insurance or similar insurance as required by State or Federal Law, including in respect of any volunteer workers;
- (d) Insurance against any other risks the Landlord reasonably requires from time to time; and
- (e) Any other insurance required by Law.

Item 12 Addresses for service - clause 33

Landlord

Authorised Officer:

Senior Manager, Property Unit
Victorian School Building Authority

Street Address: Level 2, 33 St Andrews Place, East Melbourne VIC 3002

Postal Address: GPO Box 4367, Melbourne, VIC 3001

Tenant

Authorised Officer:

Senior Property Officer

Street Address: 90 Welsford Street, Shepparton, Victoria, 3630

Postal Address: 90 Welsford Street, Shepparton, Victoria, 3630

Item 13 Special Conditions - clause 34

1. Children Services Licences and Education and Care Services Approvals

- (a) The Tenant must (or must ensure that any operator it appoints must), at all times during the Term, hold all licences required under the CS Act in relation to the provision of Children's Services (**Children Services Licences**) and in relation to the provision of Education and Care Services (**Education and Care Service Approvals**). The Tenant must provide evidence that it (or any operator it appoints) holds the Children Services Licences and/or the Education Care Service Approvals and any other relevant licences under this clause when asked to do so by the Landlord.
- (b) The Tenant must, during the Term, comply with all requirements of the State concerning the operation of a Children's Service and/or an Education and Care Service The Tenant must not (or must ensure that any operator it appoints must not) provide Children's Services and/or Education and Care Services for more than the maximum number of children permitted under the Children Services Licences and/or the Education and Care Service Approvals.
- (c) The Tenant must (or must ensure that any operator it appoints must), during the Term, be an approved child care provider with the requisite expertise, skills and experience regarding the operation of a Children's Service and/or an Education and Care Service.
- (d) During the Term, the Tenant must (or must ensure that any operator it appoints must)

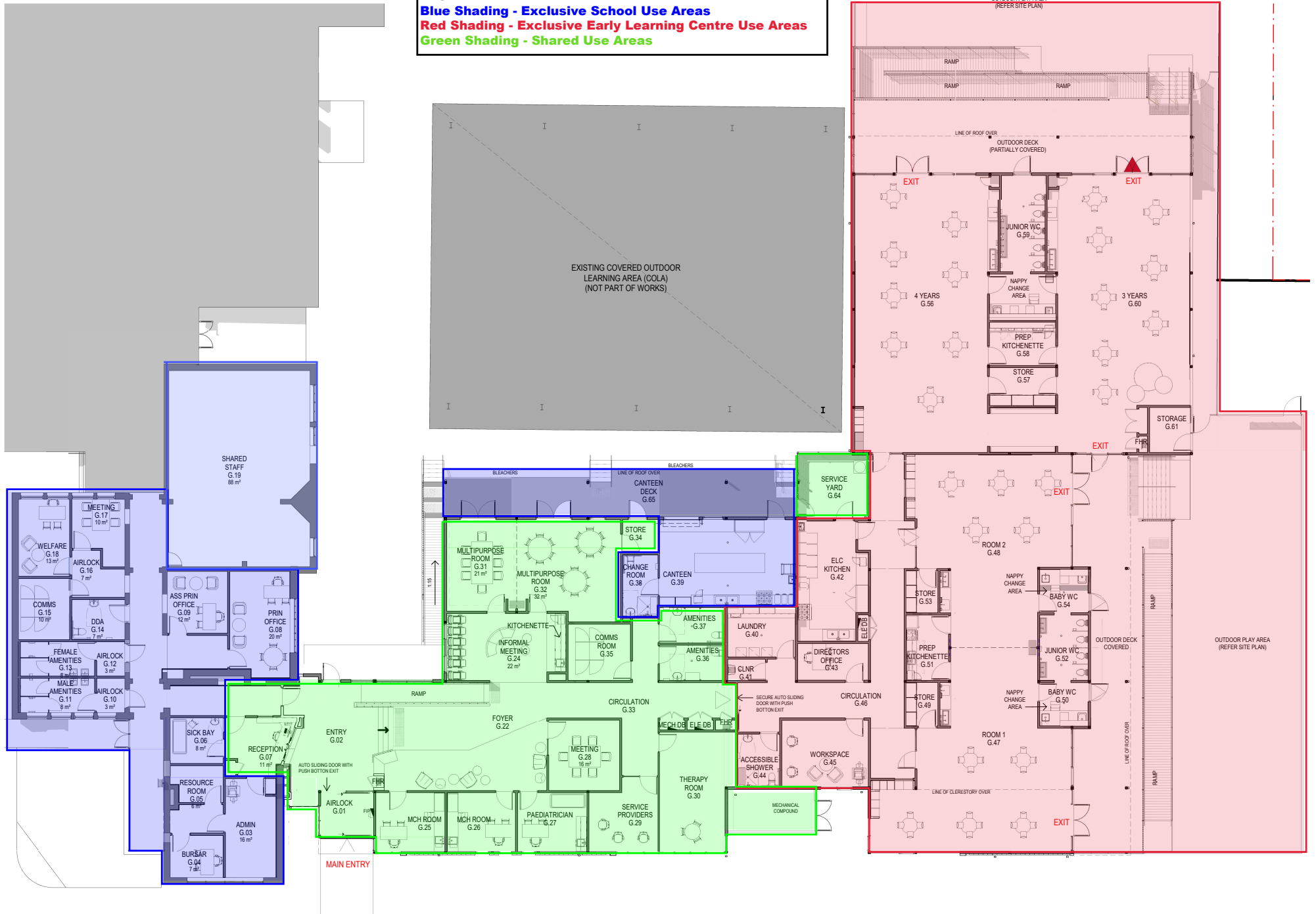
comply in all respects with the CS Act and /or the National Law and any other legislation, regulations or guidelines, current and prospective, concerning the provision of Children's Services and/or Education and Care Services.

2. Children's Safety

- (a) If the Landlord, acting reasonably, considers that there has been or there is a real risk of breach of the Child Safe Standards, or any other Law or Department policy or guideline resulting in the safety, protection, health or wellbeing of a child being at risk, the Landlord may direct the immediate removal and exclusion of such person creating the risk from the Property.
- (b) The Tenant must provide all required assistance to enable the immediate removal and exclusion contemplated by clause 2(a).

Attachment 1 Plan – Property

LEGEND
Blue Shading - Exclusive School Use Areas
Red Shading - Exclusive Early Learning Centre Use Areas
Green Shading - Shared Use Areas



Attachment 2 – List of FF&E

Appliances Schedule - Mooroopna Integrated Early Learning Centre				
Appliance	Description	Quantity	Location	Acquiring Party
Oven and Stove	Bosch Series 6 Freestanding dual fuel	1	ELC Kitchen	DET
Steam Oven	Rational iCombi Pro	1	ELC Kitchen	Council
Dishwasher	Washtech M2 Professional	1	ELC Kitchen	Council
Refrigerator	TCE	1	ELC Kitchen	DET
Freezer	In Hospitality Upright Freezer	1	ELC Kitchen	DET
Microwave	Westinghouse 40L	3	ELC Kitchen & Prep Kitchenettes	DET
Washer/Dryer	Speed Queen - Stacked	1	Laundry	Council
Oven	Bosch Electric Built in	2	1 per Prep Kitchenette	DET
Induction Cooktop	Bosch 60cm Series 6	2	1 per Prep Kitchenette	DET
Bar Fridge	Westinghouse 138L	1	Prep Kitchenette	DET
Refrigerator	Westinghouse	1	Prep Kitchenette	DET