School Council Sponsorship Agreement (Incoming)

Between

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

and

The Sponsor listed in Item 2 of Schedule 1 (**Sponsor**)

Background

1. The Sponsor has agreed to provide sponsorship to the School Council.
2. School Council has agreed to accept such sponsorship subject to the terms and conditions of this Agreement.

**Agreed terms**

# Consideration

## The parties agree that consideration for this Agreement is constituted by the mutual promises and commitments made by and between the parties whether or not those mutual promises involve the payment of monies.

# Term

## The term of this Agreement commences on the Commencement Date and continues for the Term unless otherwise extended or terminated in accordance with this Agreement.

# Sponsorship

## In consideration of the grant of the sponsorship rights set out at Item 5 of the Schedule (Sponsorship Rights), the Sponsor must pay and/or provide to School Council for the term of this Agreement the Sponsorship Fee and/or Sponsorship Product set out at Item 6(c) and Item 6(e) respectively of the Schedule (Sponsorship Fee and/or the Sponsorship Product) at the times and in the manner specified in Item 6(d) and Item 6(f) respectively of the Schedule.

## The Sponsorship Fee and/or the Sponsorship Product shall be the entire amount payable and/or products provided by the Sponsor to School Council under this Agreement.

## School Council must only use the Sponsorship Fee and/or the Sponsorship Product for the sponsored activity described at Item 6(a) of the Schedule (Sponsored Activity) in a manner consistent with the educational rationale set out at Item 6(b) of the Schedule (Educational Rationale).

## Should the Sponsorship Fee not be fully expended and/or any Sponsorship Product not be used for the Sponsored Activity, School Council must immediately notify the Sponsor of the balance of the unspent Sponsorship Fee or unused Sponsorship Product and must comply with the Sponsor's directions concerning the expenditure of the unspent Sponsorship Fee and/or use fo the any unused Sponsorship Product.

## If the Sponsorship Rights are described as exclusive, School Council must not grant any other sponsorship rights relating to the Sponsored Activity without first consulting the Sponsor.

# Advertising and Promotional Material

## All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Sponsor in exercise of the Sponsorship Rights must first be approved by School Council in accordance with the Schools’ Sponsorship Policy and [Victorian Government Sponsorship Policy](http://www.dpc.vic.gov.au/index.php/communication/policies-and-guidelines/sponsorship-policy-introduction-application-and-definitions), such approval not to be unreasonably withheld.

## All advertising and promotional material produced, published, broadcast, displayed or exhibited by School Council in respect of the Sponsored Activity must acknowledge the Sponsor's sponsorship in a manner and format agreed to by both parties.

## The School Council may, in its sole discretion, direct the the Sponsor not to perform a Sponsored Activity if it considers that any advertising or promotional material submitted to it under clause 4.1 may diminish the good name and reputation of that party, its trade marks or goods and services.

## The Sponsor warrants that any representations made in its advertising and promotional material will not breach the Australian Consumer Law.

# No Endorsement

### The Sponsor:

### acknowledges that acceptance by School Council of sponsorship benefits from the Sponsor is not a general endorsement by School Council of the Sponsor's organisation, products or services; and

### agrees not to make representations that School Council endorses the Sponsor, its products or services.

# Confidentiality

## The Sponsor hereby acknowledges and agrees to keep confidential and not to disclose, duplicate, use or permit the use of any Confidential Information relating to the Department or School Council disclosed to the Sponsor or of which the Sponsor may become aware in connection with the its sponsorship of the Sponsored Activity or this Agreement.

## The Sponsor hereby indemnifies the School Council from any costs, losses or expenses arising from any wrongful use, duplication or disclosure of any Confidential Information.

## The obligations set out in this clause 6 shall apply at all times during and after the termination or conclusion of the term of this Agreement.

## In this clause 'Confidential Information' means any information of, about or in any way related to, the Department or School Council, including any information designated by School Council as confidential, which is disclosed, made available, communicated or delivered to the Sponsor, but excludes information:

### which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;

### which the Sponsor can demonstrate was in its possession prior to the date of this Agreement;

### which the Sponsor can demonstrate was independently developed by the Sponsor; or

### which is lawfully obtained by the Sponsor from another person entitled to disclose such information.

# Privacy

### The Sponsor acknowledges that it will be bound by the Information Privacy Principles, the Health Privacy Principles and any applicable code of practice with respect to any act done in connection with this Agreement.

# Breach and Termination

## If either party breaches any of the terms and conditions of this Agreement and fails to rectify such default in accordance with a written notice by the non-defaulting party within 14 days after the date of such notice, the non-defaulting party may terminate the Agreement at any time thereafter.

## The School Council may terminate the Agreement immediately if any of the following events occur:

### if the Sponsor is wound up, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect of the Sponsor;

### if the Sponsor's business operations or the business or activities of any associated company are contrary to any government policy of the Department; or

### if the School Council determines that for what ever reason it should no longer use the Product or be associated with the Sponsor.

## The School Council may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Service Provider a minimum of 5 business days notice in writing.

## Where this Agreement is terminated by the School Council pursuant to clause 8.3, the School Council will pay the Service Provider the unavoidable and substantiated costs incurred by the Sponsor as a direct result of the termination, excluding any loss of profit, and the School Council has no other liability to the Service Provider in relation to that termination.

## When the School Council issues a notice under clause 8.3, the Sponosr will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of this Agreement.

## If this Agreement is terminated the Sponsor shall not be required to pay any unpaid instalments of the Sponsorship Fee or Product.

## The School Council must immediately on the termination or expiration of this Agreement cease to use or otherwise refer to the Sponsor’s name and/or logo.

## The expiration or termination of this Agreement shall not prevent either party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

## The Sponsor must at the termination or conclusion of the term of this Agreement return to the School Council all documents or material of any kind containing confidential or commercially sensitive information together with all copies of such material relating to the Sponsorship which are then in the Sponsor's possession or control.

# Indemnity

## The Sponsor agrees to indemnify the School Council against any liability arising from the use of any advertising and promotional material produced, published, broadcast, displayed or exhibited by School Council in respect of the Sponsored Activity.

## The Sponsor will not be liable under the indemnity in clause 9.1 to the extent that a Claim or liability results from:

### any fraudulent, negligent or deliberate act or omission of the School Council or its Associates; or

### any breach of this Agreement by the School Council or its Associates.

## Each party warrants to the other party that its advertising and promotional material will be true and will not convey any misleading or false statement at common law or within Chapter 2 of the Australian Consumer Law.

## Clauses 9.1 and 9.2 will survive the termination of this agreement, whether by effluxion of time or otherwise.

# Insurance

## The Sponsor must obtain and maintain insurance coverage at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Sponsor is liable in connection with this Agreement which may include professional indemnity and public and products liability insurance.

## On request, the Sponsor must provide the School Council with evidence of the currency of any insurance it is required to obtain.

# Notices

## Notices may be served on either party by delivering them by hand, prepaid registered post or email to the other party at the address or email address specified in Item 7 of the Schedule or such alternative address or email address notified in writing by that party to the other party from time to time.

## A Notice takes effect from the time it is received, unless a later time is specified in it. A Notice will be deemed to have been received by the addressee:

## (i) in the case of delivery in person or by courier, on delivery at the address of the addressee;

## (ii) in the case of delivery by post, on the second Business Day after posting;

## (iii) in the case of electronic mail, if the receiving party has agreed to receipt in that form under this Agreement and the message is correctly addressed to and successfully transmitted to that party’s electronic mail address (e-mail address), when receipt of the message is recorded on the sender’s computer.

## If any notice or document is delivered or deemed to be delivered after 4.00 pm in the place of receipt, or on a day which is a Saturday, Sunday or public holiday in the place of receipt; it is taken as having been delivered at 9.00 am on the next business day which is not a Saturday, Sunday or public holiday in that place.

# Assignment and Variation

## Any variation to this Agreement shall only be valid if the variation is in writing and signed by both parties.

## Neither party shall assign, transfer, change or purport to assign, transfer or change this Agreement or any of its rights or obligations without the prior written consent of the other party, which shall not be unreasonably withheld.

# GST

## Where a party to this Agreement (the Supplier) makes a Taxable Supply under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement to another party to his Agreement (Recipient) and the consideration otherwise payable for the Taxable Supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Recipient the amount of any GST on the Taxable Supply.

## If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the Taxable Supply (taking into account any Adjustment Events that occur in relation to the Taxable Supply), an adjustment will be made. If the amount paid by the Recipient exceeds the GST on the Taxable Supply, the Supplier will refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the Taxable Supply, the Recipient will pay the deficiency to the Supplier.

## Where a party to this Agreement is entitled, under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credits available in respect of those costs.

## A party will not be obliged to pay any amount in respect of GST to the other party unless and until a valid tax invoice (being an invoice that complies with the GST Legislation) has been issued in respect of that GST.

## In this clause:

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

### *Input Tax Credit* has the meaning given to it in the GST Legislation.

### *Taxable Supply* has the meaning given to it in the GST Legislation.

# Conflict of Interest

## The Sponsor warrants that, to the best of its knowledge and belief, after due inquiry as at the date of this Agreement, neither it nor or its employees have any duties or interests that create or might reasonably be anticipated to create a conflict with their duties and obligations under this Agreement.

## The Sponsor warrants that during the Term neither it nor its employees will take any action that will result in the Sponsor or its employees having a duty or interest that creates or might reasonably be anticipated to create a conflict with their duties and obligations under this Agreement.

# General

## This Agreement shall be construed and interpreted according to the laws of Victoria and the parties agree to submit to the jurisdiction of the courts of that State.

## Any provision of this Agreement which is prohibited or unenforceable will be ineffective to the extent of the prohibition or unenforceability and will not invalidate the remaining provisions of this Agreement.

## It is understood and agreed that the only relationship between the parties shall be that of independent contractors and that no agency, employment, joint venture or partnership is created by the parties under this Agreement nor that the parties endorse the products or services of the other.

## No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. Any waiver to be effective must be in writing and under seal.

# Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

# Definitions and Interpretation

## Definitions

In this Agreement, unless the context otherwise requires:

**Associates** means any officer, employee, agent, contractor, subcontractor, consultant, advisor, invitee, Sponsor or servant to the extent that such person or entity is performing an act or a function directly related to the Agreement.

**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 Agreement set out in 3 of the Schedule.

**Corporations Act** means the *Corporations Act 2001* (Cth)

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

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

**GST** means the Goods and Services Tax as defined in the GST Legislation.

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

**Health Privacy Principles** means the information privacy principles set out in the *Health Records Act 2001* (Vic).

**Information Privacy Principles** means the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic)**.**

**Law** means: principles of law or equity established by decisions of courts within the Commonwealth of Australia;

### statutes, regulations, by-laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, State of Victoria, any local government or a Government Agency, including but not limited to the *Education and Care Services National Law Act 2010* and the *Children's Services Act 1996* (Vic);

### the Constitution of the Commonwealth;

### binding requirements and mandatory approvals (including conditions) of the Commonwealth, the State of Victoria or a Government Agency which have the force of law; and

### guidelines of the Commonwealth, the State of Victoria or a Government Agency which have the force of law.

**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.

**Sponsor** means the Sponsor specified in Item 2 of the Schedule and includes, where appropriate, its employees or agents or other authorised persons.

**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.

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

**Schedule** means any schedule(s) to this Agreement.

**School Council** means the School Council specified in Item 1 and, where appropriate, the employees or agents of the School Council or other authorised persons.

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

**Term** means the period set out in Item 4 of the Schedule.

## Interpretation

Unless expressed to the contrary, in this Agreement:

### words in the singular include the plural and vice versa;

### any gender includes the other genders;

### if a word or phrase is defined its other grammatical forms have corresponding meanings;

### 'includes' means includes without limitation;

### headings are for guidance only and are to be ignored in interpreting this Agreement;

### no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

### a reference to:

#### a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

#### a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;

#### any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

#### an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and

#### “$”, “dollars” or “AUD” is a reference to the lawful currency of the Commonwealth of Australia; and

### if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

Executed as a deed.

**School Council**

**Date:**

<Insert date that School Council signs>

|  |  |  |
| --- | --- | --- |
| **The common seal of** the **School Council** was affixed by order of the School Council in the presence of the President of the School Council and its Appointee: |  | <Affix seal here> |
| **Signature of President** |  | **Signature of Appointee** |
| **Name of President (print)** |  | **Name of Appointee (print)** |

**Sponsor**

**Date:**

<insert date that Sponsor signs>

<Use this signing clause when the Sponsor is a company incorporated in Australia, delete if Sponsor is not a company>

|  |  |  |
| --- | --- | --- |
| **Executed** by the **Sponsor** in accordance with s 127 of the *Corporations Act 2001* |  |  |
| **Signature of director** |  | **Signature of director/company secretary** |
| **Name of director (print)** |  | **Name of director/company secretary (print)** |

<Use this signing clause when the Sponsor is an incorporated association, delete if Sponsor is not>

|  |  |  |
| --- | --- | --- |
| **Executed** bythe **Sponsor** in accordance with the *Associations Incorporation Reform Act 2012* |  |  |
| **Signature of authorised person** |  | **Signature of authorised person** |
| **Name of authorised person (print)** |  | **Name of authorised person (print)** |
| **Position of authority (print)** |  | **Position of authority (print)** |

<Use this signing clause when the Sponsor is an individual, delete if the Sponsor is not>

|  |  |  |
| --- | --- | --- |
| **Signed** by **the Sponsor** in the presence of: |  |  |
| **Signature of witness**  |  | **Signature of Sponsor**  |
| **Name of witness (print)** |  |  |

Schedule - Agreement Details

|  |  |  |
| --- | --- | --- |
| 1.
 | **School Council’s Name** | <Insert name of School Council, ABN and address> |
| 1.
 | **Sponsor’s Name** | <Insert registered name of Sponsor (including ACN (if a company) or registered association number (if an incorporated association), and address> |
| 1.
 | **Commencement Date** | <Insert the date the Agreement is to commence> |
| 1.
 | **Term** | <Insert the period of time in months or years for which the Agreement is to operate> |
| 1.
 | **Sponsorship Rights** | <Insert Sponsorship Rights, for example, use of the School Council’s name or logo by Sponsor, display or use of Sponsor's product or promotional material and whether or not the sponsorship rights are exclusive> |
| 1.
 | **Details of Sponsorship** | (a) Sponsored Activity <Insert brief description of sponsored activity> |
| (b) Educational Rationale <Insert brief description of the educational rationale for the sponsored activity>  |
| (c) Sponsorship Fee <Insert the sponsorship fee in total and then describe how it will be paid, for example:The Sponsorship Fee of $[insert amount].00 is payable in the following manner:(i) $5000 on the Commencement Date;(ii) $2000 on or about the first anniversary of the Commencement Date; and(iii) $2000 on or about the second anniversary of the Commencement Date.> |
| (d) Manner and time of payment of Sponsorship Fee  |
| (e) Sponsorship Product <Insert if goods are being supplied insert description of the goods> |
| (f) Manner and time of delivery of Sponsorship Product  |
| 1.
 | **Notices**  | **School Council**Authorised Officer:Address:Tel:Email: |
| **Sponsor**Authorised Officer:Address:Tel:Email: |