**Community Joint Use Agreement Explanatory Table**

**Core Clauses (green) and Options Clauses (blue)**

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|  | **Clause** | **Description and Explanation** |
| **1** | **Definitions** | This clause sets out the definitions used in the Community Joint Use Agreement. |
| **2** | **Interpretation** | This clause sets out rules of interpretation to assist with reading the Community Joint Use Agreement. |
| **3** | **Objectives of the Parties** | By this clause the parties acknowledge their shared objectives in entering into and complying with the Community Joint Use Agreement. |
| **4** | **Approvals to enter into the Agreement** | By this clause:   * The Minister approves the School Council to enter into the Community Joint Use Agreement, as required by the *Education and Training Reform Act 2006* (Vic). * Where the Facility is being constructed on School land, the Minister approves the construction of the Facility at the School site. * If the Community Partner is a local government authority, it confirms that it has obtained all necessary approvals required under the *Local Government Act 19889* (Vic). |
| **5** | **Acknowledgement by the Community Partner** | By this clause, the Community Partner acknowledges that it understands the risks related to its use of the Facility.  In addition, where the construction works involve the refurbishment of an existing building or area located on School land, the Community Partner should inspect this building or area. |
| **6** | **No grant of proprietary rights in the land** | This clause recognises that, under the Community Joint Use Agreement, the legal owner and/or occupier of the land on which the Facility is to be constructed grants a contractual right or licence to the other party to use the land and the Facility on the terms set out in the Community Joint Use Agreement. This is **not** a leasehold right. Ownership of the land is unchanged by the granting of the licence. |
| **7** | **Acting on behalf of the Minister** | This clause confirms that any act of the Minister under the Agreement may be exercised by the Department. |

CJUA Explanatory Table as at May 2017

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| **8** | **Assignment** | The Community Partner is not permitted to assign its rights or obligations under the Community Joint Use Agreement to another party without the Minister's written consent. Such consent must not be unreasonably withheld.  However, the Minister and School Council may assign or transfer their rights or obligations in this Agreement at any time during the licence term. The Minister and the School Council must give written notice to the Community Partner of such assignment. The Minister’s discretion in this regard cannot be fettered. |
| **9** | **Dissolution of the School Council** | If the School Council is dissolved, the School Council's rights and obligations under the Community Joint Use Agreement are transferred either to a new school council if one is created, and if not, to the Minister. The Community Joint Use Agreement is otherwise unaffected. |
| **10** | **Change of School Council name** | A change of the School Council name does not affect the Community Joint Use Agreement. |
| **11** | **Legal Costs** | The School Council and the Community Partner are responsible for meeting the legal costs of preparing/drafting the Community Joint Use Agreement. They can agree how to share these costs. (The Department and Community partner are responsible for their own costs if they seek legal advice separate from the drafting instructions) |
| **12** | **Notices** | This clause sets out the method for giving notices. A notice cannot be delivered by email. |
| **13** | **Governing Law** | The governing law is that of the State of Victoria. |
| **14** | **Variation of this Agreement** | A variation of the Community Joint Use Agreement is only binding if it is in writing signed by all parties to the Agreement. |
| **15** | **Waiver** | A waiver of a term of the Community Joint Use Agreement is only binding if given in writing. Unless specifically stated to be a continuing waiver, it only applies to the particular instance for which it was given. Such a waiver does not operate as a waiver of any other term of the Community Use Agreement. |
| **16** | **Confidentiality** | The information which comes into the parties' possession as a result of or in the performance of the Community Joint Use Agreement, including the Agreement itself, is confidential and may not be disclosed to third parties unless one of the situations listed in this clause apply. |
| **17** | **Conflict of Interest** | By this clause, the Community Partner warrants that it has no conflict of interest with its duties or obligations under the Community Joint Use Agreement. The Community Partner must notify the Minister and the School Council if it later becomes aware of such a conflict. |

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| **18** | **Entire Agreement** | The formal Community Joint Use Agreement contains the entire agreement between the parties and supersedes any other communications or representations or earlier written or verbal agreements regarding the arrangements the subject of the Community Joint Use Agreement. |
| **19** | **Counterparts** | This clause means that the Community Joint Use Agreement may be comprised of several copies of the same documents each signed by one of the parties. However, this is not what usually occurs. The Department prepares execution copies, which all parties sign, and a copy of the signed Community Joint Use Agreement is then provided to each party. |
| **20** | **GST** | This clause addresses GST. |
| **21** | **Mutual Obligations to facilitate compliance with this Agreement and the Law** | By this clause, the School Council and Community Partner agree to do all things reasonably necessary to assist any other party to the Community Joint Use Agreement to meet any obligations that party may have under the Community Joint Use Agreement and under any relevant law. |
| **22** | **Community Partner's General Obligations and Prohibitions in respect of the Land and the Facility** | For facilities located on School land, this clause contains broad obligations and prohibitions in respect of the land and the Facility which the Community Partner must comply with, as an occupier and user of the land and the Facility. Two examples are the obligation to keep the Facility clean and tidy and the prohibition on spreading contamination.  This clause will apply in reverse to the Minister and the School Council if the Facility is located on land owned or managed by the Community Partner. |
| **23** | **Occupational Health and Safety** | Where the Facility is located on School land, the Community Partner's obligations in respect of occupational health and safety for the Facility include:   * a requirement to establish and maintain systems to assess potential risks and hazards; * the obligation to provide appropriate training and supervision for all persons employed or engaged by the   Community Partner (including contractors) in connection with its use of the Facility;   * the obligation to inform the School Council if it is issued with a notice in respect of a breach of an occupational health and safety law and provide information any information relevant to the breach to the School Council if requested to do so.   Where the Facility is located on land owned or managed by the Community Partner, the School Council has these obligations. |
| **24** | **Audit** | The Minister has a right, at any time, to conduct an audit in relation to the construction, ongoing use and maintenance of the Facility. This right may be exercised by the Department on the Minister's behalf. The Community Partner must provide the Minister or the appointed auditor with all information reasonably requested. |

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| **25** | **Permissible dealings with the land** | Where the land is School land, at any time during the Licence Term, the Minister may subdivide, sell or otherwise dispose of or deal with the whole or any part of the land occupied by the School. This right of the Minister cannot be fettered. If the Minister has determined to dispose of the land, then the Minister may terminate the Agreement pursuant to clause 34 and the options in clause 35 will apply.  Where the land is owned or managed by the Community Partner, the parties may agree that the Community Partner cannot dispose of the land during the term of the Community Joint Use Agreement or for a specified period of time.  Where the land is Crown land managed by the Community Partner and the Community Partner ceases to manage that land or this is proposed, the Community Partner must notify the School Council and the Minister. The Minister may elect to terminate the Agreement upon receipt of this notification. Otherwise, the Agreement will terminate when the Community Partner ceases to manage the land. The Community Partner must use its best endeavours to assist the Minister in any dealings between the  Minister and the relevant government department, or any other entity, in relation to the continued use of the land by the Minister.  Where the land is owned by the Community Partner and the parties do not wish to place any restriction on the Community Partner disposing of the land during the term of the Agreement, the Community Partner may terminate the Agreement subject to first offering the land for sale to the Minister at a price to be agreed or determined by the Valuer-General. If the Minister does not wish to purchase the land or agreement on this is not reached, then the Community Partner is required to pay compensation to the Minister, calculated on the same basis as the compensation payable by the Minister to the Community Partner. |
| **26** | **Right of School Council and Minister to undertake works at the Facility** | If the Facility is located on land owned by the Minister, then the Minister has the right to carry out certain works to the Facility and the land (and enter the Facility and the land to do so) if this is necessary to comply with a law and ensure the safe and proper use of the Land and the Facility.  If the Facility is located on land owned or managed by the Community Partner, then the Community Partner has these rights. |
| **27** | **Damage to the Facility caused by negligence, gross negligence or wilful misconduct** | This clause and clause 28 relate to damage to the Facility and have been discussed with the State government's insurer, VMIA, taking into account the arrangements that VMIA has with the insurer for most local government authorities, CMP. VMIA has stated that it does not consider that these clauses affect the coverage provided by CMP.  These clauses are designed to reflect a fair sharing of the potential risks and costs associated with the use of the Facility under the Community Joint Use Agreement.  It is important to note the position with regard to hirers of the Facility. The party which is responsible for hiring out the Facility by members of the public is not automatically held responsible for damage caused to the Facility by such hirers. Instead:    If the damage is not covered by any insurance in respect of property damage applicable to the Facility (whether arranged by the parties or by a hirer), then the parties will be equally responsible for such costs unless the reason |
|  |  | there is no insurance is because of a failure by the School Council or the Community Partner to comply with the requirements of the relevant policy.   * If this is the case, then the party whose failure means the policy does not respond is responsible for the entire cost of the damage. * Where the hirer is responsible for a failure to comply with the policy requirements then, unless the amount can be recovered from the hirer, the parties are again equally responsible.   It is **not** the case that a Community Partner can negotiate to be only responsible under the Community Joint UseAgreementfor losses which can be insured against. The damages provisions are **not** intended to be back to back with the insurance that a Community Partner has or can obtain, even if the Community Partner is a local government authority. The Minister and the School Council will not bear all uninsurable risk in relation to the use of the Facility. |
| **28** | **Damage to the Facility not covered by insurance** | See explanation above. |
| **29** | **Indemnity** | If the Community Partner is not a local government authority, then the Minister and the School Council require an indemnity in respect of any loss they may suffer as a result of the actions of the Community Partner or its Personnel in connection with the use of the Facility. This clause does not apply if the Community Partner is a local government authority. |
| **30** | **Only Proper Persons are permitted** | The Community Partner may only employ or engage Proper Persons in connection with the use, operation and maintenance of the Facility. Proper Persons are those who are a proper person to be acting in that person's designated capacity in relation to a facility located at a government school and occupied by school students.  If the School Principal (acting reasonably) considers that someone employed or engaged by the Community Partner to work at the Facility is not a Proper Person, then the Principal may require the Community Partner to remove from the Facility and replace that person. |

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| **31** | **Requirement for Working With Children and Police Checks** | The *Working With Children Act 2005* (Vic) requires people performing child-related work at a Facility on School land to obtain a satisfactory working with children check. Child-related work is defined very broadly and it includes working 'within eyeshot' of a child. It is also Department policy to require a police check from a prospective employee depending on the nature of the work.  The Community Partner must ensure that all persons engaged or used by it in connection with the use, operation and maintenance of the Facility, and who are working at the Facility during times that school students are using the Facility, have these checks unless the working with children check is not required due to an exemption contained in the *Working With Children Act 2005* (Vic) or the School Principal confirms in writing that a police check is not required. |
| **32** | **Child Safe Standards** | These clauses relate to *Child Safety and Wellbeing Act 2005* (Vic) and the Ministerial Order 870. These clauses are DET policy and are included in all agreements relating to licensing of school premises. The clauses only apply to the extent that the Community Partner are engaged in child-connected work. |
| **33** | **Default after construction of the**  **Facility** | Where the Facility is located on land owned by the Minister, if the Community Partner commits a substantial breach of the Community Joint Use Agreement and fails to rectify that breach within a reasonable time of notice given by the School Council, then the School Council or the Minister may:     * do anything they consider reasonably necessary to rectify the breach and recover the cost from the Community Partner; or * terminate the Community Joint Use Agreement, in which case no compensation will be payable to the Community Partner   Where the land is owned by the Community Partner, the position is reversed and the Community Partner has a right to correct the breach or terminate the Community Joint Use Agreement if the School Council commits a substantial breach. |
| **34** | **Disputes** | This clause sets out a stepped dispute resolution process involving:   * The issue of a notice of dispute. * A meeting between senior representatives. * Mediation. * Litigation.   While a dispute is pending, the parties to the Community Joint Use Agreement must continue to perform their obligations under the Agreement, including the payment of any disputed sums of money. |
| **35** | **Minister's rights of termination** | Where the Facility is located on land owned by the Minister, the Minister may terminate the Community Joint Use Agreement if the Minister requires the Land or part of it: |
|  |  | * for the construction or redevelopment of school buildings; * to dispose of the land; to close the School; or any other reason.   The Minister may also terminate the Community Joint Use Agreement if the Facility is damaged or destroyed so as to render it (or part of it) unfit for use and the Minister considers it impractical or undesirable to reinstate the Facility or the relevant part. These rights of the Minister cannot be fettered. |
| **36** | **Minister's options following termination** | If the Minister does terminate the **Community Joint Use Agreement** for one of the reasons identified above, then the Minister must select one of three options, following consultation with the Community Partner subject to the Minister having complied with the current government policy and legislation regarding disposal of the land  **Option 1** involves the subdivision of the land and sale to the Community Partner at an agreed or assessed value.  **Option 2** involves the Minister entering into a lease with the Community Partner of the whole or part of the Facility on terms consistent with the Community Joint Use Agreement.  **Option 3** involves the payment of compensation, which is determined by the Minister in good faith at the Minister’s discretion but taking into account the construction contribution made by the Community Partner reduced to reflect the portion of the Licence Term that has expired.  There is a special dispute resolution provision, involving expert determination, if there is a dispute about the terms of the Minister's offer under each of the three options. The choice of option is at the Minister's discretion and cannot be the subject of a dispute. Again, the discretion of the Minister to make this choice cannot be fettered so the Community Partner cannot select which of the three Options it prefers. That said, the Minister has an obligation to act reasonably at all times in its dealings with the Community Partner and the Community Partner has an opportunity to identify to the Minister its preferred option. |
| **37** | **Responsibility for construction** | The party that is responsible for construction of the Facility:   * manages the tender process in consultation with the other parties (see further clause 46 below); * enters into the building contract with the contractor; * is responsible for ensuring that the works start on time and are carried out in accordance with the building contract; * is responsible for enforcing the building contract where this is necessary; * is responsible for ensuring that the works are progressed diligently and that the contractual completion date is achieved. |

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| **38** | **Access during construction phase** | If the Community Partner is responsible for construction and the works are being carried out on land owned by the Minister, it is necessary for the School Council and the Minister to grant a licence to the Community Partner and the building contractor to enter the land for the purpose of carrying out the works. This licence is only applicable during the construction phase.  If the School Council is responsible for construction and the works are being carried out on land owned or managed by the  Community Partner, then the licence is granted by the Community Partner to the School Council and the building contractor. |
| **39** | **Complying with the Law** | By this clause, the party which is responsible for construction confirms that it will comply with all laws in connection with the design and construction of the Facility and the carrying out of the works, including the *Planning and Environment Act 1987* (Vic) and the Code of Practice for the Building and Construction Industry. |
| **40** | **Construction**  **Contributions towards the cost of the Works** | This clause records the parties' contributions towards the total cost of carrying out the works.  The monetary contributions are listed separately from the land being contributed. |
| **41** | **Construction Security** | If the Community Partner is not a local government authority, but it is responsible for construction, then the Department requires the Community Partner to give security to the School Council and the Minister for the performance of its construction related obligations, the most important of which is to ensure the works are carried out in accordance with the building contract.  The amount of construction security required is 10% of the total estimated construction costs. The security required is an unconditional undertaking, such as a bank guarantee, issued in favour of the School Council and the Minister. The Department has final approval over the form of the undertaking which will be held by the School Council during the construction phase.  Subject to the School Council's and the Minister's rights to call on the construction security, the School Council and the Minister must notify the institution which issued the guarantee that:   * one half of the security is not required, once the works reach Practical Completion under the building contract; and * the remaining half of the security is not required once the Superintendent has issued a Final Certificate under the building contract. |
| **42** | **Additional**  **Construction Costs** | This clause addresses the situation where construction costs increase.  If an increase becomes apparent **before** the building contract is signed, then parties may agree to amend the Specification to reduce the costs or agree to share the additional costs between themselves. If the School Council and the Community Partner are unable to agree, then the Minister may terminate the **Community Joint Use Agreement**.  If the increase becomes apparent after the building contract is signed then the parties must share the increase in the proportions they have agreed, unless the increase is due to a variation, in which case the party requesting it must pay. |

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| **43** | **Time for payment of**  **Construction**  **Contributions and Additional**  **Construction Costs** | This clause records when the parties need to pay their construction contributions. The Community Partner and the School Council can agree to a staggered schedule of contributions during the construction period. The Minister's contributions (if any) are payable pursuant to current Department policy. |
| **44** | **Repayment of**  **Construction**  **Contributions** | If any construction contributions are not paid out in connection with the works, they must be reimbursed in the same proportions as they were paid. |
| **45** | **Construction Phase Insurance** | The required building contract, **AS2124- 1992** specifies that the building contractor or the principal under the building contract (that is, the party responsible for construction) must obtain:   * public liability insurance; and * contract works insurance.   This clause confirms that the party responsible for construction is also responsible for ensuring that this insurance is taken out. Often, the building contractor takes on responsibility for all insurance pursuant to the terms of the building contract but the party responsible for construction may do this instead. |
| **46** | **Specifications** | The party which is responsible for construction is also responsible for co-ordinating the approval of the design for the building works. As the required building contract, **AS2124-1992** is a construct only contract, the plans and specifications need to be finalised before the works are put out to tender. All plans and specifications must be approved byt he parties who are not responsible for construction. Such approval must not be unreasonably withheld. |
| **47** | **Tendering** | This clause will apply if:   * the works are being carried out on land owned by the Minister and the Community Partner is responsible for construction; or * the works are being carried out on land owned or managed by the Community Partner and the School Council is responsible for construction.   The party responsible for construction must notify the other party or parties of the planned dates for the tender and its evaluation and invite them to participate in the process, should they wish to do so. Copies of tenders which are to be called for by public notice must be provided to the Community Partner if the School Council is responsible for construction and vice versa. The party responsible for the tender process must comply with all laws, ministerial directions, government policies and other requirements relevant to public construction, including those specifically identified in the clause. This requirement applies to construction on land owned by the Minister and also to construction on land owned or managed by the Community Partner using public funds. |

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| **48** | **Inspection of the Works** | If the works are being carried out by the Community Partner on land owned by the Minister, then the Minister and the School Council have the right to inspect the works upon giving reasonable notice. The Community Partner has the same right to inspect the works if they are being carried out by the School Council on land owned or managed by the Community Partner. |
| **49** | **Practical Completion** | The party responsible for construction must notify the other parties when Practical Completion of the works is achieved and provide a copy of the Certificate of Practical Completion issued by the Superintendent. |
| **50** | **Default by the Community Partner during the construction phase** | Where the Community Partner works are being carried out on land owned by the Minister, there will be a Default Event by the Community Partner if the Community Partner becomes insolvent.  There will also be a Default Event if the Community Partner commits a substantial breach of the Community Joint Use Agreement provided that the Community Partner has first had an opportunity to remedy the problem.  If a Default Event occurs, then the School Council or the Minister may terminate the Community Joint Use Agreement or take over the works and complete them and it may access any construction security given by the Community Partner to do so.  Where the Facility is located on land owned or managed by the Community Partner, this clause will give the Community Partner the same rights in the event of a substantial breach by the Minister or the School Council during the construction phase except in relation to security. |
| **51** | **Licence Term and Licence Fee** | Where the land is owned by the Minister, the Minister and the School Council grant a contractual right or **licence** to the Community Partner to enter the land and use the Facility, on the terms set out in the Community Joint Use Agreement. Thislicence commences from the Date of Operation which is usually the date of Practical Completion of the Facility works or the date the Community Joint Use Agreementis executed.  Where the land is owned or managed by the Community Partner, the licence is granted by the Community Partner to the Minister and the School Council. If the Facility is located partly on land owned by the Minister and partly on land owned or managed by the Community Partner there will need to be reciprocal licences. It is important to notify the Department if this is the case and provide clear plans showing the location of the Facility.  The parties need to agree on an Initial Term and a Further Term for the Community Joint Use Agreement. A 20 to 30 year Initial Term and a 10 to 20 year Further Term are the most common.  For Community Partners who are local government authorities or not for profit entities, the Licence Fee payable is usually a peppercorn fee of $1.00. The same fee applies if the Facility is located completely or partially on land owned or managed by the Community Partner. |
| **52** | **Licence Renewal Process** | There is a specific renewal process to be followed by the party or parties who have been granted a licence.  The party (or parties) which wishes to renew the licence must give at least 6 months, but not more than 12 months, notice of the proposed renewal.  After this, the School Council and the Community Partner must meet (within 21 days) to discuss whether any adjustments are |
|  |  | required to the arrangements in respect of the use and operation of the Facility, to take into account new circumstances, new Department policy and any applicable legislative changes. Where the land is owned by the Minister, the Minister will consider any in principle adjustments as part of his or her approval of the renewal.  For facilities located on School land, it is not possible to re-cast this provision so that the licence is automatically renewed at the option of the party seeking renewal because this would interfere with the Minister's discretion, which cannot be fettered.  The decision to renew the licence must be made reasonably by the land owner, whether this is the Minister of a local government authority.  Where there are reciprocal licences because the Facility is located on land owned by different parties, then the parties also need to consider what happens if one licence is renewed but not the other. The parties may decide that the Community Joint Use Agreement will terminate in such circumstances. |
| **53** | **Obtaining and complying with permits** | The Community Partner is responsible for obtaining all necessary planning permits or other approvals related to its use of the Facility. A School Council does not require planning permits for its own educational activities. |
| **54** | **Reinstatement obligations at the end of the Licence Term** | The party which is the licensee (be it the School Council or the Community Partner) is required to reinstate the Facility at the end of the Licence Term, to the extent of that party's maintenance obligations. |
| **55** | **Sub-licensing** | Where the Facility is located on School land, the Community Partner must not sub-license the Facility except as explicitly stated in the Agreement or as the School Council and Minister agree in writing. Such consent must not be unreasonably withheld. The Community Partner's rights and obligations under this Agreement will not be affected by any such sub-licence.  This clause will apply in reverse where the Facility is located on land owned or managed by the Community Partner. |

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| **56** | **Use of the Facility by the School Council and the Community**  **Partner** | There are three **Options** in respect of the use of the Facility.  **Option 1:** The usual approach is for the School Council to use the Facility during School Hours and for the Community Partner to use the Facility outside School Hours but within agreed total operating hours. There is no overlapping use. Use during school holidays may be addressed in setting the School Hours and Community Partner's Hours or may be left to negotiation between the School Council and the Community Partner from time to time.  **Option 2:** A similar pre-agreed approach is adopted where the School Council uses a part or parts of the Facility during School Hours and the Community Partner uses other parts of the Facility both during and outside School Hours. This means there is overlapping use of the Facility by School students and by the Community Partner or members of the public. To properly describe the agreed use by the School Council and the Community Partner, it is necessary to separately identify the different parts of the Facility. An example of this may be a Preschool which is operated by the School Council but is located within a building also containing staff rooms and a multi-purpose room used by the School Council during School Hours. Such a building may also other special purpose areas such as maternal and child health rooms.  **Option 3:** Alternatively, the School Council and the Community Partner may use a Calendar of Use to record their use of the Facility. One party takes responsibility for maintaining and distributing the Calendar of Use on an annual basis. This option can be appropriate if there are a number of regular community users of the Facility outside School Hours and it is useful to also record their use in the Calendar of Use. The School Council still has use of the Facility or a specified part of it within School Hours and also an entitlement to free use of a part or the whole of the Facility outside School Hours. This use is recorded in the Calendar of Use.  With all three **Options**, the School Council is generally entitled to free use of a part or the entire Facility outside School Hours on an agreed number of occasions per year, unless the parties agree to remove this right. Also, the parties can decide to specify their use during school holidays and on student free days in the **Community Joint Use Agreement** or leave this to benegotiated between them at the time. |
| **57** | **Use of the Facility by community groups** | The School Council and the Community Partner are required to encourage the broader community to use the Facility, provided this does not interfere with the use of the Facility for ordinary School purposes. This is a fundamental concept linked to the Minister’s and the School Council’s power to enter into such agreements. |
| **58** | **Appointment of a Manager** | The Community Partner may wish to appoint a manager to manage its use of the Facility and maintenance and other operational obligations. An example would be the appointment of the YMCA as the manager for a sporting stadium the subject of a Community Joint Use Agreement. The appointment of a manager does not affect the parties’ rights of use as expressed in the Community Joint Use Agreementor the Community Partner’s obligations. |

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| **59** | **Hiring** | There are two aspects to the hire of the Facility - hire during School Hours and hire outside School Hours.  For hire during School Hours, the general principle is that the School Council is entitled to hire out the Facility to other parties during the times that it is entitled to use the Facility. If they wish, the parties may chose to limit this right so that the School Council can only hire to other government or non-government schools or not for profit users.  The parties need to choose who will be responsible for hiring the Facility out for community use outside School Hours, that is, during the Community Partner's Hours. This is almost always done by the Community Partner. The party which is responsible for hiring out the Facility sets the terms and the fees for such hire and will retain the hire fees, provided that party is also responsible for maintaining the Facility. The rationale is that the hire fees will go towards such costs as cleaning and ongoing maintenance.  Some facilities will be self-funding but many will not. It is important for the parties to obtain advice from a consultant with relevant experience about the revenue likely to be generated by hire fees if they hope for the Facility to be self-funding. This type of advice needs to include a comparison of the fees charged by similar facilities in the area and also consider the ongoing operating and capital costs for the Facility.  Where the Facility is located on land owned by the Minister, the terms for the hire of the Facility need to be consistent with the Department's guidelines. This is not the case if the Facility is located on land owned or managed by the Community Partner. The terms for the hire of the Facility should require hirers to obtain public liability insurance unless the hirer is a not for profit community group engaged in a low risk activity. Further guidance about what is a low risk activity can be found in the Department's Community Facilities fact sheets available on line. |
| **560** | **Maintenance of the Facility** | Maintenance is one of the most important aspects of the **Community Joint Use Agreement**.  A Facility which is constructed pursuant to a community use arrangement will generally **not** be part of the School's entitlement, which means that there is no allocation of maintenance funding for that facility provided by Government. The School Council and Community Partner therefore need to generate and meet the cost of maintenance between them.  There are four **Options** for the parties to choose between when it comes to maintenance. The Department does not have a preference, just a requirement that the parties ensure **all** maintenance related obligations are addressed.  **Option 1** applies if one party is responsible for arranging and paying for all maintenance in respect of the Facility. The other party may reimburse it for some of those costs based on a pre-agreed percentage.  **Option 2** applies if one party is responsible for arranging and paying for all maintenance in respect of the Facility with the other party to reimburse it according to its use of the Facility.  **Option 3** applies if the parties have agreed to each be responsible for the maintenance of particular areas of the Facility (provided that all areas of the Facility, including any external areas, are addressed).  **Option 4** is appropriate if the parties have agreed to describe their maintenance responsibilities in a Maintenance Schedule. This is particularly appropriate if the parties wish to divide responsibility for maintenance between them depending on the work involved. If the parties choose **Option 4** they will need to prepare and provide the Maintenance Schedule to the |

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|  |  | Department before the **Community Joint Use Agreement** can be finalised.  **Option 5** applies if one party is responsible for arranging and paying for all maintenance in respect of the Facility with no reimbursement.  **Option 6** is appropriate if the parties agree to establish an Operating Account to collect revenue generated by the Facility and pay the maintenance and/or any other specified operational expenses (excluding Capital Expenditure). |
| **61** | **Capital Works and Capital Expenditure** | The responsibility for arranging Capital Works is addressed separately from the responsibility for paying for Capital Expenditure (i.e. The cost of the Capital Works).  As with maintenance, a Facility which is not within the School Council's **entitlement** does notreceive funding from government for Capital Works.  In relation to the **Capital Works**, there are three **Options** for the parties to consider.  **Option 1** applies if one party is responsible for arranging all Capital Works in relation to the Facility.  **Option 2** applies if the responsibility for arranging Capital Works is shared according to the area of the Facility involved. **Option 3** applies if the parties wish to address the responsibility for arranging Capital Works in a combined Maintenance and Capital Works Schedule.  In relation to funding of the Capital Works, called **Capital Expenditure**, there are five **Options**. However, where the Facility is located on School land and the Community Partner is not a local government authority, the Department requires the parties to use **Option 1**.  **Option 1** involves the establishment a **Capital Reserve Account** to which both parties regularly contribute. This is appropriate if both parties are responsible for Capital Expenditure. One party is responsible for maintaining the Capital Reserve Account (or sub-account if it is the School Council's responsibility) and paying all Capital Expenditure from this account with the agreement of the other party. The parties need to agree on the regular contributions and how they will share the cost of any deficit which might occur if there are insufficient funds in the **Capital Reserve Account**.  **Option 2** provides that one party is responsible for all Capital Expenditure in relation to the Facility. If this is the School Council, the School Council must satisfy the Department that these funds are available or will be generated. It is strongly recommended that the School Council create and regularly contributes to an account for this purpose.  **Option 3** provides that one party is responsible for paying for all Capital Expenditure in the first instance subject to reimbursement from the other party of a percentage of these costs. Again, where the School Council is responsible for paying Capital Expenditure in the first instance, School Council must satisfy the Department that these funds are available or will be generated.  **Option 4** is appropriate where the parties have agreed they will share the responsibility for Capital Expenditure depending on the area of the Facility involved. The same considerations apply in respect of the School Council's obligations.  **Option 5** involves the parties including responsibility for Capital Expenditure in the combined Maintenance and Capital Works |

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|  |  | Schedule, which transforms it to a Maintenance and Capital Works and Expenditure Schedule. If the parties wish to do this, the Schedule needs to be clear and easy to understand. Again, depending on the responsibility of the School Council, the Department may need to be satisfied as to how these works will be funded. |
| **62** | **Capital Works plan** | Where the Facility is located on land owned or managed by the Minister, the parties must meet within 3 months of the Date of Operation and together prepare a 5 year rolling Capital Works plan for the Facility. This plan must be updated annually.  Where the Facility is located on land owned or managed by the Community Partner, the parties must meet within 3 months of the Date of Operation and together prepare a rolling Capital Works plan in accordance with the Community Partner’s standard planning cycle. |
| **63** | **Utilities** | **Utilities** supplied to the Facility usually include mains water, electricity and gas.  The parties can agree to address all utilities collectively, or to have separate arrangements for each one. This may depend on the metering arrangements in place.  Oftenthe land owner is responsible for paying all utility accounts in the first instance with the other party to reimburse a proportion of the costs on the basis of use or an agreed percentage of those costs. |
| **64** | **Additional financial obligations of the Community Partner and the School Council** | This clause should reflect the parties' agreed responsibility for any additional financial obligations in relation to the Facility. The parties should try to ensure that the Community Joint Use Agreement addresses all financial obligations in respect of the Facility. |
| **65** | **Insurance** | The scope of the insurance provisions contained in this clause have been carefully considered and discussed with the State government's insurer, VMIA, bearing in mind the reciprocal arrangements that VMIA presently has with Civic Mutual Plus (CMP) as the insurer of most local government authorities.  The Community Partner must arrange public liability insurance. If the Community Partner is a local government authority this is usually done by adding the Facility to the local government authority's existing policy with CMP. The School Council is covered by the Department's umbrella public liability policy so there is no need for it to obtain separate insurance.  The parties need to decide who will obtain property damage insurance in respect of the Facility and its contents and how they will share the costs of this.  If the Facility is located on land owned by the Minister, and the Community Partner is obtaining the policy, the policy must also name the State of Victoria and the School Council.  When arranging insurance for property damage, the parties need to consider whether to obtain a policy which also covers damage caused by vandalism. If the policy does not cover such damage, then this will be an uninsurable loss and pursuant to clause 28 the rectification costs will be shared equally between the School Council and the Community Partner. |
| **66** | **Consultation** | As with all joint use arrangements communication between the School Council and the Community Partner is paramount to a successful relationship, hence there is a requirement for a representative of the School Council, normally the Principal, and a representative of the Community Partner to meet on a regular basis. The default position for timing of meetings is every 6 months however the parties can specify otherwise in the Community Joint Use Proposal. These representatives have the authority to bind the parties. |
| **67** | **Advisory Group** | This option is for facilities with a larger degree of community use, perhaps even a 'resident' user such as a sporting association. The parties may elect to create an Advisory Group which may also contain additional community representatives, if this is agreed to by the School Council and the Community Partner. The Advisory Group makes recommendations but does not bind the parties.  Note: There is no option for the parties to do this by an independent Committee of Management. This is deliberate as there are issues with the legal responsibilities of such committees. |