

School Council Agreement for the Appointment of School Uniform Supplier (school uniforms to be supplied at Supplier's retail premises)

Between

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

and

The Supplier listed in Item 1(b) of Schedule 1 (**Supplier**)

Background

- A. The Supplier wishes to be appointed as the supplier of Goods at its Retail Premises.
- B. The School Council has agreed to appoint the Supplier to supply the Goods at its Retail Premises and subject to the terms of this Agreement.

Agreed terms

1. Definitions and Interpretation

1.1 Definitions

In this agreement, unless the context otherwise requires:

Agreement means this agreement and includes the schedules and any annexures to it or documents incorporated by reference.

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

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

Child-connected work has the meaning given to it in section 4 of the Ministerial Order.

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

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

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

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, the School Council, including any information designated or treated by the School Council as confidential, in its sole and absolute discretion, which is disclosed, made available, communicated or delivered to the Supplier in connection with this Agreement, but excludes information which:

- (a) is in or which subsequently enters the public domain other than as a result of a breach of an obligation of confidentiality;
- (b) the Supplier can demonstrate was in its possession prior to the date of this Agreement;
- (c) the Supplier can demonstrate was independently developed by the Supplier;
- (d) is lawfully obtained by the Supplier on a non-confidential basis from another person who is not bound by a confidentiality agreement with the School Council or otherwise prohibited from disclosing the information to the Supplier; or
- (e) is disclosed pursuant to Law.

Confidential Information includes but is not limited to any information (regardless of its form) that is:

- (f) personal information (as that term is defined in the PDP Act) relating to students of the School or Personnel of the School and/or School Council;
- (g) business information relating to the School and/or School Council; and
- (h) all copies of the information, notes or other records referred to in paragraphs (f), (g) and (h) immediately above.

Contract Publishing System means the system of the Victorian Government for publication of details of contracts entered into by Victorian Government departments and some agencies, including any replacement or amended system.

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

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

Goods means the goods (or any of them) specified in Schedule 2 (as amended from time to time in accordance with clause 3.2 or 3.7).

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

IBAC means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission.

Information Privacy Principles means the information privacy principles set out in the PDP Act.

Intellectual Property Rights means all intellectual property rights at any time recognised by law, including all present and future copyright rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Item mean an item of Schedule 1.

Laws means the law in force in the State of Victoria and the Commonwealth of Australia, including any local government by-law, common law and legislation.

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

Losses has the meaning given to that term in clause 5(a).

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

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

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

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

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of that party.

Privacy Obligations has the meaning given to that term in clause 9.3.

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

Retail Premises means the Supplier's retail premises specified in Item 5 of Schedule 1.

School means the School administered by the School Council.

School Council Child Safety Policies means any relevant School Council policies, codes, guidelines or associated documents that in any way relate to child safety, including

any policies, codes, guidelines or associated documents that the School produces for the purpose of meeting its minimum child safety standards pursuant to section 5 of the Ministerial Order.

School Council Representative means the person nominated by the School Council pursuant to clause 6.1(a)(i) for the time being.

Special Conditions means the special conditions (if any) specified in Schedule 4.

Specifications means the specifications to which the Goods must comply, including any relevant performance requirements, technical constraints and quality standards, as set out in Schedule 2.

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

Supplier Representative means the person nominated by the Supplier pursuant to clause 6.1(a)(ii) for the time being.

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

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

Term means the period of this Agreement commencing on the Commencement Date and expiring on the Expiry Date, including any extension of it.

Unique Stock means Goods bearing the School's specific logo or labelling that are made exclusively for the School, or which include fabric made exclusively for the School.

Unit Price means the price per item of each of the Goods, as stated in Schedule 3, as amended from time to time in accordance with clause 3.2, 3.7 or 6.3.

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

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other gender;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) the obligations of the Supplier, if more than one person, under this Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Agreement, of the other as if those acts or omissions were its own;
- (g) the rights of the Supplier, if more than one person, under this Agreement, including the right to payment,

jointly benefit each person constituting the Supplier (and not severally or jointly and severally);

(h) a reference to:

- (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
- (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (v) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia; and
- (vi) a party or parties is a reference to the School Council and the Supplier (as the case requires); and

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

2. Term

2.1 Term

This Agreement commences on the Commencement Date and, unless terminated earlier or extended in accordance with this Agreement, ends on the Expiry Date.

2.2 Extension of term

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

3. Supply of Goods

3.1 Appointment of Supplier

- (a) The Supplier is appointed to supply the Goods for sale by the Supplier at its Retail Premises during the Term, on and subject to the terms of this Agreement.
- (b) If:
 - (i) the School Council has provided the Supplier with written notice that, in the reasonable opinion of the School Council, the Supplier cannot meet the reasonable stock levels required in clause 3.9(a) or the specific stock levels detailed in the School Council's notice under this clause; and

- (ii) the Supplier is unable to supply the stock in the notice referred to in clause 3.1(b)(i) above within 30 days,

the School Council may terminate this Agreement on notice to the Supplier.

3.2 New Products

- (a) If, during the Term, the School Council wishes to order from the Supplier any item that is not at that time one of the Goods (**New Product**), the School Council will notify the Supplier of that fact in writing.
- (b) Within 14 days of receiving a notification under clause 3.2(a), the Supplier must provide to the School Council a quote detailing the price at which the Supplier is prepared to supply the New Product, together with any other conditions applicable to such supply. The Supplier undertakes that in determining the Unit Price for any New Product, it will:
 - (i) have regard to the obligations contained in clause 6.4; and
 - (ii) to the extent that it is reasonably possible to do so, calculate the Unit Price on the same basis as that on which the Unit Price of the Goods was calculated.
- (c) The parties must negotiate in good faith with a view to reaching agreement as to the terms on which the requested New Product will be supplied by the Supplier under this Agreement.
- (d) If the parties reach agreement pursuant to clause 3.2(c), the New Product will be deemed to form part of the Goods for the purposes of this Agreement, and the Supplier must promptly provide to the School Council updated versions of Schedule 2 and Schedule 3 containing a list of all Goods and their respective Unit Prices.
- (e) If the parties are unable to reach agreement pursuant to clause 3.2(c) within a timeframe reasonably acceptable to the School Council, the New Product will not form part of the Goods for the purposes of this Agreement.

3.3 Design

- (a) Before commencing the supply of Goods at its Retail Premises, the Supplier must provide the School Council with one complete set of samples of each item of Goods to be supplied under this Agreement for approval by the School Council, if so requested by the School Council. Each sample will be manufactured in accordance with the Specifications.
- (b) If the School Council approves a sample of Goods in writing (**Approved Sample**), the School Council must return the Approved Sample to the Supplier and the Supplier must supply the School Council with sufficient evidence (including photographs, sample fabric and design specifications) of the Approved Sample for the School Council's records.
- (c) The Supplier will provide another set of Goods to the School Council for display at the School, if required by the School Council (**Display Uniform**). The School

Council will pay the Supplier a reasonable sum for the Display Uniform if required by the Supplier.

- (d) The Supplier must ensure that each item of Goods supplied by it is the same as the Approved Sample. In the event of any conflict between the Specifications and the Approved Sample, the Approved Sample will take precedence over the Specifications to the extent of the inconsistency.

3.4 Design Change

The School Council may vary the Specifications by giving the Supplier at least 18 months' notice of the variation (or such lesser period as is agreed between the parties).

3.5 Labelling

The Supplier must ensure that each item of Goods supplied by it has affixed to it:

- (a) fabric care and size labels that conform to all relevant Australian Standards; and
- (b) any other distinctive labels required under the Specifications.

3.6 Unique Stock

- (a) On the Commencement Date, and otherwise as and when required during the Term, the Supplier must provide written notice to the School Council setting out the specific details of any Unique Stock items.
- (b) The School Council must notify the Supplier in writing whether it agrees that the items set out in a notice provided under clause 3.6(a) are Unique Stock.
- (c) A written notice provided under clause 3.6(a) must be provided prior to the Supplier incurring any cost that the School Council may be liable for in relation to the supply of the Unique Stock.
- (d) If the Supplier provides notice under clause 3.6(a) and the School Council fails within a reasonable time to notify the Supplier under clause 3.6(b) whether it agrees that the items set out in the notice provided under clause 3.6(a) are Unique Stock, the Supplier may notify the School Council and the School Council must provide a response within 7 days.

3.7 Inability to supply

If, at any time during the Term, the Supplier is unable or is likely to become unable, for whatever reason, to supply a particular Good, irrespective of the reason for that inability to supply, the Supplier must:

- (a) immediately notify the School Council of that fact; and
- (b) promptly provide to the School Council for its consideration, a substitute for the relevant item.

Any substitute or replacement item will be supplied at the same cost (or lower) as the item that it has replaced, unless otherwise agreed in writing by the School Council. If the School Council agrees to accept the substituted item in replacement for the original item that substituted item will become part of the Goods and the Supplier must promptly provide to the School Council updated versions of Schedule

2 and Schedule 3 containing a list of all Goods and their respective Unit Prices.

3.8 Number of Students

- (a) To enable the Supplier to establish production schedules and to place orders with its suppliers, the School Council will, on the Commencement Date and within 6 months prior to the end of each academic year (or within such lesser period as may be agreed between the parties in writing), provide the Supplier with an estimate of:
 - (i) the number of students likely to be attending the School during the next academic year;
 - (ii) the number of male and female students; and
 - (iii) the likely distribution of those students into year classes.
- (b) The Supplier acknowledges and agrees that:
 - (i) the number of students attending the School may fluctuate from time to time;
 - (ii) the advice as to student numbers provided in accordance with this clause 3.8 is subject to change at any time;
 - (iii) the School Council does not guarantee the number of students will remain stable; and
 - (iv) the School Council does not guarantee the number of pupils who will purchase the Goods.

3.9 Stock

- (a) The Supplier must maintain a reasonable stock level of the Goods which is adequate to meet the demand of the estimated number of students provided by the School Council from time to time in accordance with clause 3.8.
- (b) The Supplier agrees that:
 - (i) the stock levels maintained by the Supplier pursuant to this clause 3.9 are at the Supplier's risk; and
 - (ii) subject to clause 3.10, the School Council is not liable for any Goods which remain unsold at any time during or after the Term.

3.10 Buyback of Stock

- (a) The School Council will purchase agreed Unique Stock of Goods identified by the Supplier (**Buy-back Stock**) at the date of termination or expiry, if it is evidenced that the Supplier has only sought to maintain reasonable stock levels required by clause 3.9(a) and not sought to increase stock levels.
- (b) The price the School Council will pay the Supplier for the Buy-back Stock purchased under clause 3.10(a) will not exceed the wholesale price of the Unique Stock of Goods plus 5%.
- (c) Payment for the Buy-back Stock will be made within one month of delivery to the School Council.

3.11 Sale of Second Hand Uniforms

- (a) Notwithstanding anything else in this Agreement, the School Council may:
- (i) sell or otherwise dispose of; or
 - (ii) authorise or assist any person or organisation, including limitation, the School parents' club, to sell or otherwise dispose of,
- second hand Goods on the School premises or at any other venue after notifying the Supplier in writing.
- (b) The School Council agrees to assume responsibility for all existing second hand Goods accepted on consignment by the Supplier. The Supplier will provide the School Council, upon reasonable request, with records of second hand Goods sold for this purpose.

3.12 Price for the Goods

- (a) The initial Unit Price for each of the Goods is set out in Schedule 3.
- (b) Except as expressly provided otherwise in this Agreement, the Unit Price for the Goods includes all taxes, duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be imposed or levied in Australia or overseas in connection with this Agreement, packaging, transport, insurance, loading, unloading, storage and other costs and expenses of the Supplier, up to the point of delivery of the Goods, including unloading of the Goods at the Retail Premises.
- (c) Subject to clauses 3.3(c) and 3.10, the Supplier acknowledges and agrees that the School Council is not liable to the Supplier for payment of the Unit Price for the Goods supplied by the Supplier at its Retail Premises. The Goods can be purchased directly from the Supplier by families of students of the school which the School Council represents.

4. Warranties

- (a) The Supplier warrants to the School Council that:
- (i) the Supplier has the right to sell and transfer full and unencumbered title to, and property in, the Goods;
 - (ii) it will comply with all Laws and applicable State government policies which are referred to in this Agreement or made known by the School Council to the Supplier;
 - (iii) the Goods:
 - (A) (except as otherwise provided in the Specifications) are new;
 - (B) notwithstanding any approval of an Approved Sample, are fit for the purpose for which the Goods would ordinarily be used;
 - (C) conform in all other respects with the requirements of this Agreement (including the Specifications);

- (D) are free from defects;
 - (E) are of merchantable quality and comply with all applicable Laws and standards; and
 - (F) have been manufactured, constructed or assembled at the location and in the facility disclosed by the Supplier in the Tender Documentation (if applicable, or as otherwise advised to the School Council) as the place of manufacture, construction or assembly of the Goods;
- (iv) all representations made by the Supplier in or in connection with the Tender Documentation (if applicable) were and remain accurate and the Supplier has and will maintain during the Term the quality assurance arrangements set out in the Specifications; and
- (v) the Supplier will not vary the specification, design, shape, configuration or characteristics of the Goods during the Term without first obtaining the written consent of the School Council Representative.

5. Liability

- (a) The Supplier at all times indemnifies and will continue to indemnify, hold harmless and defend the Department, the School Council, its Personnel (in this clause, each an **Indemnified Party**) against any liability, loss, damage, claim, action or expense (including all legal costs determined on a full indemnity basis) (**Losses**) which any Indemnified Party suffers or incurs as a result of any demand, suit, action, claim or proceeding against an Indemnified Party where the Losses arise as a direct or indirect result of any of the following:
- (i) personal injury, including sickness and death;
 - (ii) property damage;
 - (iii) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (iv) fraudulent acts or omissions of the Supplier or its Personnel;
 - (v) any wilful misconduct or unlawful act or omission by the Supplier or its Personnel;
 - (vi) any third party claim arising out of a breach of this Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
 - (vii) any infringement or alleged infringement of the Intellectual Property Rights, Moral Rights or any other rights of any person, including any third party,

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

- (b) To the extent that the indemnity in this clause refers to persons other than the School Council, the School Council holds this clause on trust for those other persons.
- (c) If any indemnity payment is made by the Supplier under clause 5(a), the Supplier must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.
- (d) If the School Council notifies the Supplier in writing that it accepts the proposed increase in the Unit Prices notified by the Supplier under clause 6.3(c), the Unit Prices will be varied with effect from the next anniversary of the Commencement Date and the Supplier must promptly provide to the School Council an updated version of Schedule 3 containing a list of all Goods and their respective Unit Prices.
- (e) If the School Council, in its reasonable opinion, believes a proposed increase to the Unit Prices as notified by the Supplier under clause 6.3(c) to be excessive, it will notify the Supplier and provide reasons for its refusal.

6. Contract management

6.1 School Council Representative and Supplier Representative

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

6.2 Reports

The Supplier must provide the School Council Representative with all reports, data or other information that the School Council Representative may reasonably request to enable it to adequately assess the Supplier's stock levels.

6.3 Price variation

- (a) The Supplier must supply each item of the Goods at the Unit Price during the Term.
- (b) The Supplier may increase the Unit Price on each anniversary of the Commencement Date in accordance with the process in this clause 6.3 to reflect any increases in costs and other charges reasonably incurred and evidenced by the Supplier.
- (c) At least 30 days prior to an anniversary of the Commencement Date, the Supplier must provide the School Council with written notice of its proposed increase in the Unit Prices.

- (d) If the School Council notifies the Supplier in writing that it accepts the proposed increase in the Unit Prices notified by the Supplier under clause 6.3(c), the Unit Prices will be varied with effect from the next anniversary of the Commencement Date and the Supplier must promptly provide to the School Council an updated version of Schedule 3 containing a list of all Goods and their respective Unit Prices.
- (e) If the School Council, in its reasonable opinion, believes a proposed increase to the Unit Prices as notified by the Supplier under clause 6.3(c) to be excessive, it will notify the Supplier and provide reasons for its refusal.
- (f) If the School Council refuses a price variation under clause 6.3(e), the School Council and the Supplier will discuss in good faith the proposed price variation.
- (g) If the School Council and the Supplier agree any variation to the Unit Price in accordance with 6.3(f), the School Council will notify the Supplier in writing and the Unit Prices will be varied with effect from 14 days after the Supplier's receipt of such notice. The Supplier must promptly provide to the School Council an updated version of Schedule 3 containing a list of all Goods and their respective Unit Prices.

6.4 Competitive pricing

The Supplier must ensure the Unit Prices are (and will remain, for the Term) commercially competitive in terms of prices, and terms and conditions, offered by other providers in the market for goods which are the same as or equivalent to the Goods.

7. Intellectual Property Rights

7.1 Ownership of Intellectual Property

- (a) The Supplier acknowledges that:
 - (i) it acquires no right, title or interest in or to any Intellectual Property Rights associated with the Goods (whether owned by the School Council or a third party) by virtue of this Agreement;
 - (ii) it may use any Intellectual Property Rights associated with the Goods during the Term solely for the purpose of, and only to the extent necessary to, perform its obligations under this Agreement; and
 - (iii) information concerning Specifications (including drawings, patterns and fabric specifications) which is provided to the Supplier by the School Council is Confidential Information.
- (b) The School Council agrees that it will not provide any samples made up by the Supplier to any other person, including a competitor of the Supplier, without the prior written approval of the Supplier.

7.2 No assignment

Nothing in this clause affects any assignment of Intellectual Property Rights in any Goods or other items supplied under this Agreement unless the parties expressly agreed in writing to the contrary.

8. Termination

8.1 Grounds for termination by the School Council

The School Council may terminate this Agreement by notice in writing to the Supplier if the Supplier:

- (a) in the reasonable opinion of the School Council consistently fails to supply the Goods in accordance with the Specifications or otherwise in accordance with the requirements of this Agreement;
- (b) fails to remedy, to the reasonable satisfaction of the School Council, any breach of this Agreement (which in the reasonable opinion of the School Council is able to be remedied) within 14 days or any other time agreed by the parties in writing after the date on which the School Council issues the Supplier a written notice requiring the Supplier to remedy the breach;
- (c) breaches any material provision of this Agreement and, in the reasonable opinion of the School Council, such breach cannot be remedied;
- (d) or any of its Personnel are guilty of fraud, dishonesty or any other serious misconduct;
- (e) commits any act or does anything that is, in the opinion of the School Council, contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Supplier into disrepute and as a consequence the School Council believes that its continued association with the Supplier will be prejudicial or otherwise detrimental to the reputation of the School Council or the State; or
- (f) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

8.2 Termination without cause

- (a) The School Council may terminate this Agreement without cause on notice to the Supplier (such termination to take effect upon receipt of the notice or such later date as specified in the notice).
- (b) Where this Agreement is terminated by the School Council pursuant to clause 8.2(a), the School Council will pay to the Supplier the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit, and the School Council has no other liability to the Supplier in relation to that termination.
- (c) When the School Council issues a notice under clause 8.2(a), the Supplier 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.

8.3 Consequences of termination or expiry

- (a) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may

have accrued to either party prior to termination or expiry (as the case may be).

- (b) On termination or expiration of this Agreement, the Supplier must immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any Confidential Information and, at the election of the School Council:
 - (i) delete or destroy the materials, as applicable; or
 - (ii) return the materials to the School Council in the format in which they were first provided by the School Council and, in addition, if required by the School Council, in a non-proprietary and open access file format (such as .txt, .csv, .rft, etc) as specified by the School Council,

at no additional cost to the School Council.

8.4 Survival

Clauses 4, 5, 7, 8.3, 9, 13, 14 and 17 of this Agreement survive the termination or expiry of this Agreement and may be enforced at any time.

8.5 Insurance

- (a) The Supplier must (and must ensure that any sub-contractors appointed by it under clause 12) obtain and maintain for Term, the insurances specified in Item 4 of Schedule 1.
- (b) The Supplier must provide the School Council with evidence of the currency of any insurance it is required to obtain under this clause on or prior to submitting its first invoice under this Agreement, and otherwise on request by the School Council at any time during the Term.

9. Confidentiality, privacy and data protection

9.1 Use of Confidential Information

- (a) The Supplier will keep the Confidential Information confidential and secure and will (and will ensure that its Personnel will):
 - (i) use and reproduce Confidential Information only to the extent necessary to perform its obligations under this Agreement; and
 - (ii) not disclose or otherwise make available Confidential Information other than to its Personnel who have a need to know the information to enable the Supplier to perform its obligations under this Agreement.
- (b) All Confidential Information will remain the property of the School Council and all Confidential Information.
- (c) The Supplier acknowledges that the School Council will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Supplier of this clause 9 and without the need on the part of the School Council to prove any special damage.

9.2 Disclosure of Supplier's information

- (a) Subject to clause 9.2(b), the School Council agrees to treat as confidential all information of or relating to the Supplier that is provided to it, whether under this Agreement or the Tender Documentation, by or on behalf of the Supplier and which is identified in writing by the Supplier as confidential.
- (b) The Supplier consents to the School Council publishing or otherwise making available information in relation to the Supplier and the provision of the Goods as may be required:
 - (i) in order to comply with the requirements of the Contract Publishing System;
 - (ii) to other Victorian Government departments and agencies or Ministers of the State of Victoria in connection with the use of the Goods;
 - (iii) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
 - (iv) by the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) (**Auditor-General**) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic) (**Ombudsman**);
 - (v) to comply with Law, including the *Freedom of Information Act 1982* (Vic); or
 - (vi) to the IBAC.

9.3 Privacy

The Supplier acknowledges that it will be bound by the Information Privacy Principles, any applicable Code of Practice and the Health Privacy Principles (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier in connection with this Agreement in the same way and to the same extent as the Privacy Obligation would have applied to the School Council in respect of that act or practice had it been directly done or engaged in by the School Council.

9.4 Data Protection

The Supplier acknowledges that the School Council is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to a contravention by the School Council in respect of any data collected, held, used, managed, disclosed or transferred by the Supplier on behalf of the School Council under or in connection with this Agreement.

10. Disputes

10.1 Parties to meet

If any dispute arises under or in connection with this Agreement (**Dispute**) which Dispute is not able to be resolved by the School Council Representative and the Supplier Representative within 14 days, the nominated senior executive officer (or equivalent) of each of the School Council (on the one hand) and the Supplier (on the other

hand) will promptly meet and discuss in good faith with a view to resolving such Dispute.

10.2 Mediation

If any Dispute is unable to be resolved in accordance with clause 10.1 within 14 days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) in accordance with ACDC's guidelines before having recourse to arbitration or litigation.

10.3 Litigation

If the parties fail to settle any Dispute in accordance with clause 10.2 either party may pursue its rights at Law.

10.4 Performance during Dispute resolution

The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute under this clause 10.

10.5 Interlocutory relief

Nothing in this clause 10 is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such dispute.

11. Compliance by Supplier

The Supplier must, in performing its obligations under this Agreement, comply with all Laws and Victorian Government policies and procedures affecting or applicable to the provision of Goods by the Supplier and/or this Agreement.

12. Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations under this Agreement without the prior written consent of the School Council, which consent may be given or withheld by the School Council in its absolute discretion.
- (b) The Supplier must ensure that any sub-contractor engaged by it complies with all obligations imposed on the Supplier by this Agreement. The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

13. GST

13.1 Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

13.2 Consideration is inclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are inclusive of GST. If GST is imposed on any supply made under or in accordance with this Agreement which is not expressed to be inclusive of GST, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of

the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

13.3 Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

13.4 Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Agreement, the Supplier must recalculate the amount payable on account of GST under clause 13.2 to take account of the adjustment event. The Supplier must issue an adjustment note to the School Council within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Supplier to the School Council, or by the School Council to the Supplier, as the case may be.

14. Notices

14.1 Giving a communication

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

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

14.2 Time of delivery

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

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post, four (nine if posted to or from a place outside Australia) days after the date of posting; and
- (c) in the case of electronic mail, if the receiving party has agreed to receipt in that form under this Agreement, and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when receipt of the message is recorded on the sender's computer.

14.3 After hours communications

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

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

15. Requirement for Working with Children and Police Checks

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

16. Child Safe Standards

- (a) The parties acknowledge and agree that Victorian government schools are committed to:
 - (i) creating child safe environments;
 - (ii) protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with their legal obligations, including Child Safety Laws.
- (b) This clause only applies to the extent that the Supplier (and its Personnel) are engaged in Child-connected work.
- (c) The Supplier acknowledges that the School Council and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.
- (d) If the Supplier is an Applicable Entity, it warrants to the School Council that it:
 - (i) is compliant and will continue to comply with Child Safety Laws; and
 - (ii) will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Supplier (or its Personnel).
- (e) The Supplier (and its Personnel) must:
 - (i) if applicable (whether or not Supplier must itself comply with Child Safety Laws), comply

with any relevant School Council Child Safety Policies; and

- (ii) comply with any reasonable direction by the School Council in respect to compliance by the School Council, School Staff and/or the Supplier with any Child Safety Laws or any relevant School Council Child Safety Policies.
- (f) The School Council may terminate this Agreement immediately if, in the School's Council's reasonable opinion, it determines at any time that:
 - (i) there is a breach of any Child Safety Laws caused by, or in any way connected with, the Supplier or its Personnel; or
 - (ii) the Supplier or any of its Personnel are not suitable to engage in Child-connected work for the purposes of the School Council and School Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

17. General

17.1 Costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

17.2 Amendment

This Agreement may only be varied or replaced by a document executed by the School Council and the Supplier.

17.3 Waiver and exercise of rights

A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

17.4 Severability

Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

17.5 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

17.6 Set off

The School Council may set off against any sum owing to the Supplier under this Agreement any amount then owing by the Supplier to the School Council. The Supplier may set off against any sum owing to the School Council under this Agreement any amount then owing by the School Council to the Supplier.

17.7 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria and the

parties submit to the exclusive jurisdiction of the courts of Victoria.

17.8 Assignment of rights

The Supplier must not assign any right under this Agreement without the prior written consent of the School Council.

17.9 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

17.10 Entire understanding

- (a) This Agreement is comprised of the following documents:
 - (i) the Special Conditions (if any);
 - (ii) clauses 1 to 17 (inclusive);
 - (iii) the Schedules to this Agreement;
 - (iv) the Tender Documentation (if specified or included in Item 6 of Schedule 1); and
 - (v) any other documents or representations referred to in this Agreement or incorporated by reference.
- (b) In the event and to the extent of any inconsistency between the documents listed in clause 17.10(a), the provisions of the earlier mentioned document will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.
- (c) This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.
- (d) Except as otherwise provided in clause 17.10(a):
 - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect; and
 - (ii) no oral explanation or information provided by any party to another:
 - (A) affects the meaning or interpretation of this Agreement; or
 - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

17.11 Publicity

The Supplier must not make any public announcement or media release in respect of any aspect of this Agreement or the Goods without the prior written approval by the School

Council. Without limitation, if permission to publish is granted pursuant to this clause 17.11 the Supplier must, in all publications, promotional and advertising materials and public announcements, acknowledge the contribution of the School Council.

17.12 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

17.13 School Council's discretion

Unless expressed otherwise within this Agreement, any decision, discretion or opinion of the School Council under this Agreement will be at the sole and absolute discretion of the School Council.

17.14 No inducements

- (a) The Supplier will not, and will ensure that its Personnel will not, directly or indirectly, offer, promise, agree to pay, give, accept, or solicit anything of value (including to or from any third party) in order to secure any reward or improper benefit other than payment for the performance of its obligations under this Agreement.
- (b) The School Council may terminate this Agreement immediately on notice to the Supplier if the Supplier or any of its Personnel is found to have engaged in any conduct under clause 17.14(a) and recover the amount of any loss resulting from such termination as a debt due from the Supplier.

17.15 Conflict of interest

- (a) The Supplier warrants that it does not, and will ensure that its Personnel do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interest under this Agreement.
- (b) The Supplier must promptly inform the School Council of any matter which may give rise to an actual or potential conflict of interest and comply with any reasonable directions given by the School Council in terms of dealing with that conflict.
- (c) The Supplier acknowledges and agrees that failure to comply with this clause 17.15 will constitute a breach of a fundamental term of this Agreement.

Executed as an Agreement.

School Council

Date:

<insert date that School Council signs >

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

Supplier

Date:

<insert date that Supplier signs >

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

Executed by ACN		
Signature of director		Signature of director/company secretary (Please delete as applicable)
Name of director (print)		Name of director/Company secretary) (print)

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

Executed by ACN	
Signature of Sole Director and Company Secretary	Signature of witness

Name of Sole Director and Company Secretary (print)		Name of witness (print)	
<Use this signing clause when the Supplier is an individual, delete if Supplier is a company incorporated in Australia>			
Signed by in the presence of:			
Signature of witness		Signature of individual	
Name of witness (print)			

Schedule 1 Contract Variables**Item 1: Parties to Agreement****(a) School Council**

Name:	<insert FULL name of School Council then delete this line>
ABN:	
Address:	

(b) Supplier

Name:	<insert name of Supplier then delete this line>
ACN/ABN:	
Address:	

Item 2: Term**(Clause 2)**

<insert details >

Commencement Date:	
Expiry Date:	
Further term(s):	

Item 3: Parties' representatives**(Clause 6)****(a) School Council Representative**

<insert School Council details >

Name:	
Title:	
Telephone:	
Mobile:	

Email:	
Address:	

(b) Supplier Representative

<insert supplier details>

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

Item 4: Insurance**(Clause 8.5)**

<amend as necessary>

The Supplier is required to obtain and maintain during the Term:

Type of coverage	Amount (AUD)
Public liability insurance	\$20 million [per event / in the aggregate]
Product liability insurance	\$5 million [per event / in the aggregate]

Item5: Supplier's Retail Address (Clause 1.1)

<insert details of the retail premises where the Supplier intends to sell the School Uniforms >

Item 6: Tender Documentation (Clause 1.1)

<insert or attach details of tender documentation provided by the Supplier>

Schedule 2 Goods and Specifications

<Insert or attach details of Goods (School Uniforms) and Specifications>

Schedule 3 Unit Prices

<Insert or attach details of Unit Prices>

Schedule 4 Special Conditions

< If additional special conditions are required, insert details or insert 'Nil'>