

School Council Short Form Services Contract

Between

<Insert School Council name and ABN>

of

<Insert School Council address>

(School Council)

And

<Insert Supplier's name and ABN>

of

<Insert Supplier's address>

(Supplier)

The Contract Details follow

1. Details

School Council representative	Name:
	Phone:
Supplier representative	Name:
	Phone:
Date of Agreement	

2. Services and Specification

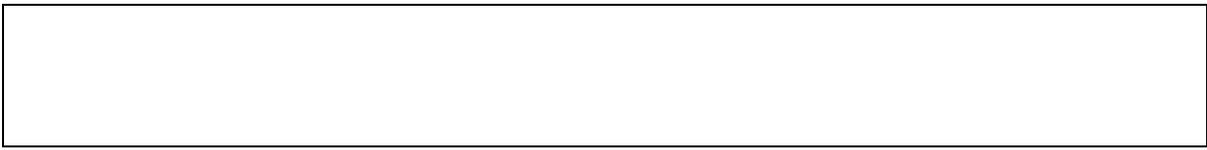
<Insert description of the Services (for example, contract deliverables could be described in terms of the results or outcomes required). If a written specification has been prepared, include it at attachment 2>

3. Rates and Fees (incl. of GST)

<Insert the agreed rates and/or fees for the Services (inclusive of GST)>

4. Completion Date

<Insert date you require Services to be delivered and a time (if any)>



5. Terms and Conditions

- 5.1 The Services must be supplied in accordance with the Conditions at Attachment 1.
- 5.2 Capitalised terms in these Contract Details that are otherwise undefined have the meaning given in:
 - 5.2.1 the Conditions at Attachment 1; or
 - 5.2.2 the Specification at Attachment 2,with the meaning in the Conditions to take precedence to the extent of any inconsistency.

Executed as an agreement

<School Council to sign>

Signature of President

Signature of Witness

Full name of President (printed)

Full name of Witness (printed)

<Supplier to sign here>

Signed for and on behalf of the
Supplier by:

Signature of Supplier's representative

Signature of Witness

Full name of Supplier's representative
(printed)

Full name of Witness (printed)

Position of Authority (printed)

Attachment 1

General Conditions for the Provision of Services ('Conditions')

1 Provision of Services

- (a) This Agreement commences on the Commencement Date and ends on the Completion Date, unless terminated earlier in accordance with its terms.
- (b) The Supplier must provide the Services to the School Council in accordance with this Agreement, and must:
 - (i) complete the Services by the Completion Date and any other dates for delivery specified in the Contract Details;
 - (ii) provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
 - (iii) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
 - (iv) act in good faith and in the best interests of the School Council;
 - (v) provide any and all plant, equipment, tools or other equipment necessary for the performance of the Services and all such equipment must be properly maintained and be appropriate for the purpose for which it is intended to be used;
 - (vi) comply with the School Council's and the State's policies and procedures (as notified or made available to the Supplier from time to time);
 - (vii) if requested by the School Council, remove and replace any person it is using to provide the Services;
 - (viii) notify the School Council:
 - (i) if any person that it is using to provide the Services has engaged in, or is reasonably believed to have engaged in, fraud, collusion or improper, dishonest or corrupt conduct in connection with this Agreement or in any other dealings with the School Council; or
 - (ii) of any other matter relevant to this Agreement including if the Supplier becomes aware of any breach of this Agreement.
- (c) If, at any time, the Supplier is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, the Supplier must immediately notify the School Council of that fact.
- (d) This Agreement is entered into on a non-exclusive basis.

2 Price for the Services

- (a) The Rates or Fees applicable to the Services set out in the Contract Details are fixed and are inclusive of:
 - (i) all costs incurred by the Supplier in the provision of the Services; and
 - (ii) all other taxes payable in connection with the Services (excluding GST).

- (b) Expenses may only be charged in accordance with the Contract Details.

3 Termination

- (a) The School Council may terminate this Agreement without cause at any time by giving written notice to the Supplier (such termination to take effect upon receipt of the notice or such later date as specified in the notice) who must, on receipt, immediately cease all work and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Services.
- (b) The School Council will pay the Supplier for the Services performed in accordance with this Agreement up to the date of the termination in accordance with clause 2, but has no other liability to the Supplier in relation to that termination.
- (c) The School Council may terminate this Agreement immediately by notice in writing to the Supplier if in the opinion of the School Council, the Supplier is in breach of this Agreement and:
 - (i) the breach is not capable of remedy; or
 - (ii) the Supplier fails to remedy the breach within 14 days of receipt of written notice from the School Council of the breach.
- (d) The School Council may terminate this Agreement immediately by notice in writing to the Supplier if the Supplier or any of its Personnel or sub-contractors have engaged in, or are reasonably believed by the School Council to have engaged in, fraud, collusion, improper, dishonest or criminal conduct or any other serious misconduct in connection with this Agreement or in any other dealings with the School Council.
- (e) The Supplier may terminate this Agreement immediately by notice if the School Council fails to pay any amounts due and payable under this Agreement within 90 days of the date on which it was due, subject to the Supplier providing the School Council with notice that the amount is outstanding at least 30 days prior to the expiration of that 90 day period.
- (f) 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.
- (g) 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 Data or Confidential Information and, at the election of the School Council, return to the School Council, or delete or destroy, the material at no additional cost to the School Council.
- (h) The School Council may terminate this Agreement immediately by notice in writing to the Supplier if the Supplier 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.

4 Invoicing and payment

- (a) The Supplier must submit to the School Council a Tax Invoice in respect of the Services once they are completed, or at such other time or times as agreed by the parties. A Tax Invoice submitted for payment must be sent to the address specified in the Contract Details.
- (b) The School Council will pay the invoiced amount within 30 days of receipt of an accurate invoice and once the School Council is satisfied the Services have been provided as required under this Agreement. However, if the School Council disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Supplier of the amount the School Council believes is due for payment. The parties will endeavour to resolve any such dispute. If requested, the Supplier will withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.
- (c) Payment of an invoice is not to be taken as evidence that the Services have been supplied in accordance with this Agreement but must be taken only as payment on account.
- (d) The School Council will, on demand by the Supplier, pay simple interest on a daily basis on any Overdue Amount, at the rate for the time being fixed under the *Penalty Interest Rates Act 1983* (Vic).

5 Failure to perform

- (a) Without limiting any other remedy the School Council may have, if the Supplier fails to provide any of the Services in accordance with this Agreement, the School Council will not be required to pay for those Services (until they are provided correctly) and may require the Supplier to remedy any default or re-perform the Services within the time specified in a notice (which must be reasonable having regard to the nature of the Services).
- (b) If the default referred to in clause 5(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or re-perform the Services, the School Council may either have the Services remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by the School Council in doing so.

6 Warranties

The Supplier warrants to the School Council that:

- (a) (**Purpose**) where the School Council has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (b) (**Conflict**) the Supplier and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under this Agreement;
- (c) (**IP**) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services and to grant to the School Council the licences contemplated by this Agreement; and

- (d) (**No infringement**) the provision of the Services and Contract Materials will not infringe any right of any third party (including any Intellectual Property Right) or any Laws.

7 Liability

- (a) The Supplier indemnifies the School Council and each of its officers, employees and agents (in this clause, each an **Indemnified Party**) against any loss, damage, claim, action or expense (including legal expense) which any of them suffers or incurs as a result of any demand, action, claim or proceeding against any Indemnified Party for or in relation to any of the following:
 - (i) any breach of this Agreement;
 - (ii) any wrongful, fraudulent, unlawful or negligent act or failure by the Supplier or any of the Supplier's employees, agents, officers or subcontractors;
 - (iii) any injury to, or death of, any person or any loss of, or damage to any property caused by or arising in connection with the provision of the Services by the Supplier, or entry into, and the activities undertaken on and in, the School Council's premises by the Supplier or its officers, employees, agents, contractors or subcontractors;
 - (iv) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (v) any infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party; or
 - (vi) loss or corruption of Data,

except to the extent that any such demand, action, claim or proceeding is caused by the negligence or other wrongful act or omission of the Indemnified Party. 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.

- (b) If any indemnity payment is made by the Supplier under this clause 7, 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.
- (c) The aggregate liability of the School Council to the Supplier in connection with this Agreement is limited to an amount equal to the Fees charged or chargeable under this Agreement.

8 Intellectual Property Rights

- (a) The School Council's and the Supplier's Pre-Existing IP will remain vested in each of them (or the third party who owns it). Contract Materials will remain vested in the Supplier.
- (b) The Supplier hereby irrevocably and unconditionally grants to the School Council a perpetual, non-exclusive, royalty-free, worldwide, irrevocable licence (including the right to sub-license) to exercise all Intellectual Property Rights in:
 - (i) the Contract Materials; and
 - (ii) any of the Supplier's Pre-Existing IP incorporated in or otherwise required to use the Contract Materials.
- (c) The School Council grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use the School Council's

Pre-Existing IP for the sole purpose of performing, and only the extent required to perform, the Services and complying with its obligations under this Agreement.

- (d) The Supplier warrants that it has or will procure from all relevant persons who are authors or makers of any Contract Materials a written consent from all individuals involved irrevocably consenting to the School Council exercising its rights in the Contract Materials in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.
- (e) **(Data)** The ownership of Data, including any Intellectual Property Rights, shall vest in the School Council upon the time of its creation. The Supplier irrevocably and unconditionally assigns to the Organisation, including by way of an assignment of future Intellectual Property Rights, all of its Intellectual Property Rights in Data on creation.

9 Insurance

- (a) The Supplier must obtain and maintain insurance coverage at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the provision of the Services including professional indemnity and, if applicable, public and products liability insurance.
- (b) On request, the Supplier must provide the School Council with evidence of the currency of any insurance it is required to obtain under this clause.

10 Confidentiality, privacy and data protection

- (a) The Supplier and its employees, agents, directors, partners, shareholders and consultants will keep the Confidential Information confidential and secure and must:
 - (i) use and reproduce the Confidential Information only to the extent necessary to perform its obligations under this Agreement; and
 - (ii) not disclose or otherwise make available any Confidential Information to any other person.
- (b) All Confidential Information will remain the property of the School Council.
- (c) The Supplier consents to the School Council publishing or otherwise making available information in relation to the Supplier (and the provision of the Services) as may be required for the School Council to comply with any Law or Victorian government policy.
- (d) The Supplier agrees to be bound by the Information Privacy Principles, the Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier in connection with the provision of the Services in the same way as the Privacy Obligations 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.
- (e) The Supplier agrees to comply with any directions made by the Commissioner, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner relevant to this Agreement.
- (f) The Supplier agrees to be bound by the Protective Data Security Standards and 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.

11 Access

The Supplier and its employees, agents and contractors must only enter the premises of the School Council with the prior consent of the School Council (or its representative at the premises). When entering the premises of the School Council, the Supplier must, and must ensure that its employees, agents and contractors will, protect people and property, prevent nuisance and act in a safe and lawful manner, comply with the safety standards and policies of the School Council (as notified to the Supplier) and comply with *the Occupational Health and Safety Act 2004 (Vic)*, the Child Safety Laws and any applicable regulations made under those Acts.

12 Working with Children Checks and Child Safe Standards

- (a) The Supplier must ensure that all its employees, agents and contractors entering the School Council's premises:
 - (i) have undertaken a satisfactory working with children check if required pursuant to the *Working With Children Act 2005 (Vic)* or as otherwise requested by the School Council; and
 - (ii) have met any additional relevant legal requirements and policies of the School Council and/or School in relation to the suitability of persons to work with school children or within the precinct of the School as notified to the Supplier by the School Council.
- (b) The parties acknowledge and agree that Victorian government schools are committed to creating child safe environments and 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.
- (c) This remainder of this clause 12 only applies to the extent that the Supplier (and its employees, agents and contractors) are engaged in Child-connected work.
- (d) 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.
- (e) 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 employees, agents and contractors).
- (f) The Supplier (and its employees, agents and contractors) must:
 - (i) if applicable (whether or not the 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.
- (g) The School Council may terminate this Agreement immediately if, in the School's Council's 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 employees, agents and contractors; or
 - (ii) the Supplier or any of its employees, agents and contractors 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.

13 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.
- (b) 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.

14 Compliance with Law and Policy

- (a) The Supplier must, in the provision of the Services, comply with all Laws and with the lawful requirements or policy of any governmental agency affecting or applicable to the provision of the Services.
- (b) Without limiting clause 14(a), if, in the course of providing the Services, the Supplier or an employee of the Supplier:
 - (i) supervises Public Sector Employees;
 - (ii) undertakes work that is of a similar nature to the work undertaken by Public Sector Employees at premises or a location generally regarded as a public sector workplace; or
 - (iii) uses or has access to public sector resources or information that are not normally accessible or available to the public,

the Supplier must comply, or ensure that its employee complies (as applicable), with the VPSC Code of Conduct as if the Supplier or its employee were a Public Sector Employee.

- (c) The Supplier must:
 - (i) maintain complete and accurate records of its performance of this Agreement (**Records**);
 - (ii) securely store and ensure the integrity of the Records in accordance with all applicable standards issued under the *Public Records Act 1973* (Vic);
 - (iii) permit the School Council to inspect and take copies of the Records at any time; and
 - (iv) if requested by the School Council, transfer the Records to the School Council in a format and manner reasonably requested by the School Council.

15 GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) 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.
- (c) 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 as the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.
- (d) 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 15(c)** 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.

16 No inducements

- (a) The Supplier will not, and will ensure that its employees, agents and contractors 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 employees, agents and contractors is found to have engaged in any conduct under clause 16(a) and recover the amount of any loss resulting from such termination as a debt due from the Supplier.

17 General

- (a) The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to the provision of the Services.
- (c) This Agreement may only be varied or replaced by agreement in writing.
- (d) The School Council may give or withhold any consent or approval, or exercise any discretion, under this Agreement in its absolute discretion unless express provision to the contrary is made.
- (e) The following clauses survive termination or expiry of this Agreement: 3(b), 3(f), 3(g), 5, 7, 8, 9, 10, 14(c), 15 and this clause 17(e).

18 Definitions

In these Conditions, unless the context otherwise requires:

Agreement means the agreement for the provision of the Services of which these Conditions, the attachments and the Contract Details form part.

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

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 of this Agreement.

Completion Date means the date set out in the Contract Details by which provision of the Services must be effected by the Supplier.

Commissioner means the Commissioner for Privacy and Data Protection appointed under section 96 of the PDP Act.

Conditions means these General Conditions for the Provision of Services.

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, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information which is in or which subsequently enters the public domain other than as a result of a breach of an obligation of confidentiality.

Contract Details means the part of this Agreement described as such, commencing on page 1 of this Agreement.

Contract Materials means any materials which the Supplier creates (whether alone or jointly with any other person) in performing the Services, except any Intellectual Property Rights in Data or materials created solely for the Supplier's internal operational purposes.

Data means any data, datasets or databases created by or on behalf of the Supplier in the course of providing the Services, unless created for the Supplier's internal operational purposes. Data includes data that does not form part of the Contract Materials.

Fees means the fees payable to the Supplier for the provision of the Services as set out in or calculated in accordance with the Contract Details.

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

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

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, 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.

Laws means the law in force in the State of Victoria and the Commonwealth of Australia, including common law and legislation.

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

Overdue Amount means an amount (or part thereof) that:

- (a) is not, or is no longer, disputed;
- (b) is due and owing under a Tax Invoice properly rendered by the Supplier in accordance with this Agreement; and
- (c) has been outstanding for more than 30 days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be.

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

Pre-Existing IP means any and all Intellectual Property Rights owned by or licensed to a party which are made available, provided or used by a party under this Agreement, excluding Contract Materials.

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

Public Sector Employee has the same meaning as in the *Public Administration Act 2004* (Vic).

Rates means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Services as set out in the Contract Details.

School means the school which the School Council represents.

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 which the School Council represents produces for the purpose of meeting its minimum child safety standards pursuant to section 5 of the Ministerial Order.

School Staff has the meaning given to it in section 4 of the Ministerial Order.

Services means the services (or any of them) specified in the Contract Details and, if applicable, the Specification.

Specification means the specification for the Services, as set out in Attachment 2 to the Contract Details.

Tax Invoice has the meaning given in the GST Act.

VPSC Code of Conduct means the Code of Conduct for Victorian Public Service Employees 2015 (as amended or replaced from time to time) issued by the Public Sector Standards Commissioner pursuant to section 61 of the *Public Administration Act 2004* (Vic).

Attachment 2 Specification

<If a written specification has been prepared, include it here>