

COMMUNITY USE AGREEMENT

THIS AGREEMENT is made on the date last signed by the parties.

BETWEEN:

The School Council identified in the Schedule ("the School Council")

AND:

The Community User identified in the Schedule ("the Community User")

RECITALS

- A.** The School Council is incorporated under section 71B of the Education Act (NT) ("the Act") and pursuant to Section 71C of the Act the School Council may exercise control and allocate certain uses in respect of the buildings and grounds of the School when not required for their usual purpose.
- B.** The Community User is an entity seeking to use the Premises and Equipment of the School for the purposes of running an event and agrees to be subject to the terms and conditions of this Agreement.
- C.** The School Council agrees to grant to the Community User a non-exclusive licence to use the Premises and Equipment subject to the terms and conditions of this Agreement.

IT IS AGREED THAT:

1. DEFINITIONS

1.1 In this agreement:

"Access Times" means the days and hours described in Item 6 of the Schedule in which the Community user is entitled to use the Premises in accordance with this Agreement;

"Agreement" means this document including any schedules, statements or annexures attached to this document;

"Community Use Date" means the dates described in Item 5 of the Schedule in which the Community User will use the Premises in accordance with the Agreement;

"Community User" means the Community User identified in Item 4 of the Schedule;

"Force Majeure" means a circumstance beyond the reasonable control of the party, which results in the party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, wash ways, explosions, fires and any natural disaster; and
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;

"Premises" refers to the space being used at the School and set out in Item 7 of the Schedule;

"Equipment" refers to the equipment, if any, needed by the Community User and provided by the School as set out in Item 8 of the Schedule;

"Principal" refers to the person occupying the position of, or acting as, principal of the School;

"School" refers to the Northern Territory government school identified in Item 2 of the Schedule;

"School Council" means the School Council identified in Item 3 of the Schedule.

1.2 Interpretation

- 1.1.1 headings are for convenience only and do not affect interpretation;
- 1.1.2 an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- 1.1.3 "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- 1.1.4 a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- 1.1.5 a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- 1.1.6 a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- 1.1.7 a word importing the singular include the plural (and vice versa), and a word indicating a gender includes every other gender;
- 1.1.8 a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to this Agreement;
- 1.1.9 if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.1.10 "includes" in any form is not a word of limitation; and
- 1.1.11 a reference to "\$" or "dollar" is to Australian currency.

2. AUTHORITY TO USE

- 2.1 The School Council grants to the Community User, a non-exclusive licence to use the Premises and the Equipment for the Specific Purpose described in Item 9 of the Schedule and for no other purpose.
- 2.2 The Community User agrees to abide by the Conditions of Use set out in clause 8.1.
- 2.3 The Parties agree that the licence to use the Premises and the Equipment contained in this Agreement is not transferable.

3. DURATION OF USE

- 3.1 This Agreement shall commence and end on the dates set out in Item 1 of the Schedule ("the Term"). The parties acknowledge that the term of this Agreement will not exceed 12 months.
- 3.2 During the Term, the Community User, subject to this Agreement, has a non-exclusive licence to use the Premises and the Equipment during the Access Times on the Community Use Date.

4. FEES

- 4.1 The Community User shall pay to the School Council the fees set out in Item 11 of the Schedule at the times and manner set out in Item 12 of the Schedule.

5. PUBLIC LIABILITY INSURANCE

- 5.1 The Community User must effect and keep in force relevant policies of insurance for professional indemnity and for public risk including personal injury and death and property damage arising out of or in connection with or in relation to the Community Users use of the Premises and Equipment and in compliance by the Community Users with the terms of this

Agreement (including all warranties, indemnities and releases given by the Community User in this Agreement) for a minimum of ten million dollars (\$10,000,000.00) in relation to any single event.

- 5.2 The insurance policy must be with a body corporate authorised to carry on insurance business under the Insurance Act 1973. Details of the insurance policy are set out in Item 13 of the Schedule.

6. WORKERS COMPENSATION INSURANCE

- 6.1 The Community User has taken out and shall maintain workers compensation insurance coverage with a licensed insurer under the Workers Rehabilitation and Compensation Act in respect of any employees of the Community User who are employed in connection with the use of the Premises and Equipment.

Note: (Clause 6.1 does not apply if the Community User does not have any employees)

7. PROOF OF INSURANCE

- 7.1 The Community User shall, on the reasonable request of the Principal made from time to time, provide a certificate of currency in respect of the insurance policies referred to in clauses 5 and 6.

8. CONDITIONS OF USE

- 8.1 The Community User shall:

- 8.1.1 not use Premises or Equipment other than in accordance with clause 2 and the purpose described in Item 9 of the Schedule (where applicable);
- 8.1.2 not use the Premises at any other time and day other than as stated in clause 3 unless agreed in writing between the Community User and the Principal and noted hereunder;
- 8.1.3 ensure that all users who enter and exit the Premises under this Agreement do so as directed by the Principal;
- 8.1.4 not interfere in any way with the operation of the School or with records, materials or Equipment of the school, staff or pupils and in particular not to use any machinery or equipment other than any equipment specified in clause 2 and Item 8 of the Schedule and will not remove any Equipment from the Premises;
- 8.1.5 not make any structural alterations to the Premises including the attachment of nails, screws or any other fastenings to walls or fittings without the permission of the Principal;
- 8.1.6 ensure that after each use all furniture is replaced in its original position unless otherwise specified by the Principal;
- 8.1.7 ensure that all persons allowed on the Premises or permitted by the Community User to use Equipment shall properly conduct themselves and ensure that any person unauthorised by the Principal to use the Premises or Equipment does not do so;
- 8.1.8 ensure that any children allowed to enter under this Agreement are properly supervised at all times and only use the Premises and Equipment;
- 8.1.9 ensure that it complies with the requirements of the *Care and Protection of Children Act* including section 187 in respect of any person working in child related employment;
- 8.1.10 ensure that any person working on the Premises whether paid or in an unpaid capacity, including as a volunteer does not work on the Premises if a relevant criminal offence is disclosed;
- 8.1.11 ensure that its employees, volunteers, subcontractors and invitees do not smoke on the Premises;

- 8.1.12 not engage in any activity which breaches the *Copyright Act 1968 (Cth)*;
- 8.1.13 notify the Principal immediately in writing of any accident to any person while on the Premises under this agreement and provide such statements from witnesses and the person/s injured as the Principal or the Department of Education and Children's Services may require;
- 8.1.14 leave the premises and any toilets or other parts of the School buildings and all entrance and exit routes in a clean and tidy condition after each use or arrange and pay for the cleaning of the premises;
- 8.1.15 make full restitution for any damages to Premises or Equipment as may in the Principal's opinion be necessary.
- 8.1.16 allow the Principal or the Principal's nominee to enter the Premises at any time for the purpose of inspecting the Premises or Equipment;
- 8.1.17 ensure that the Premises are locked and secured at the end of use. If applicable, power, heating and cooling are to be switched off after use;
- 8.1.18 not continue to use the Premises and Equipment beyond the expiration of the Term of this Agreement and reapply if continued use is required. Return any keys to the Premises to the Principal upon expiration of the Agreement;
- 8.1.19 comply with any reasonable request by the Principal concerning the use of the Premises and Equipment;
- 8.1.20 comply with or obey any reasonable request, command or order by emergency services personnel if and when necessary; and
- 8.1.21 any other additional conditions, if any, set out in the Schedule.

9. CLEANLINESS AND MAINTENANCE

9.1 The Community User must:

- 9.1.1 clean the Premises and Equipment after use; and
- 9.1.2 repair any damage to the Premises and Equipment caused or contributed to by any act, neglect or default of the Community User including a breach of this Agreement.

9.2 The Community User shall pay to the School Council on demand any costs and expenses incurred by the Council in making good any failure by the Community User to comply with this clause.

10. INJURY AND DAMAGE

10.1 The Community User must not intentionally or recklessly cause or permit:

- 10.1.1 damage to the Premises;
- 10.1.2 damage to the Equipment;
- 10.1.3 damage to the School and its buildings;
- 10.1.4 damage to the property of any neighbours;
- 10.1.5 injury to any person within the Premises or upon any neighbour's property.

11. KEYS

11.1 The Principal will make available to the Community User keys to open any gates or doors to the School to access the Premises (if required) for use under this Agreement. The Community User must at the conclusion of the Access Times on each day of use lock such gates or doors.

11.2 The Community User agrees that lost keys will be replaced at the expense of the Community User and if the Principal acting reasonably believes that locks need to be replaced after the Community User has lost keys the Community User must pay for the cost of new locks.

12. INDEMNITIES AND RELEASES

- 12.1 The School Council and the Northern Territory of Australia does not warrant that the Premises and the Equipment are now or will remain suitable for all or any of the purposes of the Community User.
- 12.2 The Community User agrees to occupy and use the Premises and the Equipment at its own risk and to the full extent permitted by law releases the School Council and the Northern Territory of Australia from all claims and demands resulting from any accident, damage or injury occurring at the Premises and the School Council and the Northern Territory of Australia shall have no responsibility or liability for any loss of or damage to the Equipment of the Community User at the Premises or on the School grounds.
- 12.3 The Community User indemnifies the School Council and the Northern Territory of Australia from and against all actions, claims, damages and expenses arising from or in consequence of the following:
- 12.3.1 the negligent use by the Community User of any utility or other services and facilities of the Premises;
 - 12.3.2 overflow or leakage of water including rainwater in or from the Premises;
 - 12.3.3 loss, damage or injury from any cause to property or person caused or contributed to by the use of the Premises by the Community User; or
 - 12.3.4 loss damage or injury from any cause to the property or person within or without the Premises occasioned or contributed to by any act, omission, neglect, breach or default by the Community User.
- 12.4 The School Council and the Northern Territory of Australia shall incur no liability for any failure of any Equipment for the time being at the Premises. The Community User undertakes to notify the Principal as soon as practicable of any failure of or issue with Equipment.

13. TERMINATION

- 13.1 At any time the School Council has the right to immediately suspend or terminate this Agreement in the event of:
- 13.1.1 an emergency;
 - 13.1.2 a federal, Territory or local election or a referendum.
- 13.2 The School Council agrees that if there is no default by the Community User at the date of suspension or termination, any fees paid for the period of the suspension or for a period beyond the termination will be refunded.
- 13.3 At any time the School Council has the right to terminate this Agreement or refuse future use if there has been a significant breach or repeated breaches of it by the Community User. In the event of such termination the Principal must give one week's notice in writing.
- 13.4 Either party may terminate this Agreement at any time by giving the other two week's notice in writing.
- 13.5 Should there be no default by the Community User at the date of termination; any fees paid for a period beyond the termination will be refunded.

14. COMPLIANCE WITH APPROPRIATE LEGISLATION

- 14.1 The Community User guarantees and warrants to the School Council that it will comply with the provisions of any legislation which may apply to the use by the Community User of the Premises and Equipment.

15. RELATION OF PARTIES

- 15.1 The performance by the School Council of its duties and obligations under this Agreement will be that of an independent body. The parties agree that nothing in this Agreement will create or imply an agency relationship between the School Council and the Community User,

nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

16. SEVERABILITY

16.1 If any word, phrase, sentence, paragraph, clause or subclause of this Agreement is found to be unenforceable, illegal or void, it shall be severed or modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement shall remain operative.

17. FORCE MAJEURE

17.1 Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.

17.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.

17.3 If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate this Agreement on providing notice in writing to the other Party.

18. NON-ASSIGNMENT

18.1 Neither party will assign this Agreement, in whole or in part, without the prior written consent of the other party.

19. SURVIVAL OF AGREEMENT

19.1 Subject to any provision to the contrary, this Agreement shall enure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not enure to the benefit of any other persons.

19.2 The covenants, terms, conditions, clauses and provisions of this Agreement which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration of this Agreement.

20. NO TENANCY RIGHTS

20.1 Nothing in this Agreement gives the Community User any tenancy rights whilst using the Premises under this Agreement.

20.2 Nothing contained in this Agreement shall be construed as granting to the Community User any interest in the Premises, other than a licence to use the Premises under the terms and conditions set out in this Agreement.

21. WAIVER

21.1 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party.

21.2 A waiver by a Party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any other or of any subsequent breach.

22. LEGAL COSTS

22.1 Each Party agrees to be responsible for its own costs, charges and expenses, including all legal costs and expenses, in connection with the negotiation, preparation and execution of this Agreement and any related documentation.

23. ENTIRE AGREEMENT

23.1 This Agreement together with any schedule, annexure or attachments referred to herein constitute the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not

been induced to enter into this Agreement by any representations or promises not specifically stated herein.

24. VARIATIONS

24.1 No agreement or understanding varying or extending this Agreement, will be legally binding upon either Party unless in writing and signed by both Parties.

25. CLAUSES BENEFITING THE TERRITORY

25.1 The School Council is authorised on behalf of the Northern Territory of Australia to accept the benefit of Clauses 4 and 9.

26. JURISDICTION

26.1 This Agreement will be governed by and construed in accordance with the law for the time being in force in the Northern Territory of Australia.

26.2 The parties irrevocably and unconditionally submit to the jurisdiction of the courts of the Northern Territory of Australia and warrant that they will not take any objection to the jurisdiction of those courts on the grounds of convenience.

EXECUTED by the parties as an Agreement:

SIGNED by the Delegate of the School Council,)
in accordance with its Constitution in the)
presence of:)

.....
Signature of Delegate

.....
Signature of Witness

.....
Name of Delegate

.....
Name of Witness

.....
Date

SIGNED by a duly authorised representative for)
and on behalf of the Community User in the)
presence of:)

.....
Signature of Authorised Representative

.....
Signature of Witness

.....
Name of Authorised Representative

.....
Name of Witness

.....
Date

SCHEDULE

Item 1	Term of Agreement: <i>*Note: The term of this Agreement must not exceed 12 months</i>	Start Date:	End Date:	
Item 2	School Name:			
	School Address:			
Item 3	School Council Name:			
	School Council ABN:			
	School Council Postal Address:			
	Telephone:	(BH)	(AH)	
Item 4	Community User Name:			
	Community User ABN:			
	Community User Address:			
	Community User Contact Person:			
	Telephone:	(BH)	(AH)	(Mobile)
Item 5	Community Use Dates:	Commencement Date:	Termination Date:	
Item 6	Access Times:	Commencement Time:	End Time:	
Item 7	Premises: <i>(Describe the Premises and attach a delineated map)</i>	<p>Attach to this Agreement a map of the school with permitted access areas clearly marked.</p>		

Item 8	Equipment: <i>(List equipment if any)</i>		
Item 9	Specific Purpose:		
Item 10	Fees:	Bond (security deposit – refundable in line with the Community Use Guidelines)	\$
		Utilities Fee (non-refundable)	\$
		Hire fee	\$
		10% GST	\$
		Total Fee Due	\$
Item 11	Fees Payment:	<p>The Community User shall pay the School Council 7 days in advance, for use of the Premises and the Equipment in accordance with this Agreement by:</p> <p>(1) Cash in person at the School Office during school hours (with a receipt being issued immediately); or</p> <p>(2) Cheque payable to the School Council in person or by post; or</p> <p>(3) Electronic transfer to:</p> <p>Account Name:</p> <p>Bank Name:</p> <p>BSB No:</p> <p>Account No:</p>	
Item 12	Public Liability Insurance:		
	Name of Insurer: <i>(Community User to attach copy of certificate of currency)</i>		
	Policy Number: Date of Expiry:		
Item 13	Any additional conditions:	<input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, please provide details: