School Council Agreement for Services

Agreement Details

1. PARTY DETAILS			
School Details			
School Council Name:	Drouin West Primary School Council (**School**)		
ABN:	Insert		
Address:	535 Main Neerim Road, DROUIN WEST, VIC 3818		
School Representative:	Administration	**Phone:**	5625 1971
Email:	Drouin.west.ps@education.vic.gov.au		
Principal	Name: Andrew Holden (Acting) Phone: 5625 1971 Email: drouin.west.ps@education.vic.gov.au		
Supplier Details			
Supplier Name:	(**Supplier**)		
ABN:			
Address:			
Supplier Representative:		**Phone:**	
Email:			

2. CONTRACT TERM	
Commencement Date:	
Completion Date:	End of current school year
Further Term(s):	***Not Applicable***

3. SERVICES
The Supplier must provide to the School the following Services: Services to be provided are detailed in Attachment 1 Specification.

Services involve: ***Guidance note:*** *tick applicable boxes*	Child-related Work	☐	If applicable, the Supplier must comply with the relevant obligations in clause 8 of the Conditions
	Collecting and handling of Personal Information, Sensitive Information and/or Health Information	☐	Supplier must comply with the obligations in clause 14 of the Conditions.
	Generation of Contract IP or Contract Data	☐	See clause 11 of the Conditions for further details.

4. RATES AND FEES (Inc. GST)
N/A
Note: All fees include GST. School to pay GST on taxable supplies upon receipt of Supplier's tax invoice.

5. SPECIFICATIONS		
Please see attachment 1 for guidance.	See Attachment 1	☒

6. SCHOOL POLICIES
Student Support & Allied Health – Drouin West Primary School

7. INSURANCE			
Supplier's Insurance:	Public Liability Insurance	☐	$10 million per event and in the aggregate
	Product liability insurance ***Guidance note:*** *only required if the Supplier supplies goods to the School*	☐	$5 million per event and in the aggregate
	Professional indemnity insurance ***Guidance note:*** *only required if the Supplier supplies professional services to the School*	☐	$5 million per event and in the aggregate
	Workcover	☐	As required by law.

8. Terms and Conditions

8.1 The Services must be supplied in accordance with the Agreement Details and the Conditions.

8.2 In the event of any inconsistency or conflict between the documents forming part of this Agreement, the following order of priority will apply, with the document listed first having the highest priority:

8.2.1 the Conditions;

8.2.2 the Agreement Details;

8.2.3 the Specification at Attachment 1 (if applicable).

Execution

By signing this form, the parties acknowledge and agree to be bound to the Agreement Details and the Conditions.

Guidance note*: signing can be by electronic signature or in person – per clause 19.6*

Signed by a duly authorised officer of the **School** who by signing this Agreement acknowledges that the authorised officer is signing on behalf of the School which will be bound by the Agreement:

_____
Print name of authorised representative

_____
Signature

_____ / _____ / _____ Date

Signed by a duly authorised officer of the **Supplier** who by signing this Agreement acknowledges that the authorised officer is signing on behalf of the Supplier which will be bound by the Agreement:

_____
Print name of authorised representative

_____
Signature

_____ / _____ / _____ Date

Conditions for the Provision of Services ('Conditions')

1. Term

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

1.2. The School may elect, by notice in writing to the Supplier at any time prior to the Completion Date, to extend the Term of this Agreement for one or more further periods as set out in Item 2 of the Agreement Details.

1.3. Any further term or terms will be on the same terms and conditions as this Agreement (other than any changes to the Fees agreed by the parties for the further term, and excluding clause 1.2 and 1.3 for any final further period).

1.4. (**Continuation beyond Term**) If the School requests that the Supplier continue providing the Services, or continues to pay for the Services, after the expiry of the Term, both parties agree that the Agreement will automatically transition into a month-by-month arrangement, on the same terms and conditions as this Agreement. The School may terminate such an agreement at any time by giving the Supplier 30 days' notice in writing.

2. Provision of Services

2.1. The Supplier must provide the Services to the School in accordance with this Agreement, and must:

(a) complete the Services by the Completion Date and any other dates for delivery specified in the Agreement Details;

(b) 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;

(c) in performing its obligations under this Agreement, comply with all Laws affecting or applicable to the Services;

(d) comply with the policies of the School, School and/or Department (as notified to the Supplier);

(e) provide any and all plant, equipment, tools or other equipment necessary and appropriate for the performance of the Services and must be properly maintained;

(f) comply with, and ensure its Personnel comply with, the Supplier Code of Conduct;

(g) notify the School:

i. if any of its Personnel providing 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; or

ii. of any other matter relevant to this Agreement including if the Supplier becomes aware of any breach of this Agreement.

2.2. 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 of that fact.

2.3. This Agreement is entered into on a non-exclusive basis.

3. Price for the Services

3.1. The Rates or Fees applicable to the Services set out in the Agreement Details are fixed and are inclusive of:

(a) all costs incurred by the Supplier in the provision of the Services; and

(b) all other taxes payable in connection with the Services (excluding GST).

4. Invoicing and Payment

4.1. The Supplier must submit to the School a Tax Invoice in respect of the Services once they are completed, or at such other time or times as agreed by the parties.

4.2. The School will pay the invoiced amount within 30 days of receipt of an accurate invoice and once the School is satisfied the Services have been provided as required under this Agreement. However, if the School disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount the School believes is due for payment. The parties will endeavour to resolve any such dispute within 7 days. If requested, the Supplier will withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.

4.3. If the School receives an invoice from the Supplier outside a Victorian School Term, the School will pay the invoiced amount to the Supplier within 30 days of the commencement of the next Victorian School Term.

4.4. 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.

4.5. The School 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).

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

5. GST

5.1. Terms used in this clause have the same meanings given to them in the GST Act.

5.2. 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.

5.3. 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.

5.4. 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 5.3 to take account of the adjustment event. The Supplier must issue an adjustment note to the School 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, or by the School to the Supplier, as the case may be.

6. Termination

6.1. (**Without cause**) The School may terminate this Agreement without cause if:

(a) it provides the Supplier with written notice of its intent to terminate under this clause at least 30 days before the termination is to take effect;

(b) Where this Agreement is terminated pursuant to clause 6.1(a) the School will pay the Supplier;

i. for the Services performed in accordance with this Agreement up to the date of the termination; and

ii. the unavoidable and substantiated direct costs incurred by the Supplier for consumables used in the provision of the Services (excluding any equipment required pursuant to clause 2.1(e)), provided that such consumables are of suitable quality for the performance of the Services and are transferred to the School,

and the School has no other liability to the Supplier in relation to that termination including (without limitation) loss of profits or revenue.

(c) When the School issues a notice under clause 6.1(a) the Supplier must 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.

6.2. (**With cause**) The School may terminate this Agreement immediately by notice in writing to the Supplier if:

(a) the Supplier is in breach of this Agreement and:

i. in the opinion of the School, 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 of the breach.

(b) the Supplier or any of its Personnel have engaged in, or are reasonably believed by the School to have engaged in, fraud, collusion, improper, dishonest or criminal conduct or any other serious misconduct, or any other conduct that may bring the reputation of the School into disrepute

(c) in the School's reasonable opinion, it determines at any time that the Supplier or its Personnel have failed to adequately comply with any Child Safety Laws, Child Safe Standards, relevant School Child Safety Policies, or School Child Safety Code of Conduct.

6.3. (**Supplier termination**) The Supplier may terminate this Agreement immediately by notice if the School 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 with notice that the amount is outstanding at least 30 days prior to the expiration of that 90-day period.

6.4. 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.

6.5. **(Consequences of termination or expiry)** On termination or expiration of this Agreement, at no additional cost to the School, the Supplier must:

(a) if requested by the School, provide reasonable assistance to the School to facilitate the transfer of responsibility for the Services to the School or another person nominated by the School;

(b) co-operate with, and assist, the School in complying with any obligations imposed by the *Public Records Act 1973* (Vic) (**Records Act**);

(c) immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any records that are:

i. Public Records (as defined by the Records Act);

ii. Data; or

iii. the School's Confidential Information,

and return all such records to the School, in a non-proprietary and open access file format (such as .txt, .csv, etc) as specified by the School;

(d) delete or destroy, the materials, as applicable, but only once the School has confirmed that all its records under clause 6.5(c) have been successfully transferred to it; and

(e) comply with any applicable Laws, notified to the Supplier, relating to record archival requirements.

7. Failure to Perform or Delay

7.1. Without limiting any other remedy the School may have, if the Supplier fails to provide any of the Services in accordance with this Agreement, or delays in its performance, the School may:

(a) withhold payment of any amounts due to the Supplier until the Services are provided in accordance with this Agreement and to the satisfaction of the School;

(b) reduce the Rates or Fees payable to the Supplier in proportion to the reduced value of the Services provided; and

(c) procure the Services from an alternate source and recover from the Supplier any additional reasonable costs incurred by the School.

8. Child Safety

8.1. Working With Children Clearance (**WWCC**)

(a) (**WWCC for Child-related Work**) If the Services require the Supplier and its Personnel to engage in Child-related Work then the Supplier's Personnel must have a valid WWCC.

(b) (**WWCC for Child-connected Work**) If the Services require the Supplier and its Personnel to engage in Child-connected Work then the Supplier's Personnel must have a valid WWCC if requested by the School.

(c) If WWCC is required, the Supplier warrants that it has verified and recorded that the WWCC of its Personnel are valid at the commencement of this Agreement.

(d) Where the Term of this Agreement is 1 year or more, if WWCC is required, the Supplier must verify and record the status of its Personnel's WWCC at least once per year.

8.2. For Services involving either Child-related Work or Child-connected Work, the Supplier and its Personnel must:

(a) comply with the relevant School Child Safety Policies and School Child Safety Code of Conduct given to it by the School;

(b) comply with any reasonable direction given by the Principal in adherence to any Child Safety Laws, or any School Child Safety Policies and School Child Safety Code of Conduct;

(c) immediately provide the Principal with details, and any reasonably requested further information, if it becomes aware of any of the following:

i. historical or current allegations made and/or concerns raised against Supplier Personnel that

relate to a sexual offence, sexual misconduct, or physical violence committed against, with or in the presence of a child; behaviour causing significant emotional or psychological harm to a child; or significant neglect of a child;

ii. historical or current child abuse allegations relating to child safety raised against Supplier Personnel;

iii. any criminal charges, investigations or convictions of Supplier Personnel; and

iv. any allegations relating to child safety raised against Supplier Personnel.

(d) immediately contact Victoria Police if it suspects a criminal offence relevant to the School or the Services has occurred(even if the Supplier believes the allegation has already been reported to Victoria Police), and provide the Principal with relevant information of the reported offence unless the Supplier has a lawful excuse not to;

(e) if requested by the Principal, meet any additional requirements of the School in relation to child safety, including but not limited to removing Supplier Personnel from providing the Services under this Agreement.

8.3. (**Child Safe Standards**) Where the Supplier is an entity or individual required to comply with the Child Safe Standards pursuant to the *Child Wellbeing and Safety Act 2005* (Vic) (**CWS Act**), it warrants that:

(a) it is compliant with, and will continue to comply with the Child Safe Standards or has a valid exemption;

(b) it will immediately provide the School 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.

8.4. (**Reportable Conduct Scheme)** Where the Supplier is an entity or individual to which the reportable conduct scheme applies as established by the CWS Act, it warrants that:

(a) it will comply with the reportable conduct scheme;

(b) if it becomes aware of a Reportable Allegation against any of its Personnel it will, unless it has a lawful excuse not to:

i. immediately provide the Principal with details of the Reportable Allegation;

ii. as soon as practicable, provide any further information relating to the Reportable Allegation reasonably requested by the School or the Department to support management to child safety risks to students; and

iii. conduct an investigation as required under the CWS Act, and inform the Principal of any outcome and disciplinary action taken within 3 Business Days following the conclusion of the investigation.

9. National Redress Scheme

9.1. The Supplier warrants that it has not received notice that it was named in an application for redress (**Notice of Redress**) to the National Redress Scheme.

9.2. The Supplier acknowledges and agrees that:

(a) if at any time during the Term the Supplier receives a Notice of Redress, it will join the National Redress Scheme as soon as practicable and no later than three months after being issued a Notice of Redress; and

(b) if, having received a Notice of Redress during the term of this Agreement and becoming a member of the National Redress Scheme, it will remain a member of the National Redress Scheme while any application for redress in which the Supplier was named, remains unresolved.

9.3. Where the Supplier becomes aware that it has breached clause 9.1 or 9.2 of this Agreement (**Redress Breach**) then it will:

(a) within 14 days of becoming aware of the Redress Breach:

i. notify the School in writing of the circumstances of the Redress Breach and of its intention to remedy the Redress Breach; and

ii. provide particulars of the steps being taken by the Supplier, with documentary evidence, to remedy the Redress Breach within 60 days; and

(b) if the School is satisfied, in its reasonable discretion, that the Supplier has demonstrated it is actively taking steps to remedy the Redress Breach within 60 days, it will notify the Supplier that it may continue to provide the Services pursuant to this Agreement, subject to such conditions as the School may reasonably impose, in its absolute discretion; and

(c) in the event the Supplier fails to remedy the breach within 60 days of notifying the School of the Redress Breach, the School may immediately give notice in writing to the Supplier of the suspension of the Services by the Supplier, without liability to pay any costs to the Supplier from the date of notice of such suspension.

10. Liability

10.1. The Supplier indemnifies the State of Victoria, the School and each of their respective Personnel (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:

(a) any breach of this Agreement;

(b) any wrongful, fraudulent, unlawful or negligent act or failure by the Supplier or any of the Supplier's Personnel;

(c) 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 its Personnel, or entry into, and the activities undertaken on and in, the School's premises by the Supplier or its Personnel;

(d) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;

(e) any infringement or alleged infringement of the IP Rights or any other rights of any person, including any third party; and

(f) 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, the School holds this clause on trust for those other persons.

10.2. It is not necessary for an Indemnified Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

10.3. If any indemnity payment is made by the Supplier under this clause 10, 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.

10.4. The aggregate liability of the School to the Supplier in connection with this Agreement is limited to an amount equal to the Fees charged or chargeable under this Agreement.

11. IP Rights

11.1. Each party's Pre-Existing IP will remain the property of that party (or its licensors).

11.2. Unless set out otherwise in this Agreement, the Supplier will own all Contract IP.

11.3. The Supplier hereby irrevocably and unconditionally grants to the School, a perpetual, non-exclusive, royalty-free, worldwide, irrevocable licence (including the right to sub-license) to use, modify, adapt, develop and otherwise exploit (but not for commercial purposes):

(a) the Contract IP; and

(b) any of the Supplier's Pre-Existing IP incorporated in or otherwise required to use the Contract IP.

11.4. The School grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use the School's Pre-Existing IP during the Term for the sole purpose of performing its obligations under this Agreement.

11.5. (**Moral Rights**) The Supplier warrants that it has, or will obtain prior to delivery, irrevocable written consent from all relevant persons who are authors or makers of any Contract IP (**Authors**), which permits the School to exercise its rights in the Contract IP in a manner that, but for the consent, would otherwise infringe the moral rights of the Authors.

11.6. (**Contract Data**) The ownership of Contract Data including any IP Rights in the Contract Data, shall vest in the Department through the School upon the time of its creation. The Supplier irrevocably and unconditionally assigns to the School, including by way of an assignment of future IP Rights, all of its IP Rights in Contract Data on creation.

11.7. (**Warranty**) the Supplier warrants that:

(a) it is entitled to use and deal with any IP Rights which may be used by it in connection with the Services and to grant to the School the licences contemplated by this Agreement; and

(b) the provision of the Services and Contract IP will not infringe any right of any person (including any IP Right) or any Laws.

12. Insurance

12.1. The Supplier must (and must ensure that any subcontractors appointed by it under clause 17) obtain and maintain the insurance coverage specified in Item 5 of the Agreement Details (at a minimum) at all relevant times.

12.2. On request, the Supplier must provide the School with evidence of the currency of any insurance it is required to obtain under this clause.

12.3. (**Accident compensation)** The Supplier must ensure that, in respect of its Personnel and any other persons engaged by the Supplier to provide the Services, it:

(a) complies with the provisions of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic);

(b) insures against its liability to pay compensation whether under Law or otherwise; and

(c) produces to the School on request any certificates or like documentation required by the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

13. Confidentiality

13.1. Each party may use Confidential Information of the other party only for the purposes of, or contemplated by, this Agreement.

13.2. The parties agree to keep Confidential Information of the other party confidential except:

(a) with the prior written consent of the other party;

(b) to the extent that party is required by Law, or the lawful requirements or policy of a governmental agency, to disclose any Confidential Information; or

(c) for a disclosure to Personnel who have a need to know for the purposes of, or contemplated by, this Agreement.

14. Privacy and data security

14.1. Collection and handling of Personal Information

The Supplier must:

(a) comply with all Privacy Obligations in relation to any Personal Information and, if any of those obligations do not apply to the Supplier then the Supplier agrees to be bound by and comply with the obligations of the School as if they applied to the Supplier;

(b) assist the School to comply with its obligations under the Privacy Obligations;

(c) only use or disclose any Personal Information to the extent necessary to perform its obligations under this Agreement;

(d) not transfer or disclose any Personal Information to any person located outside of Australia (unless otherwise agreed in writing by the School);

(e) take all reasonable steps to protect any Personal Information from misuse, interference and loss from unauthorised access or use, modification or disclosure; and

(f) immediately notify the School if it becomes aware of any actual, threatened or suspected breach of this clause 14.1.

14.2. Data security

The Supplier must:

(a) comply with all Data Security Obligations in relation to Data and, if any of those obligations do not apply to the Supplier, then the Supplier agrees to be bound by and comply with the obligations of the School as if they applied to the Supplier; and

(b) ensure the School can freely access at all times any Data held or controlled by the Supplier.

14.3. Compliance with directions

The Supplier must comply with:

(a) any directions made by the Information Commissioner in connection with this Agreement; and

(b) other reasonable directions of the School or the Department relating to the protection of Data and privacy of Personal Information.

15. Recordkeeping and audit rights

15.1. Record keeping and retention

(a) The Supplier must keep adequate information and records:

i. relating to the supply of Services;

ii. that contain sufficient metadata to comply with PROS 19/05 S2 Minimum Metadata Requirements Specification; and

iii. as reasonably required by the School and the Department,

(**Records**)

so that the School can review and measure the Supplier's compliance and performance under this Agreement.

(b) The Supplier agrees that the School has full legal rights to and owns all Records.

(c) The Supplier must only dispose of a Record in accordance with this Agreement and any relevant Law (including, but not limited to, the *Public Records Act 1973* (Vic)), applicable to the Supplier, the School or the Department.

15.2. Right to access and audit

(a) The School, or its authorised representatives, may at any time during ordinary business hours by giving at least 3 business days' notice:

i. audit the Supplier's compliance with all its obligations under the Agreement and any other matters relevant to performance as reasonably determined by the School**;** and

ii. copy the Records referred to in clause 15.1(a).

(b) Each party will bear its own costs for audits under this clause, unless the audit reveals that the Supplier has breached this Agreement, in which case, the Supplier will reimburse the School or the Department (as applicable) for the direct and reasonable costs incurred in undertaking the audit.15.2(a)

16. Access to School premises

The Supplier and its Personnel must only enter the premises of the School with the prior consent of the School (or its representative at the premises).

17. Subcontracting, assignment, and novation

17.1. The Supplier must not sub-contract, assign, or novate to any third person any of its obligations under this Agreement without the prior written consent of the School. Such consent may be granted or withheld in the School's absolute discretion and subject to any conditions deemed reasonable by the School.

17.2. The Supplier must ensure that any person engaged by it to perform the Services complies with all obligations imposed on the Supplier by this Agreement. The Supplier remains fully responsible and liable for any acts and omissions of its subcontractors, and its subcontractor's Personnel in connection with this Agreement as though they were the acts or omissions of the Supplier itself.

18. Family Violence Risk Assessment and Risk Management Framework

18.1. In this clause:

Agency means a provider of services under a contract entered into with the School relevant to family violence risk assessment or family violence risk management.

Alignment (and correspondingly **Align**) means actions taken by Framework organisations to effectively incorporate the four pillars of the Framework into existing policies, procedures, practice guidance and tools, as appropriate to the roles and functions of the prescribed entity and its place in the service system.

Approved Framework means the Family Violence Risk Assessment and Risk Management Framework as amended from time to time approved under section 189 of the *Family Violence Protection Act 2008* (Vic) (**FVP Act**).

Framework Organisation means a body prescribed to be a framework organisation for the purposes of Part 11 of the FVP Act.

18.2. If the Supplier is a Framework Organisation or an Agency under the FVP Act, it is required to Align relevant policies, procedures, practice guidance and tools with the Approved Framework.

18.3. If the Supplier is a Framework Organisation or an Agency under the FVP Act it warrants to the School that:

(a) it will Align its relevant policies, procedures, practice guidance and tools with the Approved Framework as amended from time to time; and

(b) it will maintain Alignment of its relevant policies, procedures, practice guidance and tools with the Approved Framework during the Term of this Agreement.

19. General

19.1. 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

19.2. Time is of the essence in relation to the provision of the Services.

19.3. A waiver of any right, power or remedy under this Agreement must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.

19.4. Unless expressed to the contrary, in this Agreement, words or phrases should be interpreted according to the following:

(a) 'includes' means includes without limitation; and

(b) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward that clause or would otherwise benefit from it.

19.5. This Agreement may only be varied or replaced by agreement in writing.

19.6. Subject to applicable Laws, the parties may execute this Agreement and any document entered into under it, electronically or physically, and in one or more counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one Agreement.

19.7. The School 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.

19.8. The parties' Representatives have the authority to exercise all of the powers and functions of their respective party under this Agreement.

19.9. This Agreement contains the entire understanding between the parties as to the subject matter contained in

it. All previous agreements, representations, warranties, explanations and commitments expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

19.10. Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable. If this 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.

19.11. (**Survival**) The following clauses survive termination or expiry of this Agreement: 4, 6, 10, 11, 13, 14, 15, 18, and 19.11.

20. 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 Agreement Details form part.

Child-connected Work has the meaning given to it in the Ministerial Order.

Child-related Work has the same meaning given to it in the *Worker Screening Act 2020* (Vic).

Child Safety Laws means any Laws that in any way relate to child safety, including the CWS Act.

Child Safe Standards means the standards made under the CWS Act.

Confidential Information means any information, data, or material (or copies of), in any form, that is:

(a) disclosed or revealed (either directly or indirectly) by a party to the other party under or in relation to the Agreement; and

(b) by its nature is confidential, is designated by the disclosing party as confidential, or the receiving party knows or reasonably ought to know is confidential,

but does not include information that:

(c) is or becomes generally available in the public domain other than through any breach of confidence;

(d) is rightfully obtained by the receiving party from a third person other than as a result of a breach of confidence; or

(e) has been independently developed or obtained without a breach of this Agreement.

Contract IP means any and all IP Rights incorporated in any materials created by or on behalf of the Supplier in the course of providing the Services from the Commencement Date, except any IP Rights in data or materials created solely for the Supplier's internal operational purposes.

Contract Data means any information, data, datasets, or databases which are created by or on behalf of the Supplier in the course of providing the Services, but does not include the Supplier's internal working documents, product templates, report designs or notes.

Data means any information, data, datasets, or databases which are owned by the Department or the School, including Contract Data.

Data Security Obligations means any data security standards issued under Part 4 of the PDP Act, and any applicable Laws or requirements relating to matters of data security in this Agreement, or as advised by the School from time to time.

Department means the Department of Education in the State of Victoria, or any successor Department.

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

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

Information Commissioner means the Australian Information Commissioner appointed under the *Australian Information Act 2010* (Cth) and the Information Commissioner referred to in the PDP Act.

IP means Intellectual Property.

IP Rights includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, confidential information (including 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, legislation, subordinate legislation, and any ordinances, regulations, orders and by-laws of any government, semi-government, or local authorities.

Ministerial Order means Ministerial Order 1359 (as amended or replaced from time to time).

National Redress Scheme means the scheme established under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth*) and the Victorian *National Redress Scheme for Institutional Child Abuse (Commonwealth Powers) Act 2018* that establishes state redress mechanisms.

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

Personal Information means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion and includes where the context admits, information of a kind to which the *Health Records Act 2001* (Vic) applies.

Personnel of a party includes the officers, directors, employees, agents, volunteers, contractors and subcontractors of that party, who are involved in providing, or supporting the provision of, the Services. Personnel of a party does not include the Personnel of the other party.

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

Principal means the principal of the school, or their authorised delegate, as specified in Item 1 of the Agreement Details.

Privacy Obligations means:

(a) the PDP Act;

(b) the Information Principles set out in the PDP Act;

(c) the Health Privacy Principles set out in the *Health Records Act 2001* (Vic);

(d) any applicable code of practice defined in, and approved under the PDP Act; and

(e) any other applicable Laws which relate to privacy and data protection, including the *Privacy Act 1988* (Cth).

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 Agreement Details.

Representative means the person or persons nominated by the School and the Supplier in the Agreement Details, or any other person who is subsequently appointed by the respective party.

Reportable Allegation has the same meaning given to it in the CWS Act.

School means the school which the School represents. References to School include the School Council as the context requires.

School Child Safety Code of Conduct means the relevant code that relates to standards of behaviour to protect students from harm and abuse that the School produces for the purpose of meeting its minimum child safety standards pursuant to the Ministerial Order.

School Child Safety Policies means any relevant School 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 the Ministerial Order.

Services means the services to be provided by the Supplier under this Agreement, as specified in Item 3 of the Agreement Details.

Supplier Code of Conduct means the Code of Conduct issued by the Victorian Government for suppliers providing goods or services to the Victorian Government (as amended from time to time).

Tax Invoice has the meaning given in the GST Act.

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

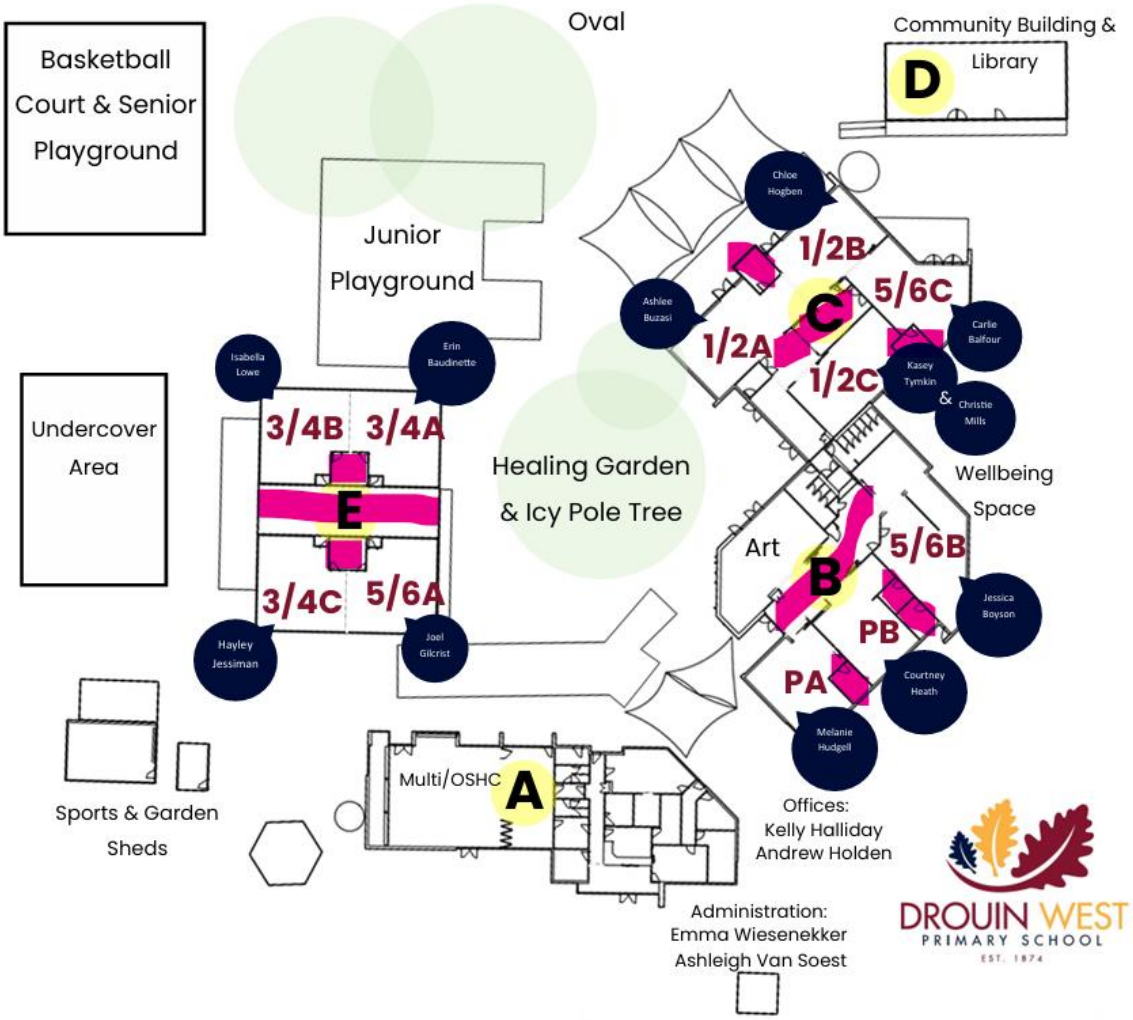
Working With Children Clearance means the successful outcome of the Working With Children Check process under the *Worker Screening Act 2020* (Vic) which assesses or reassesses whether a person is suitable to engage in Child-related work.

Attachment 1 – Specification

As a school we understand that children may require intensive therapy to support their individual developmental needs and families may be unable to access external services outside of school hours due to work commitments.

We are committed to creating a supportive environment where students can access therapy sessions when necessary. The Department has clear guidelines on how schools should approach this, and we are required to uphold these policies. We appreciate families' and allied health provider's understanding of our position.

Please note: To ensure we meet our duty of care requirements, all visiting therapists must be under direct line of sight of a classroom teacher. We cannot offer access to a private room.

Suitable communal gallery areas and classroom break out spaces are highlighted below in pink.

Please advise the classroom teacher upon collecting and returning the student.