

YARRIAMBIACK SHIRE COUNCIL

and

**HORSHAM AND DISTRICT KINDERGARTEN
ASSOCIATION INC. trading as Emerge Early
Years Services**

LEASE (WHOLE OF BUILDING)

Premises: 87 Mandeville Street, Hopetoun,
Victoria

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THIS LEASE is made on 10 March 2025

PARTIES

- 1 **YARRIAMBIACK SHIRE COUNCIL**
of 34 Lyle Street, Warracknabeal VIC 3393
("**Landlord**")
- 2 The person or persons set out in item 1 of Schedule 1
("**Tenant**")

RECITALS

- A The Landlord is the registered proprietor of the Premises.
- B The Landlord has agreed to lease the Premises to the Tenant on the terms and conditions set out in this lease.

THE PARTIES AGREE THAT:

1 DEFINITIONS

In this lease, unless the contrary intention appears:

- 1.1 "**Act**" means the *Retail Leases Act 2003* (Vic);
- 1.2 "**Applicable Entity**" has the meaning given to it under section 3 of the *Child Wellbeing and Safety Act 2005* (Vic).
- 1.3 "**Approvals**" means all necessary approvals, permits, licences, consents, certificates and authorisations required by any Law or any Authority for the Tenant's Business, the Permitted Use or any Works, and Approval has a similar meaning.
- 1.4 "**Authorised Officer**" in the case of either party means a person appointed by that party to act on its behalf under this lease.
- 1.5 "**Authority**" includes a government, a local, statutory or public authority, and a person entitled to carry out a statutory function.
- 1.6 "**Building**" means any building in which the Premises is located, including the Landlord's Property.
- 1.7 "**Business Day**" means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Victoria.
- 1.8 "**Child Safety Laws**" means any Laws that in any way relate to child safety, including the *Child Wellbeing and Safety Act 2005* (Vic), the *Education and Care Services National Law Act 2010* (Vic) and the *Worker Screening Act 2020* (Vic).
- 1.9 "**Child Safety Policies**" means any relevant policies, codes, guidelines or associated documents that in any way relate to child safety, including any policies, codes, guidelines or associated documents that the Landlord or the Department produces for the purpose of meeting its minimum child safety standards pursuant to the Child Safety Laws or any Ministerial Order made under or pursuant to the Child Safety Laws.
- 1.10 "**Commencement Date**" means the date set out in item 2 of Schedule 1.

- 1.11 **"Common Areas"** means those parts of the Building or Land which are made available by the Landlord for the common use of or access by all occupiers of the Building or Land, including the Landlord, as marked on the plan in Schedule 2 (if any).
- 1.12 **"CPI"** means:
- 1.12.1 the Consumer Price Index (All Groups) Melbourne; or
 - 1.12.2 if that index is suspended or discontinued and another index is substituted by the Australian Statistician, that index; or
 - 1.12.3 if there is no index under the preceding paragraph, the general inflation rate in Victoria as used by the Victorian treasury for the relevant period.
- 1.13 **"Default Event"** has the meaning given to it in clause 27.1.
- 1.14 **"Department"** means the Department of Education in the State of Victoria and any other Department or Authority having authority or regulatory responsibilities over or in relation to kindergarten services and/or licensing, early childhood education services and/or licensing and any other oversight capacity in relation to the Tenant's Business.
- 1.15 **"Essential Safety Measures"** means essential safety measures as defined in the Regulations and that are within the Premises or Land.
- 1.16 **"Expiry Date"** means the last day of the Term and is the date set out in item 3 of Schedule 1.
- 1.17 **"GST"** means the goods and services tax levied under the GST Act or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.
- 1.18 **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.19 **"Input Tax Credit"**, in relation to a Taxable Supply, means a credit under the GST Act for the GST payable by the recipient in respect of the Taxable Supply.
- 1.20 **"Land"** means the land described in item 7 of Schedule 1.
- 1.21 **"Landlord's Property"** means anything in the Premises at any time during the Term which is not the Tenant's Property, including the items listed in Schedule 4 (if any).
- 1.22 **"Law"** means any law, rule, statute, ordinance, regulation, by-law, local law, order, statutory instrument, control, restriction, direction, notice or proclamation and includes the requirements of any Authority, municipal or statutory body or any permit, planning scheme or Approval affecting the Premises, any aspect of the Permitted Use or this lease.
- 1.23 **"Lettable Area"** means the area calculated in accordance with the appropriate method of measurement published as at the Commencement Date by the Property Council of Australia for that type of premises.
- 1.24 **"Maintenance Schedule"** means the maintenance schedule set out in Schedule 5.
- 1.25 **"NFP Entity"** means a legally incorporated entity under the *Associations Incorporation Reform Act 2012* (Vic), which applies its profits in promoting its objects and prohibits the payment of any profits or dividends to its members.

- 1.26 **"Outgoings"** means any of the following expenses incurred in respect of the Land, the Building, or the Premises:
- 1.26.1 all rates, assessments, levies and other charges imposed by any relevant authorities;
 - 1.26.2 the costs of maintenance and repairs, and of carrying out works required by relevant authorities (but excluding any amount recovered in respect of maintenance or repair by the Landlord from its insurer);
 - 1.26.3 the costs associated with the inspection, installation, supply, maintenance, repair and servicing of Essential Safety Measures at the Premises, in the Landlord's Property and in the Tenant's Property; and
 - 1.26.4 any other expenditure reasonably and properly incurred by the Landlord for the benefit of the Tenant or the Premises,
- excluding expenses whose recovery from the Tenant would be contrary to:
- 1.26.5 any applicable legislation; or
 - 1.26.6 the Maintenance Schedule set out in Schedule 5 (if any).
- 1.27 **"Permitted Use"** means the use described in item 5 of Schedule 1.
- 1.28 **"PPSA"** means the *Personal Property Securities Act 2009* (Cth.).
- 1.29 **"Premises"** means the premises described in item 6 of Schedule 1 and includes the Landlord's Property within the Premises.
- 1.30 **"Regulations"** means the *Building Regulations 2018* (Vic) and any amendment to or replacement of those regulations.
- 1.31 **"Relevant Legislation"** means any Law relating to the Tenant's Permitted Use of the Premises, including any Law set out in Schedule 7 of this lease, as amended from time to time.
- 1.32 **"Rent"** means the amount specified in item 8 of Schedule 1, and as revised in accordance with this lease.
- 1.33 **"Rent Review Date"** means each of the dates specified in item 10 of Schedule 1.
- 1.34 **"Review Period"** means the review period following each Rent Review Date until the next Rent Review Date or until the end of this lease.
- 1.35 **"Service Agreement"** means the service agreement and/or terms of service set out in or attached to this lease at Schedule 6, as amended from time to time.
- 1.36 **"Start Of The Lease"** means the first day of the Term but, if this lease is a renewal under an option in an earlier lease (whether or not this lease is on terms that are materially different to those contemplated by the earlier lease), the starting date of the first lease to contain an option for renewal.
- 1.37 **"Tax Invoice"**, in relation to a Taxable Supply, means an invoice for the Taxable Supply required by the GST Act to support a claim by the recipient for an Input Tax Credit for the GST on the Taxable Supply.
- 1.38 **"Taxable Supply"** means a taxable supply within the meaning of the GST Act.

- 1.39 **"Tenant"** means the person or persons set out in item 1 of Schedule 1 and includes the Tenant's personal representatives, successors and permitted assignees.
- 1.40 **"Tenant's Agents"** means the members, employees, agents, contractors, customers, invitees and licensees of the Tenant.
- 1.41 **"Tenant's Business"** means the business or businesses operated by the Tenant from or at the Premises.
- 1.42 **"Tenant's Property"** means everything on the Premises at any time during the Term belonging to the Tenant, including the items listed in Schedule 3 (if any).
- 1.43 **"Tenant's Proportion"** means the Tenant's share of the Outgoings which is calculated in accordance with item 11 of Schedule 1.
- 1.44 **"Term"** means the duration of this lease as set out in item 4 of Schedule 1.

2 LEASE

2.1 Lease of Premises

The Landlord leases the Premises to the Tenant. This lease is subject to:

- 2.1.1 the terms contained in this lease;
- 2.1.2 the Landlord completing any necessary statutory procedures and processes under section 115 of the *Local Government Act 2020* (Vic) and resolving to enter into this lease;
- 2.1.3 any special conditions in item 15 of Schedule 1;
- 2.1.4 all encumbrances affecting the Premises; and
- 2.1.5 the right of the Landlord to:
 - (a) run water, air, electricity, sewage, gas and other substances through the Premises;
 - (b) install, maintain, use, repair, alter and replace the pipes, wires, ducts and cables leading through or around the Premises; and
 - (c) determine all areas of access to and from the Premises.

2.2 Term of lease

The Term of this lease begins on the Commencement Date and ends on the Expiry Date.

3 USE OF COMMON AREAS

The Landlord grants the Tenant a licence to use the Common Areas (if any) together with the Landlord, other occupants of the Building or Land and any other persons permitted by the Landlord to use the Building or Land throughout the Term.

4 TENANT IS A NFP ENTITY

- 4.1 The Tenant warrants that, as at the Commencement Date, it is a NFP Entity.

- 4.2 The Tenant must:
 - 4.2.1 be a NFP Entity for the duration of the Term; and
 - 4.2.2 notify the landlord of any amendments to its rules of incorporation or its constitution if they impact this lease or the Landlord.
- 4.3 The Tenant must, immediately upon request by the Landlord at any time during the Term, prove to the satisfaction of the Landlord that the Tenant continues to be a NFP Entity.
- 4.4 The Tenant must immediately advise the Landlord if its status as a NFP Entity ceases.
- 4.5 In the event that the Tenant is no longer a NFP Entity, the parties irrevocably acknowledge and agree that the Landlord will have an absolute right to elect to either:
 - 4.5.1 terminate this lease by giving the Tenant no less than 6 months' notice; or
 - 4.5.2 serve a notice on the Tenant advising that the market rent set out in that notice will be the Rent payable under this lease as from the date of that notice.

5 RETAIL ACT

5.1 **Lease is not a retail lease and Premises is not a retail premises**

- 5.1.1 The Landlord and the Tenant acknowledge and agree and the Tenant warrants to the Landlord that this lease is exempt from the Act pursuant to the Ministerial Determination dated 6 October 2014 and published in the Victoria Government Gazette on 13 October 2014, given that:
 - (a) the Rent is less than \$10,000 per annum (including GST); and
 - (b) the Premises is to be:
 - (1) used for; and
 - (2) used wholly or predominantly by a body (ie. the Tenant) that exists for,

the purposes of providing or promoting community, cultural, sporting, recreational or similar facilities or activities or objectives; and
 - (c) that body (ie. the Tenant) applies its profits in promoting its objects and prohibits the payment of any dividend or amount to its members.
- 5.1.2 The Tenant warrants and covenants that it will not use the Premises (or any part of the Premises) wholly or predominantly for the sale or hire of goods by retail or the retail provision of services (as defined by the Act) or for any purposes other than the Permitted Use.
- 5.1.3 The Tenant must not do or permit anything to occur that would result in the Act applying to this lease.

5.2 **Landlord's reliance on Tenant's warranty**

The Landlord enters into this lease on the basis that this lease is not subject to the Act and has relied upon the Tenant's warranties in clauses 5.1.1 and 5.1.2.

5.3 **Indemnities by the Tenant**

The Tenant indemnifies the Landlord against each and every cost, expense, liability and loss of any kind and all damages which the Landlord suffers or incurs arising out of the Act applying to this lease.

5.4 **Landlord can terminate lease if the Act applies**

In the event that the Tenant does anything or permits anything to be done on the Premises that would attract the application of the Act to this lease, the parties irrevocably acknowledge and agree that the Landlord will have an absolute right to elect to terminate this lease by giving the Tenant no less than 6 months' notice.

6 **PAYMENTS BY TENANT**

6.1 **Rent**

The Tenant must pay the Rent without any deduction, counterclaim or set-off:

6.1.1 to the Landlord at the Landlord's address specified in this lease, or as the Landlord directs; and

6.1.2 in the manner set out in item 9 of Schedule 1.

6.2 **Outgoings and Insurance**

The Tenant must:

6.2.1 pay direct to the relevant authority (as and when they fall due for payment) or reimburse the Landlord (within 14 days of demand) the Tenant's Proportion of all Outgoings; and

6.2.2 pay or reimburse the Landlord on an annual basis for all insurance premiums and other charges and excesses in connection with public risk insurance policies taken out by the Landlord (including as part of the Landlord's blanket insurance policy) for the amounts which the Landlord reasonably thinks are appropriate in connection with the Premises and this lease; and

6.2.3 pay or reimburse the Landlord on an annual basis for all insurance premiums and other charges and excesses in connection with building insurance policies taken out by the Landlord (including as part of the Landlord's blanket insurance policy) for the amounts which the Landlord reasonably thinks are appropriate in connection with the Premises.

6.3 **Services**

6.3.1 The Tenant must pay, as and when they fall due, all assessments, levies, charges and consumption costs, and any other costs for:

(a) electricity, gas, water and telecommunications services; and

(b) cleaning, lighting, landscaping and garden maintenance

that are supplied to or for the Premises, or which are for the benefit of the Premises or Common Areas, and that are not otherwise payable by the Tenant under this Lease (for example, pursuant to the Maintenance Schedule).

7 RENT REVIEW

7.1 Market Review

Not used.

7.2 Percentage Increase

If item 10 of Schedule 1 provides for a percentage increase of Rent on any Rent Review Date, then the Rent (being the amount of Rent payable by the Tenant immediately before the Rent Review Date) shall be increased on the relevant Rent Review Date by the percentage specified in item 10.

7.3 CPI Review

Not used.

7.4 Time of Review

Any delay in making a rent review does not prevent the review from taking place and being effective from the relevant Rent Review Date.

8 GST

8.1 Interpretation

The consideration payable by any party under this lease is the GST exclusive amount of the Taxable Supply for which payment is to be made.

8.2 GST exclusive amounts

Subject to clause 8.4, if a party makes a Taxable Supply in connection with this lease for a consideration, then the party liable to pay for the Taxable Supply must also pay, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.

8.3 Maximum amount to be paid

Where this lease requires a party (the "**first party**") to pay, reimburse or contribute to an amount paid or payable by the other party (the "**other party**") in respect of an acquisition from, or a transaction with a third party for which the other party is entitled to claim an Input Tax Credit, the amount for payment, reimbursement or contribution will be the GST exclusive value of the acquisition by the other party plus any GST payable in respect of the other party's recovery from the first party.

8.4 Tax invoice to be given

A party's right to payment under clause 8.2 is subject to a Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

9 LEGAL AND OTHER COSTS

9.1 Costs incurred by Landlord

The Tenant must pay or reimburse the Landlord on request all reasonable costs (including legal costs and disbursements) incurred by the Landlord in connection with:

- 9.1.1 any variations requested by the Tenant to this Lease after it is executed;
- 9.1.2 any assignment (or proposed assignment) of this lease, or any subletting or licence (or any proposed subletting or licence) of the Premises;
- 9.1.3 any approval, variation, mortgage, charge or surrender concerning this lease including costs payable to a person appointed to evaluate or supervise any matter;
- 9.1.4 any breach of this lease by the Tenant; and
- 9.1.5 the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, by the Landlord of any rights or remedies under this lease.

9.2 Other costs

Anything that either party is required to do under this lease must be done at that party's cost unless the relevant clause provides otherwise.

10 INTEREST ON OVERDUE MONEY

If the Tenant is late in paying the Landlord any money payable by it under this lease, the Tenant must pay interest on that money from the due date for payment until the money is paid in full. The rate of interest is the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

11 USE OF PREMISES

The Tenant must:

- 11.1 use the Premises for the Permitted Use (and for no other use);
- 11.2 not use the Premises for any illegal purpose or activity;
- 11.3 not use the Premises as a residence or allow anyone to sleep in the Premises;
- 11.4 not conduct any auction sale or public meeting in or around the Premises;
- 11.5 not prepare or cook food in the Premises other than in the areas which have been provided or approved by the Landlord for that purpose;
- 11.6 not operate or allow a temporary food premises or stall, or a mobile food premises or stall, to be operated for payment (either monetary or in kind) within or near the Premises (eg. sausage sizzle, cake stall, coffee or food van, fairy floss or popcorn machine), without first obtaining the Landlord's written consent (which must not be unreasonably delayed), and the Tenant must and must ensure that the Tenant's Agents comply with all relevant Laws and permits;
- 11.7 not permit the sale, service or use of any alcohol at the Premises during business hours;

- 11.8 not burn rubbish at the Premises or in the Building;
- 11.9 not use any lavatories, grease traps, drains or other sanitary facilities for any purpose other than that for which they were designed;
- 11.10 not bring, allow or permit any animal or pet on the Premises (other than guide dogs or where part of the education program carried out by the Tenant at the Premises), except if the Landlord gives prior consent which will not be unreasonably withheld or delayed;
- 11.11 not do anything which is or may be a nuisance or annoyance to the Landlord, any occupants of the Building, any owners or occupants of premises adjacent to the Premises or the Building, or members of the public;
- 11.12 not obstruct or interfere with the Landlord's or any other occupier's use of the Common Areas;
- 11.13 at its own expense, apply for and keep in force all licences and permits necessary for the Tenant to use the Premises for the Permitted Use;
- 11.14 take all precautions required by law against fire and comply with all regulations and directions of any authority in relation to fire prevention;
- 11.15 not without the Landlord's prior written consent, store or use any dangerous, toxic, explosive or inflammable substances at the Premises or in the Building;
- 11.16 subject to the Maintenance Schedule (if any), at its own expense comply on time with all Laws (including any Relevant Legislation), notices, orders, legal requirements and requirements of any authority concerning the Premises or this Lease, or the use and occupation of the Premises (except where applicable legislation makes such compliance the Landlord's responsibility). Without limiting this clause, an authority includes any person, body or corporation (whether government, statutory or non-statutory) that has authority over the Premises or the Tenant's use of the Premises;
- 11.17 without limiting clause 11.16:
 - 11.17.1 keep registrations and licences under the *Food Act 1984* (Vic) (**Food Act**) current and otherwise comply with all provisions of the Food Act;
 - 11.17.2 immediately notify the Landlord if an order is made against the Tenant in respect of a breach of the Food Act or any associated law, and provide the Landlord with copies of any notices issued under the Food Act within 14 days of receipt of such notices; and
 - 11.17.3 strictly comply with all Laws relating to the safe preparation, storage and handling of food;
- 11.18 not install any permanent or fixed form of heating, cooling, ventilation or air-conditioning in the Premises which is not approved beforehand by the Landlord in writing;
- 11.19 not, without the Landlord's prior written approval, bring onto or remove from the Premises any object or equipment which is likely, in the opinion of the Landlord, to cause damage to the Premises, the Landlord's Property or any services or Essential Safety Measures. The Tenant must comply with any instructions given by the Landlord with respect to the installation, use or removal of any object or equipment for which the Landlord has given the Tenant approval to bring onto or remove from the Premises under this clause;

- 11.20 maintain and display at the Premises at all times, an emergency and evacuation plan for the Premises in accordance with Relevant Legislation.
- 11.21 not cause the Common Areas to be left in an untidy or unclean condition;
- 11.22 comply with any Building rules in force from time to time that are notified in writing by the Landlord to the Tenant. To the extent that any such Building rules are inconsistent with this Lease, the Lease prevails;
- 11.23 comply with all reasonable requests or directions given by any Authorised Officer of the Landlord that the Authorised Officer considers necessary or desirable for the safety, care or cleanliness of the Premises or areas near the Premises; and
- 11.24 comply with the policies, guidelines and local laws of Yarriambiack Shire Council as published from time to time (Eg. Event Guidelines).

12 TENANT MUST HAVE ALL NECESSARY LICENCES OR APPROVALS

- 12.1 The Tenant must not undertake any part of the Permitted Use at the Premises unless and until the Tenant has all necessary Approvals from any Authority (including the Landlord) for the Tenant to conduct the Tenant's Business or the Permitted Use from the Premises.
- 12.2 The Tenant must maintain all Approvals necessary for the Tenant to conduct the Tenant's Business or the Permitted Use from the Premises during the Term of the lease and during any period of overholding.
- 12.3 If the Tenant's Approvals or any Approval is revoked or suspended, the Tenant must immediately notify the Landlord in writing and must immediately cease operating the Tenant's Business and the Permitted Use or such aspect of the Tenant's Business or the Permitted Use which was authorised by that Approval.
- 12.4 If the Landlord reasonably believes that the Tenant will not obtain the Approvals for the Tenant to recommence operating the Tenant's Business and the Permitted Use or such aspect of the Tenant's Business or the Permitted Use which was authorised by that Approval, then the Landlord may, by written notice to the Tenant, terminate this lease with effect from the date specified in that notice.
- 12.5 If the Landlord terminates this lease pursuant to clause 12.4, the Landlord is not liable to pay the Tenant any compensation and the Tenant must not make any claim for compensation or any payment of any kind from the Landlord for the termination of this lease and the loss of the use of the Premises.

13 REQUIREMENT FOR WORKING WITH CHILDREN CHECKS

- 13.1 Without limiting clause 11.16, the Tenant must (and must ensure that all persons employed or engaged (including volunteers) by the Tenant, including the Tenant Agents, for the purpose of carrying out any work or any activity in the Tenant's Business at the Premises and/or carrying out the Permitted Use under this lease):
 - 13.1.1 hold a current and valid WWC Clearance under the *Worker Screening Act 2020* (Vic) (or any such certificate or check which replaces the WWC Clearance in the future), before working with children at the Premises;
 - 13.1.2 provide a copy of the WWC Clearance for each of the Tenant's employees and volunteers working at the Premises to the Landlord, on request;

- 13.1.3 ensure that any employee or volunteer that is given a WWC Exclusion (within the meaning given to that term in the *Worker Screening Act 2020* (Vic)) does not work with children at the Premises; and
- 13.1.4 subject to clause 13.2, ensure that the information in any WWC Clearance of the Tenant's employees and volunteers which is provided to the Landlord, is kept confidential.
- 13.2 The Tenant agrees that the Landlord may disclose the information in any WWC Clearance of the Tenant's employees and volunteers for the purpose of administering or enforcing this Lease or if required by law.
- 13.3 Without limiting clause 11.16, the Tenant must, and must ensure that the Tenant's Agents, comply with and implement the Victorian State Government Child Safe Standards, as amended from time to time. Upon request, the Tenant must provide the Landlord with information regarding how the Tenant has adopted and applied the Child Safe Standards in the form requested by the Landlord.

14 CHILD SAFE STANDARDS

- 14.1 The parties acknowledge and agree that the Landlord is committed to:
 - 14.1.1 creating child safe environments; and
 - 14.1.2 protecting children from abuse or harm in the education 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.
- 14.2 The Tenant acknowledges that the Landlord and/or the Department are required to comply with, and implement, the Child Safety Laws and the Landlord and/or Department Child Safety Policies (if any).
- 14.3 If the Tenant is an Applicable Entity, it warrants to the Landlord that it:
 - 14.3.1 is compliant and will continue to comply with Child Safety Laws; and
 - 14.3.2 will immediately provide the Landlord and the Department with copies of any documents or information in respect of any compliance action taken by any Authority in connection with child safety against the Tenant or any of the Tenant's Agents.
- 14.4 The Tenant must, and must ensure that the Tenant's Agents:
 - 14.4.1 if applicable (whether or not the Tenant must itself comply with Child Safety Laws), comply with any relevant Landlord and/or Department Child Safety Policies; and
 - 14.4.2 comply with any reasonable direction by the Landlord and/or the Department in respect of compliance by the Landlord and/or the Department and/or the Tenant with any Child Safety Laws or any relevant Landlord and/or Department Child Safety Policies.
- 14.5 The Landlord may terminate this lease after having given 14 days' written notice to the Tenant if, in the Landlord's reasonable opinion, it determines at any time that:
 - 14.5.1 there is a breach of any Child Safety Laws caused by, or in any way connected with, the Tenant or the Tenant's Agents; or

- 14.5.2 the Tenant or any of the Tenant's Agents are not suitable to engage in Child-Connected Work for the purposes of the Landlord and/or Department compliance with the Child Safety Laws or relevant Landlord and/or Department Child Safety Policies.

15 SECURITY

15.1 Tenant to protect Premises

- 15.1.1 The Tenant must use its best efforts to protect and keep safe the Premises and the Landlord's Property from theft and vandalism. This includes keeping all fences, gates, doors, windows and openings closed and securely fastened when the Premises are not in use.
- 15.1.2 If the Tenant requires a security alarm system, the Tenant must, at its own cost, install and maintain the system for the Premises. The Tenant must provide the Landlord with all relevant codes and process for the security alarm upon installation, and whenever the codes are updated, for the purposes of emergency access and building maintenance by the Landlord or its employees or agents.

15.2 Keys and Security Cards

The Tenant must maintain a current list of those persons retaining keys or security cards for the Premises and provide the Landlord with this list at the commencement of the lease and whenever the list is amended.

16 LICENCES

- 16.1 The Tenant must obtain the prior written consent of the Landlord before applying for any licence, permit or consent for the Premises or the Tenant's use of the Premises.
- 16.2 If the Tenant obtains any licence, permit or consent pursuant to clause 16.1, the Tenant must retain a copy of such licence, permit or consent at the Premises and produce a copy if requested by the Landlord.

17 TENANT'S OBLIGATIONS CONCERNING INSURANCE

17.1 Tenant to maintain insurance

The Tenant must take out and maintain insurance for:

- 17.1.1 public liability in the name of the Tenant, and noting the interest of the Landlord, for an amount of not less than the amount set out in item 12 of Schedule 1 in respect of any single occurrence. This policy must indemnify the Landlord against all claims of any kind arising from any act, omission or neglect by the Tenant or any of the Tenant's agents;
- 17.1.2 the Tenant's Property, contents and any fit-out of the Premises against loss, damage or destruction by any cause;
- 17.1.3 employers' liability, workers' compensation and/or Workcover which covers any damage, loss or liability suffered or incurred by any person engaged by the Tenant arising by virtue of any statute relating to workers' or accident compensation or employers' liability or at common law; and
- 17.1.4 any other insurances in connection with the Premises which the Landlord may reasonably require

AND the Tenant must produce to the Landlord copies of all these insurance policies and evidence that they are in force within 7 days of the Commencement Date, on each anniversary of the Commencement Date and at any other time upon request by the Landlord.

17.2 Tenant not to prejudice insurance

The Tenant must not do anything on the Premises or otherwise which:

- 17.2.1 may cause any insurance policy (taken out under this lease or otherwise) to become void or voidable; or
- 17.2.2 may cause any claim on any insurance policy (taken out under this lease or otherwise) being rejected or a premium to be increased.

17.3 Compliance with insurer's requirements

The Tenant must comply with the requirements of any insurer under any insurance policy for the Premises or Building or property in the Premises (whether taken out under this lease or otherwise).

17.4 Where premium increased

If the Tenant causes an increase in any premium payable by the Landlord for any insurance effected by the Landlord for the Premises or Building or property in the Premises (whether taken out under this lease or otherwise), the Tenant must pay the Landlord, on request, the increase in the premium.

18 MAINTENANCE OF PREMISES AND ALTERATIONS

18.1 Tenant to maintain

- 18.1.1 Except for fair wear and tear and subject to clause 18.2 and clause 18.5, the Tenant must at its own cost keep the Premises and the Landlord's Property (including all trees, gardens and vegetation at the Premises):
 - (a) in the same condition as at the Start Of The Lease (and, where Works are completed under clause 18.7, the Tenant must maintain those Works in good and well-maintained condition), including all capital and structural repairs;
 - (b) properly repaired and maintained, using good quality materials, and in compliance with all Laws and all requirements of Authorities; and
 - (c) properly cleaned (including the interior and exterior surfaces of any windows and doors) and the Tenant must:
 - (1) arrange for all refuse to be regularly removed from the Premises;
 - (2) take all proper precautions to keep the Premises free of refuse, rodents and vermin. If required by the Landlord, the Tenant must engage pest exterminators for that purpose;
 - (3) store refuse before removal so that it cannot be seen from outside the Premises; and

- (4) comply with the Landlord's reasonable directions concerning cleaning and disposal of refuse.

18.1.2 If required by Item 14 of Schedule 1, and in accordance with the requirements in Item 14 of Schedule 1, the Landlord will prepare and the parties will promptly sign a condition report which details and confirms the condition of the Premises and Landlord's Property as at the Commencement Date.

18.2 Maintenance Schedule

18.2.1 If a Maintenance Schedule is attached to this lease then, subject to clause 18.5, the Tenant and the Landlord must comply with their respective obligations set out in the Maintenance Schedule at their own cost, using registered and qualified tradespeople and in compliance with all Laws and all requirements of Authorities.

18.2.2 Despite any other provision of this lease (including any provision of the Maintenance Schedule and any special condition of this lease), the Tenant is responsible for and must promptly carry out any repairs and maintenance required to the Premises, Landlord's Property or the Tenant's Property because of damage caused by the act, omission or default of, or misuse by, the Tenant or the Tenant's Agents (except for fair wear and tear, as defined by the Landlord or its contractor).

18.2.3 All notifications/requests for repair or maintenance which are the responsibility of the Landlord should be requested by the Tenant via the Landlord's Customer Service Reporting system (unless the matter is urgent or in an emergency) detailing:

- (a) the type of repair or maintenance required;
- (b) who is making the request (including the name of the person and contact details); and
- (c) where the damage is located.

18.2.4 In the case of an emergency, if reasonably practicable, the Tenant must contact one of the Landlord's nominated contractors directly and must then notify the Landlord as soon as practicable. The Landlord will provide the Tenant with contact details for its nominated contractors (and any update to these details from time to time) so that the Tenant can comply with this clause.

18.3 Landlord may carry out maintenance

The Tenant must carry out repairs or maintenance within 14 days of being served with a written notice of any defect or lack of repair or maintenance which the Tenant is obliged to fix under this Lease, unless reasonable grounds for delayed action are conveyed to the Landlord. If the Tenant does not comply with the notice within 14 days, or has not advised the Landlord of reasonable grounds for delay, the Landlord may carry out the repairs and the Tenant must pay the cost to the Landlord on demand.

18.4 Tenant to report damage

The Tenant must:

- 18.4.1 promptly report to the Landlord any material damage to or defect in the Premises, Landlord's Property, or Building or any defective windows, lights, doors, locks and fastenings (and, in addition, where the Tenant suspects that a break-in or criminal damage has occurred, report the break-in or damage to the police and provide a copy of the police report to the Landlord); and
- 18.4.2 promptly give written notice to the Landlord of any hazards within the Premises or the Building or the service by any authority of a notice or order affecting the Premises or Building.

18.5 Limitations on obligations

Despite any term of this Lease, the Tenant is not obliged to repair damage for which the Tenant is not responsible under this Lease, unless the Landlord loses the benefit of any insurance for that damage because of any act or omission by the Tenant or any of the Tenant's Agents.

18.6 Essential Safety Measures - Tenant's obligations

The Tenant must:

- 18.6.1 not interfere with, alter or limit the operation or effectiveness of any Essential Safety Measure;
- 18.6.2 immediately advise the Landlord and confirm in writing any alteration, breakdown or theft of or damage to any Essential Safety Measure;
- 18.6.3 allow the Landlord or its appointed agent to enter the Premises at any reasonable time on the provision of reasonable notice (except in the case of an emergency when the requirement for notice shall be waived) to inspect and maintain any Essential Safety Measure;
- 18.6.4 ensure that the annual essential safety measures report prepared in accordance with the Regulations, and any determination and record of maintenance checks, service and repair work which are kept on the Premises pursuant to the Regulations, are retained on display at the Premises;
- 18.6.5 provide to the Landlord all documentation required in order to establish and maintain records of maintenance checks, services and repair work for any Essential Safety Measure; and
- 18.6.6 advise the Landlord immediately if the Tenant receives notice (whether written or oral) of any proposed inspection of the Premises by a municipal building inspector or chief officer pursuant to the Regulations.

18.7 Alterations to Premises

- 18.7.1 The Tenant must not, without first obtaining the written approval of the Landlord (which may be given or withheld at the Landlord's discretion and given or withheld with conditions):
 - (a) make any alterations, additions or improvements (whether structural or otherwise);
 - (b) install any equipment or exterior fixtures or fittings (including blinds or awnings) to or on the Premises;

- (c) carry out any demolition, landscaping or earthworks on the Premises;
- (d) fix or place signs, notices or advertisements which are visible from outside the Premises in any place in or near the Premises; or
- (e) interfere with or alter any Essential Safety Measure, ("Works").

18.7.2 In considering whether or not to approve any Works under clause 18.7.1:

- (a) the Landlord may employ external consultants for the purpose of considering any proposed Works and supervising the Works, and the Tenant must cooperate with and allow the Landlord's consultants access to the Premises for these purposes;
- (b) the Landlord may require the Tenant to:
 - (1) deliver three copies of all drawings and specifications and a program of Works to the Landlord in such format, including electronic format, as the Landlord may require;
 - (2) make all variations to the drawings, specifications and program of Works reasonably required by the Landlord and deliver further copies to the Landlord in such format, including electronic format, as the Landlord may require;
 - (3) deliver a detailed quote for the cost of completing the Works (including the cost of all materials to be used) certified by a qualified consultant to be a bona fide estimate of the cost of completing the Works;
 - (4) obtain all approvals and permits necessary for the Works;
 - (5) deliver one copy of those approvals and permits to the Landlord;
 - (6) give the Landlord the name of:
 - (A) each contractor and tradesman the Tenant intends to employ to carry out the Works; and
 - (B) the person who will supervise the Works; and
 - (7) reimburse the Landlord the cost of effecting and maintaining the appropriate insurances in respect of the Works unless the Landlord agrees for the Tenant to effect and maintain that insurance.

18.7.3 The Tenant must:

- (a) carry out and complete all Works within the Premises promptly and in a proper and workmanlike manner at the Tenant's cost and:
 - (1) in accordance with the drawings, specifications and program of Works approved by the Landlord;

- (2) in compliance with any conditions imposed by the Landlord;
- (3) using qualified tradespersons; and
- (4) in compliance with all laws and all requirements of authorities;
- (b) obey and cause its contractors and tradesmen to obey the Landlord's reasonable directions concerning the Works;
- (c) if the Works affect the electrical, water or gas supplies, or the switchboard capacity, ensure that these supplies are adequately maintained, and restore them to proper working order;
- (d) immediately give the Landlord a copy of any notice received from any party in relation to the Works; and
- (e) not interfere and ensure that the Tenant's contractors and tradesmen do not interfere with other occupiers or users of the Building.

18.7.4 On completion of the Works, the Tenant must promptly:

- (a) remove from the Premises all unused building materials, equipment and debris as directed by the Landlord;
- (b) if required, obtain an occupancy permit or compliance from the relevant authority for the Works and deliver a copy to the Landlord; and
- (c) in the case of alterations or additions, deliver to the Landlord a complete set of drawings and specifications showing the alterations or additions as built, in such format, including electronic format, as the Landlord may require.

18.7.5 The Tenant must promptly pay when requested all reasonable costs incurred by:

- (a) the Landlord in employing external consultants pursuant to clause 18.7.2(a); and
- (b) the Landlord in remedying any breach by the Tenant of its obligations under this clause 18.7.

18.8 Advertising and Billboards

If the Tenant wishes to install or place billboards, signs or advertisements for a temporary purpose at the Premises (eg. to advertise a fundraising event), the Tenant must:

- 18.8.1 first comply with clauses 11.16 and 11.24 (though without in any way limiting clause 11) and clause 18.7.1;
- 18.8.2 first ensure that the Tenant's public liability insurance covers the billboard, sign or advertisement, and provide evidence of this to the Landlord; and
- 18.8.3 immediately remove the billboard, sign or advertisement once its purpose has been fulfilled or the event is complete (eg. the fundraising event has been held).

19 SERVICE AGREEMENT

- 19.1 The Tenant must comply at all times with the Service Agreement (as amended from time to time) by the time/s required by the Service Agreement.
- 19.2 The Tenant acknowledges and agrees that subject to clause 19.1, the Landlord may, from time to time, and with the agreement of the Tenant (which will not be unreasonably withheld) amend the Service Agreement. If the Landlord amends the Service Agreement, it must provide a copy of the amended Service Agreement to the Tenant within 30 days after any such amendment.

20 REPORTING AND SERVICE OBLIGATIONS

20.1 Reporting Requirements

- 20.1.1 In each year of the Term, the Tenant must provide to the Landlord:
 - (a) within 30 days of the conduct of any annual general meeting of the Tenant:
 - (1) an audited financial report for the Tenant, including an audited statement of assets and liabilities and a profit and loss statement for the Tenant for the most recent financial year;
 - (2) a copy of the minutes of the Tenant's annual general meeting; and
 - (3) a current list of office bearers of the Tenant, their duties and length of term of office; and
 - (b) by 30 November of each year, copies of all current insurance policies required to be held by the Tenant under clause 17 of this lease.
 - (c) by 30 November of each year, a list of the maintenance work carried out by the Tenant at the Premises during the previous 12 months.

20.2 Proposed Minor/Major Capital Works Funding Applications

- 20.2.1 The Tenant must obtain the Landlord's approval before making any funding application for minor or major capital works or a grant application

(e.g. an annual sun protection grant for shade sales) relating to the Tenant's Business (**Application**).

- 20.2.2 Despite clause 20.2.1, an application by the Tenant for funding or a grant with respect to equipment relating to the Tenant's Business does not require the Landlord's approval.

20.3 Reporting on Tenant's Business

- 20.3.1 The Tenant must immediately report by notice to the Landlord and/or the Department any:

- (a) notice or report it has received in relation to the Tenant's Business and/or Premises and provide a copy of such notice or report with that notice;
- (b) notice, order, investigation or report in relation to the Tenant's license or authority to operate the Tenant's Business (whether pursuant to the Child Safety Laws or otherwise) and provide a copy of that report, order or notice or provide a written report of the outcome of such investigation to the Landlord and the Department;
- (c) audit or report by any Authority relating to the operation of the kindergarten, early childhood education service or any food safety audit; or
- (d) notifiable incident as defined by the *Education and Care Services National Regulations*.

- 20.3.2 The Tenant must ensure that the Landlord has at all times the current names and after-hours contact telephone numbers of the people who are responsible for dealing with the following matters on the Tenant's behalf:

- (a) Governance (associated with the Tenant entity and Tenant's Business, and compliance with this lease);
- (b) Education program;
- (c) Enrolments.

These people will be Authorised Officers of the Tenant for the purposes of this lease.

20.4 Playground Audit

- 20.4.1 When required by the Kidsafe Child Accident Prevention Foundation of Australia – *Playground Safety Management System guidelines*, and at other times when reasonably required by the Landlord, the Tenant must engage a suitably qualified and independent auditor to:

- (a) inspect and audit the playground installations at the Premises in order to confirm whether the installations comply with all relevant Laws and Australian Standards; and
- (b) provide a written report (if requested by the Landlord) on their findings.

- 20.4.2 The Tenant must at its own cost promptly comply with any recommendations made by the auditor in the reports and maintain records to be sighted upon request by the Landlord.

21 ASSIGNMENT, SUBLETTING AND HIRE OF PREMISES

21.1 Consent of Landlord

The Tenant must not:

- 21.1.1 assign its rights or powers as tenant under this lease without the Landlord's prior written consent which consent shall not be unreasonably withheld provided the provisions of clause 21.2 are complied with;
- 21.1.2 sub-let, licence or part with possession or share the Premises without the Landlord's prior written consent which consent may be given, given subject to conditions, or withheld by the Landlord acting reasonably; or
- 21.1.3 create or allow any mortgage, interest, easement or other encumbrance which would affect the Tenant's interest in the Premises or its rights as tenant under this lease.

21.2 Where consent not to be unreasonably withheld

The Landlord will not unreasonably withhold its consent to an assignment if the Tenant has:

- 21.2.1 requested an assignment by notice in writing to the Landlord;
- 21.2.2 given the name and address of the proposed assignee ("**New Tenant**") to the Landlord;
- 21.2.3 remedied any Default Event which exists at the time of the proposed assignment;
- 21.2.4 provided the Landlord with a copy of the proposed document of assignment, in a form approved by the Landlord acting reasonably, and procured the New Tenant to execute that document;
- 21.2.5 proved to the satisfaction of the Landlord that the New Tenant is respectable and responsible and has the financial resources, experience and ability to comply with all of the Tenant's obligations under this lease;
- 21.2.6 ensured that the New Tenant does not propose using the Premises in a way which is not permitted under this lease;
- 21.2.7 agreed to pay the Landlord all reasonable costs (including legal costs and disbursements) incurred by the Landlord in connection with the proposed assignment including all enquiries made by the Landlord relating to the New Tenant; and
- 21.2.8 if the New Tenant is a corporation, its directors and principal shareholders have, if required by the Landlord, guaranteed to the Landlord the compliance by the New Tenant of its obligations under this lease.

21.3 Deemed assignment

21.3.1 Where the Tenant is a corporation, any circumstances which result in any person or group of persons who:

- (a) control the composition of the board of directors; or
- (b) beneficially hold more than one half of the issued share capital,

being different from the person or persons who were in that position at the Commencement Date, will be deemed to be an assignment of this lease which will require the prior written consent of the Landlord.

21.3.2 Clause 21.3.1 will not apply where the Tenant is a company, the voting shares of which are listed on Australian Stock Exchange Limited or a wholly owned subsidiary of such a company, and where a change of control is caused only by a transfer of shares in the listed company.

22 DISCRIMINATION

The Tenant must comply with any responsibilities and obligations under the *Disability Discrimination Act 1992* (Cth) and the *Equal Opportunity Act 2010* (Vic) and any other relevant legislation pertaining to people with a disability with respect to the use of the Premises, and ensure that it uses the Premises so as not to be inconsistent with the Landlord's disability action plan, as notified to the Tenant from time to time.

23 OCCUPATIONAL HEALTH AND SAFETY

The Tenant must:

- 23.1 conduct the Tenant's Business and operations from the Premises in a safe and healthy manner so as to ensure that there is minimal exposure to hazards at the Premises;
- 23.2 comply with the *Occupational Health and Safety Act 2004* (Vic) and all regulations and codes of practice made under that Act as well as any other relevant Australian standards in relation to the Tenant's operations at the Premises;
- 23.3 remedy any hazards or risks identified as a result of the risk assessment conducted by the Tenant or as otherwise required by the Landlord in writing; and
- 23.4 allow the Landlord access to the Premises at any time upon reasonable notice to conduct safety audits of the Premises.

24 TENANT'S OBLIGATIONS AT END OF LEASE

24.1 Vacating the Premises

At the end of this lease, the Tenant must:

- 24.1.1 vacate the Premises and leave the Premises clean and in the condition required by this lease;
- 24.1.2 if required by the Landlord and to the extent required by the Landlord (at its sole discretion):

- (a) remove any buildings, fixtures or improvements to the Premises that form part of the Tenant's Property or Works carried out under clause 18.7.1;
- (b) remove any signs, notices or advertisements placed in or near the Premises and any below ground and above ground electricity equipment or other installations; and
- (c) restore the Land (both at a surface level and below ground) to its state as at the Start of the Lease to the reasonable satisfaction of the Landlord, including the remediation to the reasonable satisfaction of the Landlord of any contamination of the Land caused or contributed to by the Tenant or the Tenant's Agents.

- 24.1.3 remove all of the Tenant's Property from the Premises (except any building, fixtures, improvements or other items, the removal of which is to be dealt with under clause 24.1.2);
- 24.1.4 repair any damage caused by the Tenant complying with its obligations under this clause (including any necessary repainting of walls); and
- 24.1.5 deliver to the Landlord all keys and passes giving access to the Premises which are held by the Tenant or any of the Tenant's Agents, whether or not they were supplied by the Landlord.

24.2 Tenant's Property left on Premises

- 24.2.1 If the Landlord does not require the Tenant to remove any buildings, fixtures or improvements under clause 24.1.2, such buildings, fixtures and improvements will become the property of the Landlord at the end of this lease.
- 24.2.2 Where the Landlord requires any items of Tenant's Property that are buildings, fixtures or improvements to remain in or on the Premises pursuant to clause 24.1.2, the parties agree that those items of Tenant's Property are deemed to be a Fixture for the purpose of the PPSA.
- 24.2.3 Any of the Tenant's Property (which is required to be removed under clause 24.1) that is left on the Premises 14 days after the early determination or expiry of this lease may be dealt with or disposed of by the Landlord as the Landlord deems appropriate. Any costs the Landlord incurs in removing any of the Tenant's Property must be reimbursed by the Tenant to the Landlord on demand. The parties intend that this clause operates in relation to the Tenant's Property in place of any legislation that might otherwise apply to goods remaining on the Premises.
- 24.2.4 While and for so long as it is necessary for the Landlord to take action under clause 24.2.3, the Tenant must continue to pay the Rent, the Outgoings and insurance (under clause 6.2) and Services (under clause 6.3).

25 LANDLORD'S OBLIGATIONS

Provided the Tenant complies with the terms of this lease, and subject to the terms of this lease, the Tenant may peacefully enjoy the Premises during the Term without interruption by the Landlord.

26 LANDLORD'S RIGHTS

26.1 Right to enter

26.1.1 The Landlord or any person authorised by the Landlord may enter the Premises at reasonable times:

- (a) to inspect, maintain, repair or alter the Premises, subject to reasonable notice; and
- (b) to carry out any building works required by the Landlord or any relevant authority, subject to 1 months' prior written notice being given to the Tenant,

and subject always to the Landlord complying with Child Safety Laws.

26.1.2 If there is an emergency, the Landlord and any person authorised by the Landlord may enter the Premises at any time without notice, subject to the Landlord complying with Child Safety Laws.

27 DEFAULT BY TENANT

27.1 Default Event

A Default Event occurs if:

27.1.1 the Tenant does not pay any money as required under this lease whether or not demand has been made;

27.1.2 the Tenant does not comply with any other obligation under this lease;

27.1.3 a judgement or order for \$10,000.00 or more is enforced or becomes enforceable against the Tenant's interest in this lease or the Tenant's Property;

27.1.4 the Tenant is a corporate body other than a public company listed on Australian Stock Exchange Limited and:

- (a) an order is made or resolution is passed to wind up the Tenant except for reconstruction or amalgamation;
- (b) the Tenant goes into liquidation;
- (c) the Tenant has a receiver (including a provisional receiver) or a receiver and manager of any of its assets, or an administrator appointed; or
- (d) the Tenant proposes a re-organisation, moratorium or other administration involving all or any class of its creditors except for reconstruction or amalgamation;

27.1.5 the Tenant being an individual:

- (a) becomes bankrupt; or
- (b) takes, or tries to take advantage of, Part X of the *Bankruptcy Act 1966* (Cth); or

- 27.1.6 the Tenant enters into a scheme of arrangement or composition with, or assignment for the benefit of, any of the Tenant's creditors.

27.2 **Landlord's right to end lease**

If a Default Event occurs, the Landlord may:

- 27.2.1 end this lease by re-entering the Premises without notice or, if required by law or by clause 27.3, with notice; or
- 27.2.2 end this lease by notice to the Tenant.

27.3 **Notice under Property Law Act**

- 27.3.1 For any breach of this lease to which section 146(1) of the *Property Law Act 1958* (Vic) applies, 14 days after service of a notice under the section is fixed as the time within which:
- (a) the Tenant must remedy the breach if it is capable of remedy; and
 - (b) make reasonable compensation in money to the Landlord's satisfaction for the breach.
- 27.3.2 Before terminating this lease for an event to which 146(1) of the *Property Law Act 1958* (Vic) does not extend, the Landlord must give the Tenant written notice of the breach and a period of 14 days in which to remedy it (if it is capable of remedy) and to pay reasonable compensation for it.

27.4 **Rights retained**

If this lease is ended by the Landlord, the Landlord retains the right to sue the Tenant for all unpaid moneys or for damages for breaches of the Tenant's obligations under this lease. For the purpose of assessing damages to the Landlord, the benefit of the Tenant's performance of this lease to the Landlord must be calculated on the basis that this lease continues in force until the Expiry Date.

28 **ESSENTIAL TERMS**

28.1 **Essential terms**

The following Tenant's obligations are essential terms of this lease:

- 28.1.1 the obligation to pay money; and
- 28.1.2 without limitation, the obligations under clause 6 (Payments), 8 (Goods and Services Tax), 11 (Use of Premises), 12 (Security), 14 (Child Safety Standards), 16 (Licences), 17 (Tenant's obligations concerning insurance), 18 (Maintenance of Premises and Alterations), 19 (Service Agreement), 21 (Assignment and subletting), 23 (Occupational Health and Safety), and the special conditions in Item 15 of the Schedule.

However, this clause does not prevent any other obligation under this lease being an essential term.

28.2 **Breach is repudiation**

Failure to remedy a breach by the Tenant of an essential term is taken to be a repudiation by the Tenant of all its obligations under this lease.

29 MITIGATION OF DAMAGES

29.1 Landlord must mitigate damages

If the Tenant vacates the Premises whether with or without the Landlord's consent, the Landlord must take reasonable steps to mitigate its loss and to endeavour to re-lease the Premises at a reasonable rent and on reasonable terms.

29.2 Assessment of damages

The Landlord's entitlement to damages will be assessed on the basis that the Landlord has observed the obligation to mitigate damages. The Landlord's conduct taken in exercising this duty to mitigate damages will not of itself constitute acceptance of the Tenant's breach or repudiation or a surrender by operation of law.

30 DAMAGE TO PREMISES

30.1 Rights of Landlord

If the Premises are damaged so that they cannot be used for the Permitted Use, the Landlord may, on written notice to the Tenant to be served within 30 days from the date of the destruction or damage, choose to either end this lease or reinstate the Premises.

30.2 Where Landlord's notice not given

If the Landlord does not serve any notice under clause 30.1 within the required time:

30.2.1 if the Premises are partly, but not substantially destroyed, then subject to clause 30.4 the Landlord must reinstate the Premises as soon as reasonably practicable; and

30.2.2 if the Premises are wholly or substantially destroyed, the Landlord is not obliged to reinstate the Premises, but (subject to clause 30.4) the Tenant may end this lease by written notice to the Landlord. However, if before the Tenant serves any such notice the Landlord gives the Tenant notice of its decision to reinstate the Premises, the Tenant will no longer have this right.

30.3 Delay in reinstatement

If the Landlord is obliged to or chooses to reinstate the Premises, and the reinstatement does not start within 3 months or is not completed within 18 months of the date of the destruction or damage, then either the Landlord or the Tenant (subject to clause 30.4) may end this lease by giving the other written notice at any time before the reinstatement is completed.

30.4 Refusal of insurance claim due to Tenant's conduct

If payment of an insurance claim in respect of any damage or destruction is refused because of an act or omission by the Tenant or any of the Tenant's Agents:

30.4.1 the Tenant is not entitled to end this lease under clause 30.2.2 or clause 30.3; and

30.4.2 the Landlord is not obliged to reinstate the Premises under clause 30.2.1.

30.5 **No compensation to Tenant**

The Landlord is not liable to pay the Tenant any compensation if any part of the Premises is destroyed or damaged or if this lease is ended under this clause.

31 PERSONAL PROPERTY SECURITIES ACT

31.1 Expressions used in this clause that are defined in the PPSA have the meanings given to them in the PPSA.

31.2 The Landlord may, at any time, register a financing statement for any security interest arising out of or evidenced by this lease over any or all of:

31.2.1 the Landlord's Property (including property deemed to be Landlord's Property at the end of this Lease);

31.2.2 any cash security deposit provided under this lease; and

31.2.3 any Tenant's Property left on the Premises after the end of this lease,

that are personal property, and must identify the property affected by the financing statement in the free text field of the statement. The Tenant waives the right to receive notice under section 157(1) of the PPSA.

31.3 When this lease:

31.3.1 ends and the Tenant has vacated the Premises and performed all of its obligations under it; or

31.3.2 is transferred,

the Landlord must register a financing change statement with respect to any security interest for which the Landlord has registered a financing statement other than those to which clause 31.2.2 relates.

31.4 The Tenant must sign any documents and do anything necessary to enable the Landlord to register the statements referred to in clause 31.3 and to enforce its rights and perform its obligations under this clause and the PPSA. In particular, if the Tenant is a natural person, the Tenant must provide the Landlord with the Tenant's date of birth and a certified copy of a Victorian driver's licence (or other evidence acceptable

to the Landlord) to confirm the Tenant's date of birth. The Landlord must keep the Tenant's date of birth and any evidence provided to confirm it secure and confidential.

- 31.5 The Tenant must not register, or permit to be registered, a financing statement in favour of any person other than the Landlord, for any security deposit (if provided by the Tenant) or any of the Landlord's Property.
- 31.6 The Tenant must pay the Landlord's reasonable costs in respect of anything done or attempted by the Landlord in the exercise of its rights or performance of its obligations under this clause 31 or the PPSA.
- 31.7 In accordance with section 275(6)(a) of the PPSA, the parties agree that neither of them will disclose information of the kind mentioned in subsection 275(1).
- 31.8 Subject to any requirement to the contrary in the PPSA, notices under this clause or the PPSA may be served in accordance with clause 47 of this lease.

32 RESUMPTION OF PREMISES

If any part of the Premises is resumed by any Authority and the Premises becomes unfit for the Permitted Use, then either the Landlord or the Tenant may end this lease by written notice to the other. The Landlord is not liable to pay the Tenant any compensation if any part of the Premises is resumed by any Authority.

33 HOLDING OVER

If the Tenant remains in possession of the Premises without objection by the Landlord after the end of the Term:

- 33.1 the Tenant, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy;
- 33.2 either party may end the tenancy by giving one month's written notice to the other at any time;
- 33.3 the monthly rent starts at an amount equal to the annual Rent which the Tenant was paying immediately before the Term ended divided by 12 unless a different rent has been agreed upon; and
- 33.4 the Landlord may increase the monthly rent at any time by giving the Tenant one month's written notice.

34 RELEASE AND INDEMNITY

34.1 Tenant's risk

The Tenant occupies and uses the Premises, Building and Land at the Tenant's own risk.

34.2 Release and indemnity

The Tenant releases and indemnifies the Landlord and its employees, agents and contractors from all legal liability arising from the use or occupation of the Premises, Landlord's Property, Building and Land by the Tenant or any of the Tenant's Agents, including:

- 34.2.1 any claim made by any person for injury, loss or damage arising in any manner;

34.2.2 any loss or damage to any property belonging to the Tenant or other persons located on or outside the Premises caused by the Tenant or the Tenant's Agents; and

34.2.3 any loss, damage, injury or illness sustained or incurred by the Tenant or any of the Tenant's Agents.

34.3 Restrictions on release and indemnity

The releases and indemnities in clause 34.2 and in clause 34.4 do not apply to:

34.3.1 any legal liability of the Landlord that arises from any unlawful act or omission of or any misconduct by the Landlord or its employees, officers, agents or contractors; or

34.3.2 any breach of this lease by the Landlord.

34.4 No claim for compensation

The Tenant claiming rights under this lease releases the Landlord from any claim for compensation for:

34.4.1 the failure of any equipment or machinery in the Premises; and

34.4.2 any damage or loss caused or arising out of the interruption of any services supplied to the Premises including but not limited to the supply of gas, electricity or water.

35 LANDLORD'S EXERCISE OF RIGHTS

35.1 Landlord has discretion

The Landlord may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy.

35.2 Partial exercise

A single or partial exercise of a right, power or remedy by the Landlord does not prevent a further exercise of that right or an exercise of any other right, power or remedy.

35.3 Right not prejudiced by delay etc

Failure by the Landlord to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

36 DISPUTES

36.1 Application

This clause 36 applies to all disputes under this lease except disputes:

36.1.1 about unpaid rent and interest charged on it;

36.1.2 about review of rent; or

36.1.3 to be resolved in another way prescribed by any other provision of this lease.

36.2 **Dispute**

If a dispute arises out of or relates to this lease (including any dispute as to breach or termination of this lease), a party may not commence any court proceedings relating to the dispute unless it has complied with this clause, except where the party seeks urgent interlocutory relief.

36.3 **Mediation procedure**

If a dispute or disagreement arises in relation to any matter under this lease, the parties must endeavour to resolve the matter in accordance with the following mediation procedure:

- 36.3.1 An initial meeting will be held between representatives of both parties where the dispute or disagreement will be discussed and both parties will make a bona fide effort to resolve;
- 36.3.2 If no resolution is found at the meeting referred to in clause 36.3.1, a party may start mediation by serving notice on the other party;
- 36.3.3 the notice must state that a dispute has arisen and identify what the dispute is;
- 36.3.4 the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 5 Business Days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator;
- 36.3.5 once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and
- 36.3.6 if the dispute is not resolved within 28 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

A party is not bound to follow the procedures set out in this clause 36 where to do so means that a limitation period for a cause of action relevant to the issues in dispute will expire.

36.4 **Charges**

The mediator may fix the charges for the mediation which must be paid equally by the parties.

36.5 **Settlement of dispute**

If the dispute is settled, all parties must sign the terms of agreement and those terms are binding on the parties.

36.6 **Confidential**

The mediation is confidential and:

- 36.6.1 statements made by the mediator or the parties; and
 - 36.6.2 discussions between the participants to the mediation,
- before, after or during the mediation, cannot be used in any legal proceedings.

36.7 Mediator to be released

It must be a term of the engagement of the mediator that the parties release the mediator from any claim of any nature relating to this lease.

36.8 Rules of natural justice do not apply

The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

36.9 Legal representation

Each party may be represented at the mediation by a legal practitioner or legal practitioners of its choice.

37 APPROVALS AND CONSENTS

37.1 Unless this lease provides otherwise, any consent or approval to be given by the Landlord may be given by the Landlord conditionally or unconditionally or withheld by the Landlord acting reasonably. If conditions are imposed by the Landlord, the Tenant must comply with each condition imposed by the Landlord as if it were a provision of this lease.

37.2 Where under this lease the consent of the Landlord is required to be given, the consent can only be given by the Landlord acting in its capacity as a council under the *Local Government Act 1989* (Vic) or *Local Government Act 2020* (Vic) and the Tenant acknowledges that the consent is not given or deemed to be given by the Landlord acting as the responsible planning authority under the *Planning and Environment Act 1987* (Vic) or by the issue of any building permit by the municipal building surveyor.

38 WAIVER AND VARIATION

A provision of or a right created under this lease may not be waived or varied except in writing signed by the party to be bound.

39 REMEDIES CUMULATIVE

The rights, powers and remedies provided in this lease are in addition to the rights, powers or remedies provided by law independently of this lease.

40 INDEMNITIES

Each indemnity in this lease is a continuing obligation, independent from the other obligations of the Tenant and survives the end of this lease.

41 EXCLUSION OF STATUTORY PROVISIONS

The covenants, powers and provisions implied in leases by section 67 of the *Transfer of Land Act 1958* (Vic), and section 144 of the *Property Law Act 1958* (Vic), do not apply to this lease.

42 PAYMENTS**42.1 No set-off**

The Tenant must make payments under this lease punctually without set-off, counterclaim or deduction.

42.2 No demand required

Unless this lease provides otherwise, the Landlord need not demand any amount payable by the Tenant under this lease.

43 FURTHER ASSURANCES

If the Landlord requests, the Tenant must:

43.1 execute, and cause its successors to execute, documents and do everything else necessary or appropriate to bind the Tenant and its successors under this lease; and

43.2 use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this lease.

44 PRIOR BREACHES AND OBLIGATIONS

The ending of this lease does not affect:

44.1 the Landlord's rights in respect of a breach of this lease by the Tenant before the end of this lease; or

44.2 the Tenant's obligation to make any payment under this lease before the expiry or termination.

45 GOVERNING LAW

This lease is governed by the laws of Victoria.

46 WAIVER AND VARIATION

46.1 Writing required

A provision of or a right created under this lease may not be waived or varied except in writing signed by the party to be bound.

46.2 Limit of waiver

If the Landlord waives a provision of or a right created under or implied in this lease, that waiver does not extend to:

46.2.1 a breach by the Tenant of the same or any other provision; or

46.2.2 the future exercise by the Landlord of that right.

46.3 No deemed waiver

The acceptance of a payment under this lease will not be taken to constitute a waiver of any provision of or a right created under or implied in this lease, except the right to demand the payment of that amount of money.

47 NOTICES

47.1 Giving notice

Subject to clause 47.4, any notice (which includes, without limitation, a demand, request, consent, approval and any other communication made, required or authorised under this lease) given under this lease must be:

- 47.1.1 in writing and signed by or on behalf of the party giving it;
- 47.1.2 directed to the recipient's address or email address specified in item 13 of Schedule 1, as varied by any notice; and
- 47.1.3 hand delivered or sent by prepaid post to that address, or sent by email to that email address.

47.2 **Receipt of notice**

A notice given in accordance with clause 47.1 is taken to be received by the recipient:

- 47.2.1 if hand delivered, on delivery;
- 47.2.2 if sent by prepaid post, 2 Business Days after the date of posting; or
- 47.2.3 if sent by email, at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*.

In all cases, a notice received after 5.00pm in the place of receipt or on a day that is not a Business Day is taken to be received by the recipient at 9.00am on the next Business Day.

47.3 **Signing of notice**

A notice given under this lease is sufficiently signed if:

- 47.3.1 in the case of a body corporate, it is signed by an Authorised Officer, director, secretary or other officer of, or a legal practitioner acting for, the body corporate; or
- 47.3.2 in the case of an individual, it is signed by the individual.

47.4 **Other modes of service permitted**

The provisions of this clause are in addition to any other mode of service permitted by law.

48 **SEVERANCE**

48.1 **Preferred construction**

The parties agree that a construction of this lease that results in all provisions being enforceable is to be preferred to any other construction.

48.2 **Severance**

If, despite the application of clause 48.1, a provision of this lease is illegal or unenforceable:

- 48.2.1 if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and

- 48.2.2 in any other case, the whole provision is omitted,

and the remainder of this lease continues in force.

49 ACTS OF TENANT'S AGENTS

If this lease:

- 49.1 prohibits the Tenant from doing a thing, the Tenant must ensure that the Tenant's Agents do not do that thing, and not allow or cause any person to do that thing; or
- 49.2 requires the Tenant to do a thing, the Tenant must ensure that the Tenant's Agents do that thing.

50 ENTIRE AGREEMENT

The Tenant acknowledges that:

- 50.1 no information, representation or warranty by or on behalf of the Landlord was supplied or made concerning this lease with the intention or knowledge that it would be relied upon by the Tenant;
- 50.2 no information, representation or warranty has been relied upon; and
- 50.3 this lease constitutes the entire agreement between the parties concerning the Premises and supersedes all previous negotiations and agreements.

51 ELECTRONIC EXECUTION

- 51.1 This clause applies if this lease has been executed, witnessed and/or exchanged by using electronic means, including an electronic execution service ("EES") and/or witnessing over audio visual link.
- 51.2 By signing this lease, the parties consent to this lease being executed, witnessed and exchanged by way of electronic means.
- 51.3 Each party and any witness may execute the lease in physical paper format or electronically or a combination of both. This lease may be exchanged electronically or in physical paper format or a combination of both. In each case this Lease will be legally binding upon the parties.
- 51.4 If using an EES, the parties:
 - 51.4.1 must comply, and must ensure that its authorised representatives comply with all processes and instructions concerning the use of the EES to execute and to give effect to this lease;
 - 51.4.2 must refrain from engaging in any conduct which may place any party in breach of their obligations under any agreement with the provider of the EES for the provision of the EES; and
 - 51.4.3 acknowledge and agree that the date, time and location of the electronic execution by or on behalf of the parties may be recorded by the provider of the EES and may be used by the parties in establishing when and where this Lease was executed by or on behalf of other parties.
- 51.5 Each party must do all things necessary and must ensure that party's employees and agents do all things necessary in order to give effect to this lease, including signing and delivering to other parties electronic or hard copies of this lease.

52 INTERPRETATION

In this lease, unless the contrary intention appears:

- 52.1 if there is an inconsistency between a special condition in item 15 of Schedule 1 and another provision of this lease, the special condition prevails;
- 52.2 the singular includes the plural and vice versa;
- 52.3 a reference to a document or instrument, including this lease, includes a reference to that document or instrument as novated, altered or replaced from time to time;
- 52.4 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 52.5 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 52.6 other grammatical forms of defined words or expressions have corresponding meanings;
- 52.7 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
 - 52.7.1 two or more parties; or
 - 52.7.2 a party comprised of two or more persons,
 is made or given and binds those parties or persons jointly and severally;
- 52.8 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 52.9 a recital, schedule, annexure or description of the parties forms part of this lease;
- 52.10 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 52.11 if an act required to be done under this lease on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 52.12 all monetary amounts are in Australian dollars;
- 52.13 a party that is a trustee is bound both personally and in its capacity as trustee;
- 52.14 a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and
- 52.15 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this lease.

SCHEDULE 1**Item**

- | | | |
|----------|--|--|
| 1 | Tenant:
(Clause 1.39) | <i>Horsham and District Kindergarten Association Inc.</i>

<i>Registration number A0039348B</i>

<i>ABN 65 670 142 871</i>

<i>Trading as Emerge Early Years Services</i>

<i>of 22 McLauchlan Street Horsham Vic 3400</i> |
| 2 | Commencement Date:
(Clause 1.5) | <i>10 March 2025</i> |
| 3 | Expiry Date:
(Clause 1.16) | <i>10 March 2030</i> |
| 4 | Term:
(Clause 1.44) | Five years |
| 5 | Permitted Use:
(Clause 1.25) | <i>Kindergarten facility that provides early childhood education services</i>

<i>including associated activities such as committee meetings, parent information sessions, working bees, and social functions.</i> |
| 6 | Premises:
(Clause 1.29) | The whole of the land and building at 87 Mandeville Street, Hopetoun, Victoria |
| 7 | Land:
(Clause 1.20) | The land described in Certificate of Title Volume 04967 Folio 343, and known as 87 Mandeville Street, Hopetoun, Victoria |
| 8 | Rent:
(Clause 1.32) | \$1 per annum plus GST, deemed paid. |
| 9 | Frequency of Payment of Rent:
(Clause 6.1.2) | Not applicable |

Item		Rent Review Date Not applicable	Rent Review Date Not applicable
10	Rent Review: (Clauses 1.33 and 7)		
11	Tenant's Proportion of Outgoings: (Clause 1.43)	11.1 In relation to Outgoings relating to the Premises only and capable of separate assessment: 100% Noting that Council rates are not applicable to this property and are not considered outgoings for the purpose of this lease. 11.2 In relation to all other Outgoings not referred to in 11.1, the proportion that the Lettable Area of the Premises bears to the Lettable Area of the Land or the building upon which the Outgoings are assessed.	
12	Amount of public liability insurance: (Clause 17.1.1)	\$20 million or such other greater amount reasonably required by the Landlord from time to time.	
13	Addresses of parties: (Clause 47.1)	Landlord's address: 34 Lyle Street, Warracknabeal VIC 3393 Email address for Landlord: info@yarriambiack.vic.gov.au Tenant's address: 22 McLauchlan Street Horsham Victoria 3400 Email address for Tenant: ceo@eeys.com.au	
14	Condition Report (clause 18.1.2)	Not applicable	

Item**15 Special conditions:**
(Clauses 2.1.3 and 52.1)**1 Hours of Use**

The Premises must only be used during the following hours:

6.00am – 9.00pm Monday to Friday.

or otherwise such other times as agreed to by the Landlord in writing;

subject to the requirements of all applicable laws, permits and licences.

2 Repairs and Maintenance

Despite clause 18.1.1, the Landlord will, at its own cost, carry out all necessary capital and structural repairs to the Premises and the Landlord's Property, provided however that the Tenant must carry out all necessary capital and structural repairs to any Works completed under clause 18.7.

3 Landlord's Insurance

Despite clause 6.2.2 and clause 6.2.3, the Tenant is not required to pay or reimburse the Landlord for insurance premiums or other charges and excesses in connection with insurance policies taken out by the Landlord in connection with the Premises.

4 West Wimmera Health Service

The Tenant must use its best endeavours to enter into a licence agreement with West Wimmera Health Service (WWHS) commencing no later than 01 April 2025 which permits WWHS to provide a maternal child health service from the Premises for a period of 5 years, with expiry to be 10 March 2030.

The licence agreement must be in a form and include terms and conditions approved by the Landlord.

SCHEDULE 2

PLAN AND TITLE

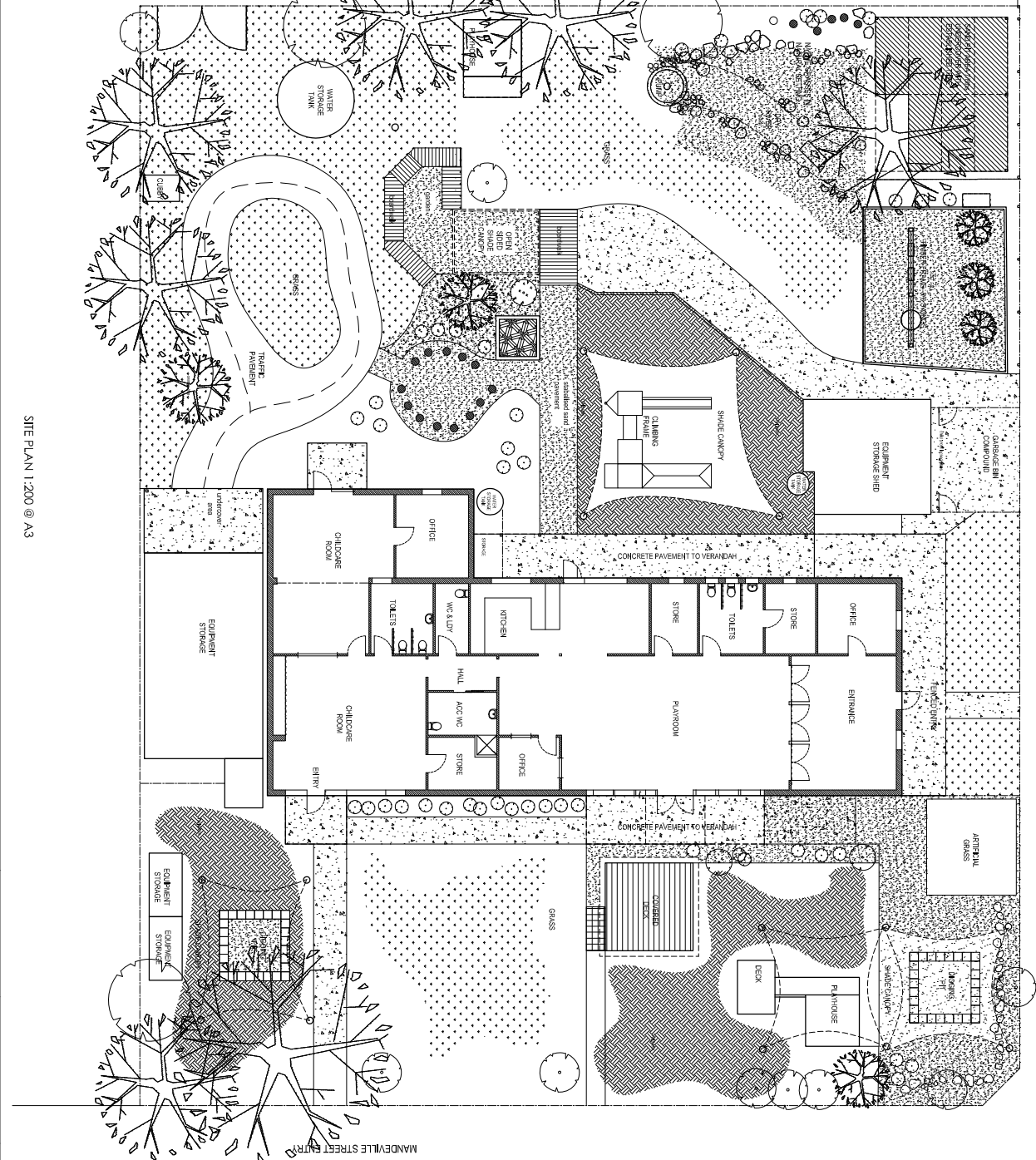
The following documents have been inserted as PDF's after Page 38:

[Hopetoun Early Years Centre - 21 Jan 2025 - Building Area Plan.pdf](#)

[Hopetoun Early Years Centre - 19 Dec 2024 - Site Layout.pdf](#)

[AS135591R 8042.764.pdf](#)

[AS135591R 8042.767.pdf](#)



SITE PLAN 1:200 @ A3

HOPETOUN PRESCHOOL SITE LAYOUT

GOOGLE MAPS

SHEET INFORMATION		SHEET PLAN	
PROJECT NAME	HOPETOUN PRESCHOOL	DATE	10/10/2024
DESIGNER	GOOGLE MAPS	SCALE	1:200
DATE	10/10/2024	CONTRACTOR	XXX
PROJECT NO.	100	REVISION	00

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REGISTRATION CONFIRMATION STATEMENT

Produced: 03/05/2019 11:39:05 AM

VOLUME 8042 FOLIO 764

LAND DESCRIPTION

Lot 1 on Plan of Subdivision 026623.
PARENT TITLE Volume 04967 Folio 343
Created by instrument 2632895 05/04/1954

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
YARRIAMBIACK SHIRE COUNCIL of 34 LYLE STREET WARRACKNABEAL VIC 3393
AS135391A 03/05/2019

ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan or imaged folio set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE LP026623 FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER		STATUS	DATE
AS135391A	RECTIFY PROPRIETORSHIP	Registered	03/05/2019
AS135522M	RECTIFY PROP. DERIVATION	Registered	03/05/2019
AS135591R	AMEND pCT TO eCT	Registered	03/05/2019

Additional information:

Street Address: 87-89 MANDEVILLE STREET HOPETOUN VIC 3396

ADMINISTRATIVE NOTICES

NIL

eCT Control 09900L YARRIAMBIACK SHIRE COUNCIL
Effective from 03/05/2019

DOCUMENT END

Lodgement No: 4890068

Email:

Customer Code: 00035D

Customer Name: REGISTRAR OF TITLES

LAND USE VICTORIA, 2 Lonsdale Street Melbourne Victoria 3000

GPO Box 527 Melbourne VIC 3001, DX 250639

Telephone: (03) 9194 0601 Facsimile 9194 0616

ABN 90 719 052 204

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REGISTRATION CONFIRMATION STATEMENT

Produced: 03/05/2019 11:39:06 AM

VOLUME 8042 FOLIO 767

LAND DESCRIPTION

Lot 2 on Plan of Subdivision 026623.
PARENT TITLE Volume 04967 Folio 343
Created by instrument 2632898 05/04/1954

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
YARRIAMBIACK SHIRE COUNCIL of 34 LYLE STREET WARRACKNABEAL VIC 3393
AS135391A 03/05/2019

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NIL

eCT Control 09900L YARRIAMBIACK SHIRE COUNCIL
Effective from 03/05/2019

DOCUMENT END

Lodgement No: 4890068

Email:

Customer Code: 00035D

Customer Name: REGISTRAR OF TITLES

LAND USE VICTORIA, 2 Lonsdale Street Melbourne Victoria 3000

GPO Box 527 Melbourne VIC 3001, DX 250639

Telephone: (03) 9194 0601 Facsimile 9194 0616

ABN 90 719 052 204

SCHEDULE 3

TENANT'S PROPERTY

- Any Works carried out under clause 18.7
- All toys at the Premises as at the Commencement Date (the parties agree that these items will be deemed to be Tenant's Property as at the Commencement Date)
- All furniture at the Premises as at the Commencement Date (the parties agree that these items will be deemed to be Tenant's Property as at the Commencement Date)

SCHEDULE 4
LANDLORD'S PROPERTY

Not applicable.

SCHEDULE 5

MAINTENANCE AND SERVICING GUIDELINES

The [Maintenance and Servicing Guidelines](#) is to be included as a PDF after Page 41 of this Lease.



Yarriambiack
SHIRE COUNCIL

Maintenance and Servicing Guidelines

for Yarriambiack Shire Council
owned and managed facilities

This document provides guidelines to the Tenant for the Maintenance of Yarriambiack Shire Council owned / managed facilities.

Yarriambiack
Shire Council

Tenant

Warracknabeal Sales Yard

RESPONSIBILITY SIGNAGE

Advertising and Sponsorship Signage



The erection and maintenance of all advertising signage must be approved by Council and must meet all regulations and planning requirements.

Any repair to infrastructure and fences that is required due to the installation of signage is the responsibility of the Tenant.

Entrance Signage



Entrance signage will be installed and maintained by Council.

Internal Signage, Shelving and Equipment



If the Tenant are planning on fixing shelving or equipment to the walls, they need to provide adequate information to inform Council. Council will then assess and advise/approve like any standard tenant arrangement.

INSURANCE

Building Insurance



Council will insure buildings owned as they are Council assets.

Contents Insurance



Contents not owned by Council must be insured by the Tenant.

Public Liability Insurance



The Tenant shall, at all times during the Lease Term, be the holder of a current Public Liability Policy of Insurance in respect of the activities undertaken at the Premises.

FOOD AND BEVERAGE

Kitchen Equipment



Testing and tagging of kitchen and all other equipment must be arranged by the Tenant through a licenced electrician.

Council will be responsible for the servicing of fixed kitchen equipment.



**Yarriambiack
Shire Council**

Tenant

Rupanyup Kindergarten

RESPONSIBILITY CLEANING AND TOILETS

Facility Cleaning



Day to day cleaning of the facility will be completed by the Tenant.

Toilets



Day to day cleaning and supply of all consumables such as toilet paper and hand towels will be managed by Tenant.

Sanitary Bins



Tenant will arrange sanitary bins for all toilets.

INTERNAL BUILDING

General Repairs and Maintenance



Day to day maintenance and repairs such as light globes and cobweb removal etc is the responsibility of the Tenant and must be undertaken by a qualified person.

Ceiling and Internal Walls



Damage sustained to the ceiling and internal walls as a result of daily activity is the responsibility of the Tenant.

Floor Surfaces and Coverings



Cleaning of floor surfaces and coverings is Tenant responsibility.

Repair / Replacement of floor surfaces and coverings at the end of economical life is Council responsibility.

Glass and Glazing



Cleaning of windows is Tenant responsibility.

Replacement due to breakage as a result of other action or event (i.e. break-in) is Council responsibility.

Internal Maintenance



Repairs and faults such as plumbing leaks and electrical faults must be reported to Council by the Tenant for repair.

More listed on the following page.

RESPONSIBILITY**INTERNAL BUILDING (continued)**

Pest Control			Insect, spider and rodent infestations must be treated by the Tenant. Pests causing structural damage to a building must be reported to Council for assessment and action. Council will undertake termite inspections and action.
Asbestos Removal			Must be undertaken by qualified, certified contractors arranged by Council.
Defibrillator			The fixing of a defibrillator to a wall is subject to approval from Council. Ongoing maintenance of the Defibrillator is the responsibility of the Tenant.
Structural Repairs or Major Maintenance			Must be reported to Council for assessment and prioritised action.
Keys and Locks			Council is responsible for all locks and keys to all Council owned buildings and structures. Tenant must keep a key register and inform any changes or new keys to Council.
Curtains, Drapes and Blinds			Tenant is responsible for maintenance and repair to any facility curtains, drapes and blinds.
Fridges / Freezers			Responsibility of the Tenant to repair, maintain and replace.
Furniture			Any furniture not fixed to the building is the responsibility of the Tenant to repair, maintain and replace.
Security Systems			Security Systems must be approved and installed by Council. Management and payment of fees associated with the Security System is the responsibility of the Tenant. Call outs in relation to the System are Tenant responsibility. If a Security System is installed, security details must be provided to Council.



Tenant occupants are responsible for the locking of facilities after each use.

Yarriambiack
Shire Council

Tenant

Hopetoun Memorial Hall

RESPONSIBILITY

UTILITIES AND SERVICES

Electricity Consumption



Payments for all operating costs are to be organised and paid by the Tenant.

Water Consumption



Payments for all operating costs are to be organised and paid by the Tenant.

Gas Consumption



Payments for all operating costs are to be organised and paid by the Tenant.

NBN Internet



It is the responsibility of the Tenant to pay for this service if required.

Heating and Cooling Servicing



Six monthly or annual servicing of air conditioning, split system units, electric and gas heaters are required and will be the responsibility of the Council.

Plumbing



Cleaning of blocked toilets and blocked sewerage pipes is Tenant responsibility.

Replacement of tap washers is Tenant responsibility.

Replacement of plumbing pipes, fittings, broken toilet bowls, cisterns, taps and sinks subject to Council assessment is Tenant responsibility.

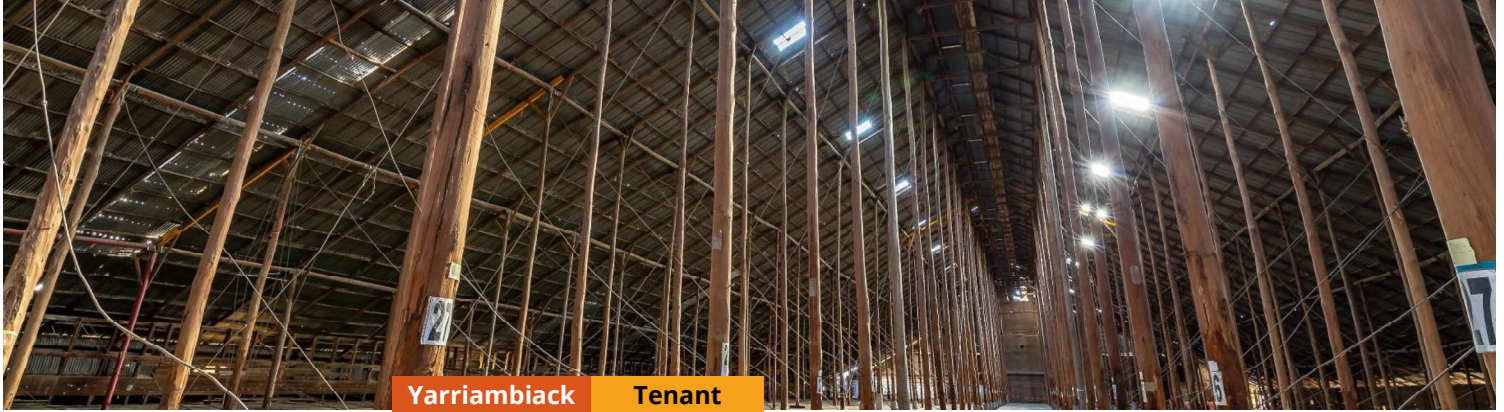
Drainage repairs / works including broken sewerage pipes, drains and pits is Council responsibility.



Essential Safety Measures (ESM)



Council will ensure that all ESM (fire extinguishers, exit lights, paths of travel) complies will regulation standards.



**Yarriambiack
Shire Council**

Tenant

Murtoa Stick Shed

RESPONSIBILITY BUILDING SURROUNDS

External Painting



Council will undertake painting of buildings if deemed necessary for major maintenance activities, eg to maintain a building with asbestos.

Any additional painting requests should be submitted to Council for consideration.

Roof, Guttering and Spouting



Repairs and replacement requests are to be submitted to Council by the Tenant.

Day to day maintenance of cleaning out guttering and spouting should be arranged by the Tenant and completed by a qualified tradesperson.

Vandalism and Graffiti



Reports of vandalism and graffiti must be reported to Council and the Police if required.

WASTE MANAGEMENT

Rubbish / Recycling Bins



Rubbish / recycling generated from Tenant activities must be disposed of in allocated bins located at the facility.

The Landlord will provide recycling, general waste and glass bins.

Waste Collection Fees



Rubbish / recycling generated from Tenant activities must be disposed of in allocated bins located at the facility.

The Tenant is currently exempt from the waste collection fee.

Litter Bins



Public bins located outside the facility are for public use and will be collected by Council's outdoor works team.

Tenant to notify Council if bins are overflowing or offensive smelling in nature.

All building maintenance works are to be reported in a timely manner (within 48 hours) utilising Council's Customer Request Management System (CRM). The CRM system can be accessed by:

- Reporting the matter directly, calling Council's Customer Service number on 03 53 98 0100; or
- Lodging the request online via Council's Website – Report an Issue ([Index - Yarriambiack Shire Council \(councilwise.com.au\)](https://www.yarriambiack.vic.gov.au/index)) or
- Via Snap Send Solve Application.



YARRIAMBIACK SHIRE COUNCIL

34 Lyle Street, Warracknabeal Vic 3393

T: (03) 5398 0100

F: (03) 5398 2502

www.facebook.com/yarriambiack

PO Box 243, Warracknabeal VIC 3393

E: info@yarriambiack.vic.gov.au

W: www.yarriambiack.vic.gov.au

www.twitter.com/yarriambiackshire

SCHEDULE 6
SERVICE AGREEMENT

The [Service Agreement](#) is to be inserted as a PDF after Page 42 of this Lease.

**YARRIAMBIACK SHIRE COUNCIL
EARLY YEARS SERVICE AGREEMENT**

THIS AGREEMENT is made on 10 March 2025

PARTIES

- 1 **YARRIAMBIACK SHIRE COUNCIL**
of 34 Lyle Street, Warracknabeal VIC 3393
("**Council**")
- 2 **HORSHAM AND DISTRICT KINDERGARTEN ASSOCIATION INC.**
Registration number A0039348B, ABN 65 670 142 871
Trading as Emerge Early Years Services
of 22 McLauchlan Street Horsham Vic 3400
("**Tenant**")

RECITALS

- A Council and the Tenant are committed to supporting and providing access to quality early years' education and care for children in the municipality of Yarriambiack Shire Council.
- B Council is the registered proprietor of the Facility.
- C The Tenant occupies or will occupy the Facility as tenant under a Lease between Council and the Tenant. The Tenant is to use the Facility in a manner consistent with the permitted use and obligations under the Lease, and to provide the Services.
- D The parties agree to enter into this Agreement to document the terms and conditions upon which the Services are to be provided.

THE PARTIES AGREE THAT:

1 DEFINITIONS

In this lease, unless the contrary intention appears:

- 1.1 "**Agreement**" means this agreement, including the parties, recitals, schedules and annexures to this Agreement;
- 1.2 "**CRES**" means the Yarriambiack Shire Council Central Registration and Enrolment Scheme;
- 1.3 "**Facility**" means the premises which are the subject of the Lease.
- 1.4 "**Lease**" means the lease of the Facility between the Council as landlord and Tenant as tenant, dated on or about the date of this Agreement.
- 1.5 "**Schedule**" means a schedule to this Agreement
- 1.6 "**Services**" means kindergarten services and/or early childhood education services, as specified in the Permitted Use clause in the Lease.
- 1.7 "**Term**" means the term of this Agreement as defined in clause 3 of this Agreement.

Any term defined in the Lease has the same meaning in this Agreement and if there is any inconsistency between the meaning in this Agreement and the meaning in the Lease, the terms of the Lease prevail.

2 COMPLIANCE WITH SERVICE AGREEMENT AND RELATIONSHIP WITH LEASE

- 2.1 In consideration for the Council granting the Lease to the Tenant, the Tenant enters into this Agreement.
- 2.2 At all times during the Term, the Tenant must comply with the Service Agreement (as amended from time to time) and by the time/s required by the Service Agreement.
- 2.3 The Tenant acknowledges and agrees that, pursuant to clause 19 of the Lease, Council may, from time to time, and with the agreement of the Tenant (which will not be unreasonably withheld), amend this Agreement. If Council amends this Agreement, it must provide a copy of the amended Service Agreement to the Tenant within 30 days after any such amendment.
- 2.4 The Tenant acknowledges and agrees that the Department may issue policy directives relating to funded kindergarten programs which could require amendments to this Agreement. In such an event, any amendments to reflect Department directives will be made in consultation with, and agreement between, Council and the Tenant. If Council amends this Agreement following consultation and agreement between the parties, it will provide a copy of the amended Agreement to the Tenant within 30 days after any such agreement is made. This Agreement will be deemed to have been replaced by the amended Agreement on the date Council provides a copy to the Tenant.
- 2.5 If the Lease ends or is terminated for any reason then this Agreement will be terminated also and at the same time.

3 TERM

This Agreement commences on the Commencement Date of the Lease and ends when the Lease ends.

4 SERVICES

- 4.1 The Tenant must perform and deliver the Services during the Term in accordance with this Agreement and early years' policies and directions of Council from time to time which relate to the provision of the central registration and enrolment scheme.
- 4.2 The Tenant will remain responsible for the performance of the Services notwithstanding the acceptance or review of the Services, or any element of the Services, by Council or by any employee or person acting on behalf of the Council.
- 4.3 The Tenant must:
 - 4.3.1 manage all aspects of the performance and delivery of the Services, including the employment and management of all staff, the compliance with all laws and Department policies, the management of finances and budgets, the administration and implementation of this Agreement and the Lease, and all other administrative and operational matters;
 - 4.3.2 take timely and corrective action where the Services are not being performed in accordance with any requirements of this Agreement or the Lease; and
 - 4.3.3 ensure that the Services are delivered in accordance with the Lease, all Approvals, Laws and Relevant Legislation and all funding guidelines as applicable from time to time.
- 4.4 The Council will not be liable for any cost, liability, loss or damage incurred or suffered directly or indirectly by the Tenant or the Tenant's Agents in connection with the provision of the Services except to the extent it was caused or contributed to by a breach of this Agreement by, or the negligence of, Council.

5 PLANNING OF SERVICES

The Tenant must:

- 5.1 establish and promote a range of early years Services for children which meet community need;
- 5.2 actively work with Council to develop strategies and timetables to meet community demand for early years services, and facilitate eligible children to access two years of funded kindergarten in the two years prior to school entry;
- 5.3 prioritise the delivery of and access to kindergarten programs for children who are vulnerable or experiencing disadvantage in the two years prior to school entry;
- 5.4 offer a kindergarten group size that maximises the number of places offered based on licensed capacity;
- 5.5 annually review and provide to Council details of the kindergarten programs to be offered in response to identified supply and demand data, and set out:
 - 5.5.1 *the number of 3-year-old and 4-year-old places to be offered; and/or*
 - 5.5.2 *the number of total places to be offered as a mixed age group;*
 - 5.5.3 *details of other kindergarten programs and activities to be offered including bush kinder, extended care or other regular sessions;*
 - 5.5.4 *session times for all kindergarten programs and activities;*
 - 5.5.5 *details of fees and charges (if not readily available on service website);*
 - 5.5.6 *kindergarten staff qualifications, where relevant;*
 - 5.5.7 *details of any improvement grant opportunities as identified in the service's quality improvement plan; and*
 - 5.5.8 *alarm code and key register listing all keys and allocations by name and contact number;*
- 5.6 collaboratively work with Council to align with the goals of Council plans and policies to ensure community facilities are safe, accessible, adaptable, and highly utilised, providing high levels of value to meet community demand for kindergarten; and
- 5.7 respond to current and forecast enrolment needs and trends as provided by Council and the Department;
- 5.8 adopt a responsive approach to planning for additional places at the Facility within the parameters of licensed capacity and service viability when demand exceeds supply;
- 5.9 participate in and administer the CRES in collaboration with Council and in accordance with Council policies, procedures and guidelines;
- 5.10 annually review the CRES process in collaboration with Council; and
- 5.11 ensure that the Tenant's service management representative/s participate in all information sessions and meetings conducted by Council which relate to service management and networking, future planning, sector updates, and the CRES.

6 MARKETING AND ADVERTISING

- 6.1 Council will promote all early years Services operating from Council owned facilities on Council's website, and through targeted marketing opportunities (for example, Open Weekend and Children's Week).
- 6.2 Subject to clause 6.1 of this Agreement, the Tenant is responsible for all marketing, promotion and advertising of the Services provided at the Facility.
- 6.3 The Tenant will work with Council to enable the online CRES process, so that CRES related content is reflected accurately on websites and/or other media (as applicable).

7 SERIOUS INCIDENTS

- 7.1 The Tenant will notify Council as soon as practicable if any of the following incidents occur at the Facility:
 - 7.1.1 A child dies while attending the Facility;
 - 7.1.2 A child cannot be accounted for or appears to have been taken or removed from the Facility without parental or guardian authorisation; or
 - 7.1.3 Other incidents where Emergency services including police, fire, and state emergency services attend the Facility.
- 7.2 Where reasonably appropriate or as requested by the Tenant, the Council will provide practical assistance (e.g. stakeholder management, support to the Tenant's staff) in managing the incident.

8 SERVICE MANAGEMENT REPRESENTATIVE

8.1 Appointment

The Tenant must:

- 8.1.1 appoint the person or persons with Management or Control as defined by the *Education and Care National Regulations* as the representative at all times during the Term;
- 8.1.2 ensure that the representative as defined in clause 8.1.1 is available and able to be contacted by Council during Business Hours and in the event of an emergency; and
- 8.1.3 notify Council immediately if a new representative as defined in 8.1.1 is appointed.

8.2 Contact details

The Tenant must:

- 8.2.1 provide Council with:
 - 8.2.1.1 the name, address and contact details of the person or persons with Management or Control during Business Hours;
 - 8.2.1.2 a telephone number on which the person or persons with Management or Control may be contacted outside Business Hours; and
 - 8.2.1.3 notify Council immediately of any change of contact details of the person or persons with Management or Control.

8.3 Directions to Representative

Any direction, instruction, notice, determination, approval or other communication given to the person or persons with Management or Control is deemed to have been given to the Tenant.

8.4 Knowledge of Representative

Any matter within the knowledge of the person or persons with Management or Control is deemed to be within the knowledge of the Tenant.

9 NOTICES

A notice required or permitted to be given by one party to another under this Agreement must be given in accordance with the method of giving notices under the Lease, and will be treated as having been duly given and received in accordance with the notice provisions of the Lease.

10 INTERPRETATION

In this Agreement, unless inconsistent with the context:

- 10.1 the singular includes the plural and vice versa;
- 10.2 other grammatical forms of defined words or expressions have corresponding meanings;
- 10.3 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 10.4 a reference to any Act, law, regulation, proclamation, planning scheme, local law or by-law includes any amendment, consolidation or replacement of any of them;
- 10.5 a reference to an Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act;
- 10.6 a reference to a party includes that party's successors, permitted assigns, receivers, receivers and managers, liquidators, administrators and legal personal representatives;
- 10.7 a reference to a document includes a reference to that document as amended, rectified or replaced from time to time and the document which amends, rectifies or replaces that document; and
- 10.8 headings are for convenience only and do not affect interpretation.

10.9 Severance

If any provision or part of a provision of this Agreement is illegal or unenforceable for any reason, then the provision or part of the provision shall be severed from this Agreement and the remaining provisions or parts of the provisions will continue in full force and effect.

10.10 Governing law

The law of the State of Victoria governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.

10.11 Act on next Business Day

If an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day.

10.12 **Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together constitute the same instrument.

10.13 **No partnership**

Nothing in this Agreement shall operate or be deemed to create a partnership between any of the parties to this Agreement.

10.14 **Severable and joint liability**

If the Tenant consists of two or more parties, this Agreement binds each of them severally and jointly.

10.15 **Agency**

The Tenant must not:

- 10.15.1 hold itself out as being an agent of Council or being in any other way entitled to make any contract on behalf of Council or to bind the Council to the performance, variation, release or discharge of any obligation; or
- 10.15.2 hold out its personnel and agents or allow its personnel and agents to hold themselves out, as employees or agents of the Council.

10.16 **No restriction of Council's powers**

This Agreement does not fetter or restrict the powers or discretions of the Council in relation to any powers or obligations it has under any Act, regulation or local law that may apply to the Services, the Tenant or the Municipality.

10.17 **No waiver**

Any waiver must be in writing signed by the party giving that waiver. The following will not amount to a waiver of Council's rights under this Agreement or at law:

- 10.17.1 time or other indulgence granted by Council to the Tenant;
- 10.17.2 variation of the terms and conditions of this Agreement; or
- 10.17.3 judgment or order obtained by the Tenant against Council.

EXECUTED as an Agreement.

Council:



THE COMMON SEAL of
YARRIAMBIAK SHIRE COUNCIL was
hereunto affixed on the 26th day of
February 2025
in the presence of:

)
)
)
)
)

Kylie Zanker

Kylie Zanker (Mar 13, 2025 08:58 GMT+11)

..... Councillor

Kylie Zanker

Full name

Karly Kirk

Karly Kirk (Mar 13, 2025 09:08 GMT+11)

..... Councillor

Karly Kirk

Full name

Tenant:

THE COMMON SEAL of HORSHAM AND
DISTRICT KINDERGARTEN ASSOCIATION
INC. (Registration number A0039348B) was
affixed in accordance with its rules in the
presence of:

)
)
)

E. Napoli

.....
Elicia Napoli - CEO

Ke

.....
Krystal Osborne - Finance Manager

SCHEDULE 7

RELEVANT LEGISLATION

Associations Incorporation Reform Act 2012 (Vic)

Child Wellbeing and Safety Act 2005 (Vic)

Children's Services Act 1996 (Vic)

Children's Services Regulations 2020 (Vic)

Education and Care Services National Law Act 2010

Education and Care Services National Regulations 2011

Worker Screening Act 2020 (Vic)

EXECUTED as a deed

Landlord:



THE COMMON SEAL of
YARRIAMBIACK SHIRE COUNCIL was
 hereunto affixed on the 26th day of
 February 2025
 in the presence of:

)
)
)
)
)

Kylie Zanker

Kylie Zanker (Mar 13, 2025 08:58 GMT+11)

..... Councillor

Kylie Zanker

Full name

Karly Kirk

Karly Kirk (Mar 13, 2025 09:08 GMT+11)

..... Councillor

Karly Kirk

Full name

Tenant:

THE COMMON SEAL of **HORSHAM AND**
DISTRICT KINDERGARTEN ASSOCIATION
INC. (Registration number A0039348B) was
 affixed in accordance with its rules in the
 presence of:

)
)
)

E. Napoli

..... Elicia Napoli - CEO

Ke

..... Krystal Osborne - Finance Manager

Ke

Lease - Yarriambiack Shire Council to Emerge - Early Years Hopetoun

Final Audit Report

2025-03-13

Created:	2025-03-12
By:	Jo White (jwhite@yarriambiack.vic.gov.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAAT_w4BF046NjRayFMcYt07BHskolcR-BL

"Lease - Yarriambiack Shire Council to Emerge - Early Years Hopetoun" History

-  Document created by Jo White (jwhite@yarriambiack.vic.gov.au)
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-  Document emailed to Kylie Zanker (kzanker@yarriambiack.vic.gov.au) for signature
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Signature Date: 2025-03-13 - 10:17:06 PM GMT - Time Source: server

 Agreement completed.

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