

Right to Use Land and Buildings Agreement

Melbourne Archdiocese Catholic Schools Ltd

The Roman Catholic Trusts Corporation for the Diocese of
Melbourne

The party specified in Item 3 of Schedule 1



CATHOLIC ARCHDIOCESE
OF MELBOURNE

Schedule 1

Item 1 Owner	The Roman Catholic Trusts Corporation for the Diocese of Melbourne ABN 52 768 159 282 of 383 Albert Street, East Melbourne, Victoria, 3002 as trustee for the Parish Priest
Item 2 MACS	Melbourne Archdiocese Catholic Schools Ltd ACN 643 442 371 of 228 Victoria Pde, East Melbourne, Victoria, 3002
Item 3 Parish Priest	[Parish Priest] for and on behalf of [Parish]
Item 4 School	[School Name] [School VRQA Reg. No.] [School E No.]
Item 5 Land	[address], being all of the land in Certificate of Title Volume X Folio Y AND/OR [address], being that part of the land in Certificate of Title Volume X Folio Y described in Schedule 3 or, if Schedule 3 is not completed, the area that is used at the Commencement Date for the operation of the School (but excluding any area which is used for the purposes of Owner Facilities Common Areas (or equivalent)).
Item 6 Commencement Date	1 January 2021
Item 7 Term	50 years commencing on the Commencement Date, as may be extended from time to time pursuant to clause 4(c)
Item 8 Further Terms	One further term of 20 years
Item 9 Usage Fee	\$1 p.a. for the first 3 years of the Term, if demanded
Item 10 Permitted Use	Provision of Catholic education and associated educational uses by the School, including the provision of out of hours programs and children's services that are ancillary to the provision of Catholic education

Right to Use Land and Buildings Agreement

Parties

1. Fr of for and on behalf of [Parish] (Parish Priest)
2. **The Roman Catholic Trusts Corporation for the Diocese of Melbourne ABN 52 768 159 282** of 383 Albert Street, East Melbourne, Victoria, 3002 as trustee for the Parish Priest (**Owner**)
3. **Melbourne Archdiocese Catholic Schools Ltd ACN 643 442 371** of 228 Victoria Pde, East Melbourne, Victoria, 3002 (**MACS**)

Background

- A. The parish referred to above is the beneficial owner of the Land.
- B. The Parish Priest represents the parish referred to above.
- C. The Owner is the registered proprietor of the Land, which it holds on trust for the parish.
- D. MACS has been established by the Archbishop to assume the governance and operation of Catholic schools operated in an unincorporated form by parish priests, associations of parish priests or the Archbishop, and to be responsible for the operation of further schools that will be established by MACS.
- E. The Parish Priest has agreed to transition to MACS the operation of the School of which he is registered as proprietor, such that MACS will become registered as a proprietor of the School. MACS has agreed to accept assets and assume various liabilities associated with the School's operations.
- F. In order to give full effect to the transition of the School's operations, the Owner has agreed to grant to MACS a right to exclusive possession and use of the Land and the Buildings on and from the Commencement Date for the Term on the terms and conditions set out in this agreement.
- G. By entering into this agreement, the parties have agreed that, at this time, no fee other than a nominal amount shall be introduced in respect of MACS' right to exclusive possession and use of the Land and the Buildings for the purpose of operating the School. However, this agreement allows the parties to introduce the payment by MACS of a Usage Fee, which may occur only after the Archdiocesan School Planning & Collaboration Forum has considered a wide range of relevant factors including those set out in clause 2(b) and, in particular, appropriate liaison with relevant authorities.
- H. The Parish Priest has an integral role in the pursuit of MACS' objects as the Custodian of Mission and Apostolic Leader of the parish and the School. Consequently, he is always a welcome presence within the School community where he leads and is co-responsible for the religious life of the School in collaboration with the principal. The Parish Priest is also responsible for the patrimony of the land and buildings of the parish, including those used in the School operations.
- I. As part of the governance reform project, the Archbishop has initiated the establishment of the Archdiocesan School Planning & Collaboration Forum. The Archdiocesan School Planning & Collaboration Forum is designed to support enhanced collaboration and alignment of the needs, priorities and strategic direction of MACS, the Archdiocese and its parishes, consistent with the Archbishop's strategic direction and vision for the local Church and its mission more broadly.

Operative provisions

1. Right to use Land

- (a) The Owner grants to MACS and MACS accepts a right to exclusive possession and use of the Land and the Buildings for the Term for the sole purpose of conducting the Permitted Use at all times during the Term.
- (b) The Owner reserves to itself and the Parish Priest the right to have access to the Land, the Buildings and the School Facilities Common Areas for the purposes of performing the functions of a Parish Priest (including in relation to the School) or to attend to any appropriate works, including in relation to adjacent parish land.
- (c) The Owner will grant to MACS an option for a Further Term if MACS:
 - (i) gives the Owner written notice exercising the option for a Further Term no later than one year before the end of the Term (time being of the essence); and
 - (ii) has remedied any breach of this agreement of which MACS has received written notice from the Owner.
- (d) Upon the grant of a Further Term, the number of Further Terms in Item 8 (if any) reduces by one, and the Owner must make all changes necessary to the agreement to reflect the grant of the Further Term.
- (e) From time to time as part of the Archdiocesan School Planning & Collaboration Forum, the parties may meet, in good faith, to discuss:
 - (i) any proposal by MACS to redevelop the Land and the Buildings during the remainder of the Term or Further Term (as applicable);
 - (ii) any proposed extension of the current Term;
 - (iii) the proposed use of the Land after the end of the Term or Further Term (as applicable);
 - (iv) any proposal by any of the parties to redevelop the Land in the future;
 - (v) whether or not MACS wishes to continue performing the Permitted Use from the Land beyond the end of the Term or Further Term (as applicable);
 - (vi) the strategic direction of, or any other issues relevant to, the parish the Parish Priest represents and any things in relation to the School that the Parish Priest wishes to discuss;
 - (vii) whether or not the Owner wishes MACS to continue performing the Permitted Use from the Land beyond the end of the Term or Further Term (as applicable); and
 - (viii) in respect of any proposal to close the School, the extent to which the Parish Priest and MACS will contribute to such amount as is necessary to satisfy all or part of the following:
 - (A) any capital grant obligations relating to Buildings on the Land, in the event that such Buildings cease to be used as required by the terms of any such capital grant; and
 - (B) the repayment of any loans relating to Buildings,

having regard to matters including, but not limited to:

- (C) the capacity of the Parish Priest to contribute and to all matters pertinent to the prudent operation of the parish that the Parish Priest represents and its reputation;
- (D) all matters pertinent to the prudent operation, the strategic direction and the reputation of, and any other issues relevant to, MACS and the School; and
- (E) any relevant Archdiocesan policy, guidelines or requirements.

This clause 1(e) does not oblige the parties to reach agreement in respect of a grant of a Further Term or any other matter.

2. Usage Fee and Outgoings

- (a) MACS must pay the Usage Fee to the Owner monthly in advance within 30 days of the Owner requesting in writing (including by invoice).
- (b) As part of the Archdiocesan School Planning & Collaboration Forum, the parties will use their best endeavours to reconsider the Usage Fee set at the commencement of this agreement during the first three years of the Term and agree to a suitable mechanism for determining the Usage Fee from time to time, having regard to:
 - (i) the capacity of the School to pay a revised fee and to all matters pertinent to the prudent operation of the School and its reputation, including the compliance position of the School in the opinion of such Government agencies as are responsible for regulating and funding the School;
 - (ii) all matters pertinent to the prudent operation, the strategic direction and the reputation of, and any other issues relevant to, the parish the Parish Priest represents; and
 - (iii) any relevant Archdiocesan policy, guidelines or requirements.

If the Owner and MACS have any dispute in respect of the Usage Fee, either MACS or the Owner may notify the other of such dispute and clause 17 applies.

- (c) MACS must pay, or if paid by the Owner shall reimburse:
 - (i) all Outgoings; and
 - (ii) all rates, charges, imposts, taxes or levies for the use and/or consumption of water, electricity, gas, telephones, data, telecommunications and collection of waste and other similar services, items and utilities which relate to the Land,

within 14 days of the Owner requesting in writing (including by invoice). If any amounts are not separately assessed, MACS must pay the Owner the proportion that the Land bears to the total land area assessed.

3. Treatment of Buildings

- (a) The Buildings:
 - (i) will vest in MACS on the Commencement Date until this agreement ends; and
 - (ii) will revert to the Owner when this agreement ends.

- (b) MACS may claim any depreciation benefits and building allowances in relation to the Buildings.
- (c) The Owner will not claim any depreciation entitlements or building allowances in relation to the Buildings and will not hinder MACS seeking to claim such entitlements.
- (d) MACS may remove some or all of the Portable Buildings from the Land at any time.
- (e) If MACS removes any Portable Buildings from the Land, MACS must:
 - (i) follow all reasonable directions given by the Owner for the removal of the Portable Buildings, including ensuring that all Services to the Portable Buildings are capped, disconnected and made safe all foundations are removed and the surface of the Land is left in a state to the Owner's reasonable satisfaction (which may include sealing or paving); and
 - (ii) otherwise comply with the clauses 4 and 6.

4. Alterations to Land and Buildings

- (a) MACS must ensure any alterations or works to the Land or the Buildings or any Services to the Land or the Buildings are carried out:
 - (i) only if the Owner's prior written consent has been obtained, and which will not be unreasonably withheld in the case of non-structural alterations or works and other non-structural works not affecting the Services;
 - (ii) strictly in accordance with plans and specifications approved by the Owner;
 - (iii) by qualified and reputable trade persons;
 - (iv) in accordance with good construction practices using suitable and good quality materials; and
 - (v) to the Owner's reasonable satisfaction and in accordance with the Owner's reasonable requirements.
- (b) Despite clause 4(a)(i), MACS is not required to seek the Owner's approval to works up to such amounts as set out from time to time in Archdiocesan policy, guidelines and requirements.
- (c) In providing consent under clause 4(a)(i), the Owner must extend the Term by a reasonable period of up to 50 years, having regard to the amortisation period of the works, the designated period of use mandated under any capital funding requirements, the nature, cost and value of the works and the context in which the works have been undertaken by MACS.

5. Repair and maintenance

- (a) MACS must:
 - (i) keep, repair and maintain the Land, the Buildings and the MACS Property in a good and safe condition and to at least the same condition as it was as at the date MACS first entered occupation of the Land or the relevant improvement was constructed or brought onto the Land (if later) (fair wear and tear excepted);
 - (ii) keep the Land and the Buildings clean and free from rubbish;

- (iii) maintain all plumbing, drains, pipes, and sewers servicing the Land in working order; and
 - (iv) maintain all grounds in the Land in good condition.
- (b) MACS acknowledges and agrees the Owner is not responsible for any maintenance, works, replacements, upgrades or repairs (including structural and capital repairs) to MACS Property, the Land and/or the Buildings.
- (c) MACS and the Owner will jointly procure a condition report of the Land and Buildings within 12 months of the date of this agreement and that condition report will be conclusive evidence of the condition of the Land and Buildings as at the Commencement Date of the initial term of this agreement.

6. Occupational health and safety

For the purposes of the OHS Law, MACS agrees that:

- (a) MACS has sole management and control of the Land and the Buildings and has sole responsibility for ensuring that the Land and the Buildings and the means of entering and leaving them are safe and without risks to health;
- (b) the Owner appoints MACS as Principal Contractor in respect of any works to be carried out by MACS on the Land to which an OHS Law applies and MACS must carry out such works in accordance with the requirements of the OHS Law;
- (c) the Owner authorises MACS to exercise whatever authority is necessary for MACS to discharge the responsibilities of the appointment under clause 6(b).

7. Essential Safety Measures

- (a) MACS must comply at MACS' cost with the terms of the Building Act and the Building Regulations including ensuring that:
 - (i) any essential safety measure (**ESM**) is maintained in a state which enables the ESM to operate satisfactorily and fulfil its purpose; and
 - (ii) any ESM annual report and all records of all maintenance audits and any service or repair work carried out to any ESM are available at the Land for inspection by the Owner when reasonably requested and also by a representative of the responsible Authority.
- (b) MACS must indemnify and hold harmless the Owner against all claims resulting from any damage, loss, death or injury in connection with a breach of this clause (including any fine imposed under the Building Regulations) except to the extent that such claims arise out of the Owner's negligence.

8. MACS' general obligations

MACS must:

- (a) use the Land and Buildings for the Permitted Use and not for any other purpose;
- (b) comply with all Laws and all permits, conditions, consents and approvals and requirements of authorities in connection with the Land and the Buildings and/or relating to MACS' use of the Land and the Buildings (including any alterations or works);

- (c) not do or omit to do anything which causes or could cause a danger or nuisance to arise from the Land and the Buildings;
- (d) not use the Land and the Buildings for any illegal purpose or carry on a noxious or offensive activity on the Land;
- (e) ensure that the use of the Land and Buildings is consistent with MACS' Statement of Mission, which by its nature is consistent with Catholic theological doctrines, beliefs or principles, and is not injurious to Catholic religious sensitivities; and
- (f) cause MACS' employees, agents, contractors and invitees to comply with this agreement.

9. Child Safe Standards

- (a) MACS acknowledges and agrees that it was aware of the Child Safe Standards, prior to the MACS entering into this agreement.
- (b) It is agreed between MACS and the Owner, that MACS is:
 - (i) an applicable entity within the meaning of the CW&S Act; and
 - (ii) not otherwise exempt from the requirements of the CW&S Act,
- (c) MACS must:
 - (i) comply with the Child Safe Standards at all times; and
 - (ii) on or before the Commencement Date:
 - (A) implement a child-safe policy or statement of commitment to child safety;
 - (B) put in place a code of conduct that establishes clear expectations for appropriate behaviour with children;
 - (C) put in place strategies to promote the participation and empowerment of children;
 - (D) establish appropriate human resources practices (including screening, supervision and training) to reduce the risk of child abuse;
 - (E) codify mandatory and voluntary processes for responding to and reporting suspected child abuse; and
 - (F) implement such other policies and practices from time to time as are relevant and appropriate to comply with the Child Safe Standards.
- (d) MACS acknowledges and agrees that the Chief Executive Officer of MACS is the Head of Entity and is responsible for reporting conduct of all MACS employees for the purposes of the CW&S Act.
- (e) In this clause:
 - (i) **CW&S Act** means the *Child Wellbeing and Safety Act 2005 (Vic)*.
 - (ii) **Child Safe Standards** means the child safe standards published in the Victoria Government Gazette on 31 December 2015 by the Minister for Families and Children pursuant to the CW&S Act, as amended, supplemented or replaced from time to time.

10. Common Areas

- (a) The parties agree that the Common Areas comprise those buildings and other areas of land identified as such in Item 1 of Schedule 2 (if any).
- (b) This agreement applies to the Common Areas as if a reference to 'Land' and a reference to 'Buildings' was a reference to Common Areas (as the context allows) except to the extent it is inconsistent with the context.
- (c) Schedule 2 to this agreement applies in respect of any Common Areas, except to the extent that there is inconsistency with any other provision of this agreement.

11. Tenant's obligations at end of agreement

- (a) At the end of this agreement, MACS must:
 - (i) vacate the Land and Buildings and give them back to the Owner in a condition consistent with MACS having complied with its obligations under this agreement;
 - (ii) unless otherwise agreed between the parties, remove MACS Property (including all signs and lettering) and reinstate the Land and Buildings to the condition they were in prior to the installation of MACS Property including making good any damage caused by the removal of the MACS Property;
 - (iii) in the case of the removal of any Portable Buildings from the Land, MACS must also:
 - (A) follow all reasonable directions given by the Owner for the removal of the Portable Buildings, including ensuring that all Services to the Portable Buildings are disconnected, all foundations are removed and the surface of the Land is left in a state to the Owner's reasonable satisfaction (which may include sealing or paving);
 - (B) otherwise comply with clauses 4 and 6; and
 - (iv) give to the Owner all keys and other security devices for the purposes of obtaining access to the Land and Buildings.
- (b) Any MACS Property remaining on the Land when this agreement ends vest in the Owner. The Owner may dispose of any MACS Property remaining on the Land in breach of this agreement as the Owner sees fit and at the reasonable cost of MACS. MACS warrants and represents to the Owner that the MACS Property will be owned by MACS and unencumbered immediately before the vesting.

12. Insurance

- (a) MACS must at all times during the currency of this agreement effect and maintain:
 - (i) public liability insurance in respect of the Land and the operation of the School, for an amount the Owner reasonably requires;
 - (ii) insurance for the Buildings and the Portable Buildings for loss and damage from risks including fire and water damage for their full replacement value; and
 - (iii) any other insurances the Owner reasonably requires.
- (b) The insurance policies must:

- (i) be in the name of MACS and note the interests of the Owner, the parish and the Priest;
 - (ii) be with an insurer approved by the Owner (which approval must not be unreasonably withheld); and
 - (iii) provide that the insurer must notify the Owner at least 14 days before the policies lapse.
- (c) MACS must punctually pay all premiums for the insurance and deliver on demand to the Owner a certificate of currency for that insurance.

13. Dealing with the Land

- (a) MACS must not assign, novate this agreement or grant any sublease, licences or share possession or encumber or dispose of any interest in the Buildings without the prior written consent of the Owner.
- (b) Despite clause 13(a), MACS may sublease or license the Land or any part thereof, if the same is for the Permitted Use.
- (c) MACS must ensure that any sublessee, licensee or a person or entity with which it shares possession:
 - (i) has appropriate insurance in place; and
 - (ii) uses the Land and Buildings in a manner consistent with Catholic theological doctrines, beliefs or principles, and is not injurious to Catholic religious sensitivities.
- (d) MACS is responsible for the acts and omissions of any sublessee, licensee or a person or entity with which it shares possession as if they were the acts or omissions of MACS.
- (e) The Owner may subdivide the Land or grant easements or other rights over the Land or the Buildings except where it will unreasonably interfere with the MACS exclusive possession and use of the Land or the Buildings and in which case the subdivision or grant is subject to prior consultation with and the approval of MACS, which must not be unreasonably withheld or delayed.

14. No warranty

MACS:

- (a) acknowledges that the Owner does not represent that the Land and Buildings are suitable for the Permitted Use; and
- (b) must make its own enquiries as to the suitability of the Land and Buildings for the Permitted Use.

15. Release and indemnity

- (a) MACS uses the Land at MACS' risk.
- (b) MACS releases the Owner from all liability for loss of or damage to property, or injury to or illness or death of any person, in or about the Land and any other loss relation to MACS' use and/or occupation of the Land and/or Buildings.

- (c) MACS indemnifies the Owner against all claims and all costs, liability and expenses incurred by the Owner or by the Owner on behalf of the Owner, arising or contributed wholly or in part from:
 - (i) MACS' use and/or occupation of the Land, MACS' breach of this agreement, and/or an act or omission (negligent or otherwise) by MACS and/or its employees, agents, contractors and/or invitees (including a negligent act or omission, or an omission to prevent water leakage or overflow), including in respect of loss of or damage to property, injury to or illness or death of any person or damage to the Land and/or Buildings; and
 - (ii) any Contamination affecting the Land and/or regarding the condition of the Buildings (including cladding).

16. Termination

- (a) The Owner may terminate this agreement if MACS commits a breach of this agreement and does not remedy such breach within 90 days of receipt of written notice of the breach from the Owner.
- (b) MACS must immediately cease, or ensure the cessation of, any act or omission which is a cause, or material threat of, death, personal injury or material property damage if directed by the Owner.
- (c) The Owner may rectify the default of MACS at MACS' cost, payable upon request.
- (d) If the Owner has a right to terminate this agreement it may, without limitation, convert this agreement into a monthly agreement by notice to MACS.
- (e) MACS must pay the Owner interest on unpaid amounts at an interest rate equal to the Official Cash Rate (or equivalent rate) set by the Reserve Bank of Australia from time to time plus 5%.
- (f) The parties may agree to terminate this agreement at any time.
- (g) Following a comprehensive consultation process by MACS with stakeholders and the Parish Priest, if a decision is made by MACS to close the School, this agreement will terminate effective from the date of closure of the School.

17. Dispute Resolution

If a dispute arises between the parties, then any party may refer the dispute for determination in writing to the Archbishop (or his delegate). The parties will be bound by the Archbishop's determination.

18. Retail Leases Act

The intention of the parties in entering into this agreement is that the *Retail Leases Act 2003* (Vic) (**RLA**) will not apply to this agreement because of the application of one or more Ministerial Determinations made pursuant to the RLA and, on that basis and at the request of MACS, the parties (to the extent not prohibited by the RLA) do not intend to enforce rights against any other party pursuant to the RLA.

19. Notices

- (a) A notice, request, demand or other communication given under this agreement (**notice**) must be in writing signed by the party or its authorised representative.
- (b) A notice may be given to a party:
 - (i) personally;
 - (ii) by leaving it at the party's address last notified;
 - (iii) by sending it by pre-paid mail to the party's address last notified; or
 - (iv) by transmitting it by facsimile or e-mail to the party's facsimile number or e-mail address last notified.
- (c) A notice is deemed to be received by a party:
 - (i) when left at the party's address;
 - (ii) when sent by pre-paid mail, on the sixth business day after posting; or
 - (iii) when transmitted by e-mail and there is no intimation that the notice was not received, on the day of transmission (or if that day is not a business day, the next business day).
- (d) Where two or more people comprise a party, notice to one is effective notice to all.

20. GST

20.1 Definitions

In this clause words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

20.2 GST Religious Group

The parties:

- (a) acknowledge that, as at the Commencement Date, they are both members of the same Australian Taxation Office GST Religious Group (**Catholic Religious Group**), and while they both continue to be members of the Catholic Religious Group, any supply described in this agreement is exempt from GST; and
- (b) agree to provide evidence of their inclusion in the Catholic Religious Group upon request by the other party.

20.3 GST exclusive

Except as otherwise provided by this clause, all consideration payable under this Lease in relation to any supply is exclusive of GST.

20.4 Increase in consideration

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

20.5 Payment of GST

Subject to clause 20.6, the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this agreement.

20.6 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 20.5.

20.7 Reimbursements

If this agreement requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled: and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

20.8 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this agreement:

- (a) the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment: and
- (b) any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

21. Governing law and jurisdiction

This agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

22. Schedule 3

In the event that a plan of the Land is not attached at Schedule 3 as at the Commencement Date, the parties will use their best endeavours to obtain or prepare a suitable plan within 12 months of the Commencement Date, which will then replace the information at Schedule 3.

23. Definitions and interpretation

23.1 Definitions

The following words have these meanings unless the contrary intention appears:

Archbishop means the present Archbishop of the Catholic Archdiocese of Melbourne his predecessors and his successors or any person who holds an equivalent position at canon law.

Archdiocesan School Planning & Collaboration Forum means the body or group referred to in recital I established by the Archbishop with objectives and terms of reference determined by the Archbishop from time to time and any substituted, replacement or alternative body or group from time to time fulfilling a similar purpose.

Authority means any government, semi or local government or other statutory body.

Building Act means the *Building Act 1993* (Vic).

Building Regulations means the *Building Regulations 2006* (Vic).

Buildings means:

- (a) all structures on the Land from time to time which are owned by the Owner and used in the operation of the School;
- (b) all fixtures, fittings, Services, partitions or similar articles (including firefighting apparatus and prevention mechanisms, lights, floor coverings, window coverings, air-conditioning items, hydraulic items, any item pertaining to Services) that from time to time are in or form part of the Land or service the Land; and
- (c) any other additions, modifications or improvements made to the Land from time to time including the School's oval (if any), all landscaping and other similar improvements,

excluding the Portable Buildings.

Commencement Date means the date specified in Item 6 of Schedule 1.

Common Areas has the meaning defined in Schedule 2.

Contamination means any organic or inorganic substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) (including asbestos) the presence of which is or may be:

- (a) noxious or harmful to any aspect of the Environment or to the health, welfare, safety or property of human beings;
- (b) in breach of any Environmental Law or any standard prescribed for that substance under any Environmental Law;
- (c) the subject of a Contamination Notice;
- (d) detrimental to any beneficial use of the relevant Land or waters; or
- (e) at a level or concentration above naturally occurring levels in the immediate area.

Contamination Notice means a notice or direction given by an authority under an Environmental Law requiring measures to be taken in connection with any Contamination (including its removal, remediation, clean up, treatment, abatement and ongoing monitoring).

Environment has the meaning given in the EP Act.

Environmental Hazard has the meaning given in the EP Act.

Environmental Law means a law (including the EP Act, the *Planning and Environment Act 1987* (Vic), the *Heritage Act 1995* (Vic), the *Subdivision Act 1988* (Vic) and the *Owners Corporation Act 2006* (Vic)) affecting, relating to or regulating:

- (a) any aspect of the Environment;
- (b) the use, handling, transportation, storage, production, treatment, disposal, remediation, clean up or monitoring of any hazardous substance, Contamination, Environmental Hazard, pollution or waste;
- (c) planning, development, heritage or any use of the Land; or
- (d) the health, safety or protection of any person, the Environment or property,

and includes schemes, orders, policies, codes of practice, guidelines and protocols made under any of those laws.

EP Act means the *Environment Protection Act 1970 (Vic)*.

Further Term is a reference to each of the further terms specified in Item 8 of Schedule 1.

GST means goods and services tax.

Law means any statute, regulation, proclamation, ordinance or by law of the Commonwealth of Australia or the State and includes all statutes, regulations, proclamations, ordinances or by laws varying consolidating or replacing them and all regulations, proclamations, ordinances and by laws issued under that statute.

Land means the land specified in Item 5 of Schedule 1 and includes the School Facilities Common Area.

MACS means the party described in Item 2 of Schedule 1.

MACS Property means all furniture, furnishings (including window coverings, blinds and light fittings), plant, machinery, installations and equipment installed on the Land, owned or leased from a third party by MACS (including the Portable Buildings).

OHS Law means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Land

OHS Regulations means the *Occupational Health and Safety Regulations 2007 (Vic)*.

Outgoings means the total cost of all outgoings and expenses (including taxes, charges, levies, rates, assessments, owners corporation fees and levies) of the Owner reasonably incurred:

- (a) in respect of the Land; or
- (b) in or about the conduct, management and maintenance of the Land.

Owner means the party described in Item 1 of Schedule 1.

Parish Priest means the party described in Item 3 of Schedule 1 or any other parish priest of the parish referred to above or those equivalent to him at canon law and their relevant successors.

Permitted Use means the permitted use specified in Item 10 of Schedule 1.

Portable Buildings means all demountable buildings from time to time on the Land, being the property of MACS.

School means the Catholic school specified in Item 4 of Schedule 1.

Services means all services or systems of any nature from time to time provided to the Land or available for use, and includes any of the following which are part of or service the Land:

- (a) any electronic medium, energy source, lighting, gas, fuel, power, water, sewerage, drainage, loading docks, plant rooms, storage areas, fire services, sprinkler systems of devices, lifts, escalators, heating, ventilation and air-conditioning;
- (b) fittings and fixtures utilised for any of services; and
- (c) any services or systems from time to time utilised for access to the Land.

Term means the term specified in Item 7 of Schedule 1.

Usage Fee means the amount specified in Item 9 of Schedule 1.

23.2 Interpretation

- (a) This agreement is intended to take effect as a lease.
- (b) In this agreement, unless the contrary intention appears:
 - (i) a reference to a clause or schedule is a reference to a clause of or schedule to this agreement and references to this agreement include any recital or schedule;
 - (ii) a reference to this agreement or another instrument includes any variation or replacement of either of them;
 - (iii) a reference to any statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) headings do not affect interpretation;
 - (v) the singular includes the plural and vice versa;
 - (vi) 'include' (in any form) does not limit the meaning of the preceding words;
 - (vii) all consents and notices must be in writing;
 - (viii) 'in writing' means any communication sent by letter or e-mail; and
 - (ix) 'dollars' means Australian dollars.

Schedule 2

Item 1
School Facilities Common Areas

Item 2
Owner Facilities Common Areas

Item 3
MACS' Access Times

Item 4
Owner's Access Times

Item 5
MACS' Expense Contribution

Item 6
Owner's Expense Contribution

Item 7
School Facilities Ad Hoc Usage Fees

Item 8
Owner Facilities Ad Hoc Usage Fees

Item 9
End Date

1. Common Area general usage arrangements

- (a) In respect of each Owner Facilities Common Area:
 - (i) MACS is granted a right to use each Owner Facilities Common Area during the MACS' Access Times prescribed for that Owner Facilities Common Area without providing notice to or seeking the consent of the Owner; and
 - (ii) MACS must not use that Owner Facilities Common Area during the Owner's Access Times prescribed for that Owner Facilities Common Area;
 - (iii) the Owner has unfettered access to each Owner Facilities Common Area during the Owner's Access Times prescribed for that Owner Facilities Common Area; and
 - (iv) despite the balance of this clause, the Owner and MACS share access during Shared Access Times.
- (b) In respect of each School Facilities Common Area:
 - (i) the Owner reserves to itself and its invitees a right to use each School Facilities Common Area during the Owner's Access Times prescribed for that School Facilities Common Area without providing notice to or seeking the consent of MACS; and

- (ii) MACS retains the right to use each School Facilities Common Area during the MACS' Access Times prescribed for that Owner Facilities Common Area; and
- (iii) the Owner and MACS' share access during Shared Access Times,

2. Common Area cost sharing arrangements

- (a) Subject to clause 15 of the agreement, in respect of each Owner Facilities Common Area:
 - (i) MACS is not responsible for all maintenance, capital expenses and other costs referable thereto;
 - (ii) MACS will pay the MACS' Expense Contribution to the Owner within 30 days of the Owner requesting payment of the same (including by invoice).
- (b) In respect of each School Facilities Common Area, the Owner will pay the Owner's Expense Contribution within 30 days of MACS requesting payment of the same (including by invoice).

3. Common Area ad hoc usage arrangements

- (a) MACS may from time to time make a request to the Owner to use an Owner Facilities Common Area outside of the MACS' Access Time for that Owner Facilities Common Area. The Owner may approve or deny MACS' request at their discretion, acting reasonably. Subject to paragraph 4 of this Schedule 2, the Owner may charge to MACS an amount not exceeding the Owner Facilities Ad Hoc Usage Fees for that Owner Facilities Common Area, or waive the same, at their absolute discretion.
- (b) The Owner may from time to time make a request to MACS for MACS to cease to use a School Facilities Common Area during the MACS Access Time for that School Facilities Common Area and for the Owner to use it. MACS may approve or deny the Owner's request at their discretion, acting reasonably. MACS may charge to the Owner an amount not exceeding the School Facilities Ad Hoc Usage Fees for that School Facilities Common Area, or waive the same, at their absolute discretion.

4. Use of Common Areas for worship and parish uses

- (a) The Owner acknowledges that celebrations of the Eucharist and other sacraments and liturgical celebrations are a vital part of the Catholic formation of the members of the School community and the Owner agrees that no MACS' Expense Contribution or Owner Facilities Ad Hoc Usage Fees will be sought in respect of any such use by MACS of Owner Facilities Common Areas.
- (b) The parties will regularly consult about the use of the Common Areas to accommodate, program and adapt the short, medium and long-term uses of the Common Areas to achieve a harmonious accommodation of the needs of MACS, the Owner and the Parish Priest.
- (c) If, after consultation, the parties cannot agree who may use Owner Facilities Common Areas at what times, the Owner or the Parish Priest may amend the MACS' Access Times by written notice to MACS.

5. Third party usage of Common Areas

In the event that a third party uses a Common Area:

- (a) MACS in respect of a School Facilities Common Area, or the Owner in respect of an Owner Facilities Common Area, must ensure that:
 - (i) the Common Area is fit for the use proposed by the third party and that the proposed use is appropriate (and if the use is not appropriate, refuse that use);
 - (ii) the terms of the licence or hire agreement are met;
 - (iii) the child safety policies of the Archdiocese and the Owner are adhered to;
 - (iv) the licence or hire fee is paid to the appropriate party, having regard to the provisions of paragraphs 5(b) and 5(c) below;
 - (v) appropriate insurance is in place; and
 - (vi) the proposed use is not injurious to Catholic religious' sensitivities, would not bring the Archdiocese, Owner or School into disrepute, and is not against Catholic theological doctrines, faith and morals;
- (b) if the Common Area is a School Facilities Common Area, any hiring or licence income derived therefrom shall be the property of MACS for the purposes of the School, regardless of when the third party uses the School Facilities Common Area; and
- (c) if the Common Area is an Owner Facilities Common Area, any hiring, licence or rental income derived therefrom shall be the property of the Parish Priest, regardless of when the third party uses the Owner Facilities Common Area.

6. Updating of operational details

The parties will consult regularly about, and act reasonably to adjust, each of School Facilities Common Areas, Owner Facilities Common Areas, MACS' Access Times, Owner's Access Times, MACS' Expense School Facilities Ad Hoc Usage Fees Contribution, Owner's Expense Contribution, and Owner Facilities Ad Hoc Usage Fees

7. Definitions

In this Schedule 2:

Common Areas means the School Facilities Common Areas and the Owner Facilities Common Areas.

End Date means the date specified in Item 9 of this Schedule 2 in relation to that Common Area.

MACS' Access Times means that time or those times specified in Item 3 of this Schedule 2 in relation to that Common Area.

MACS' Expense Contribution means the percentage of the Outgoings, maintenance, capital expenses and other costs referable to that Common Area listed in Item 5 of this Schedule 2 in relation to that Common Area.

Owner's Access Times means that time or those times specified in Item 4 of this Schedule 2 in relation to that Common Area.

Owner's Expense Contribution means the percentage of the Outgoings, maintenance, capital expenses and other costs referable to that Common Area listed in Item 6 of this Schedule 2 in relation to that Common Area.

Owner Facilities Ad Hoc Usage Fees means, in respect of any Common Area that is part of the Owner Facilities, the hourly rate specified in Item 8 of this Schedule 2, being an amount reflecting the hourly cost of operating the same (e.g. utilities, cleaning, security and maintenance).

Owner Facilities Common Areas means those parts of the land and buildings owned by the Owner, excluding the Land and Buildings, that the parties agree will be used by both MACS and the Owner on a regular and agreed basis, being those buildings and other areas of land specified as such in Item 2 of this Schedule 2.

School Facilities Ad Hoc Usage Fees means, in respect of any Common Area that is part of the School Facilities, the hourly rate specified in Item 7 of this Schedule 2, being an amount reflecting the hourly cost of operating the same (e.g. utilities, cleaning, security and maintenance).

School Facilities Common Areas means those parts of the Land and Buildings that the parties agree will be used by both MACS and the Owner on a regular and agreed basis, being those buildings and other areas of land specified as such in Item 1 of this Schedule 2.

Shared Access Times means when (and to the extent) MACS' Access Times Owner's Access Times for the whole or part of a Common Area overlap.

Schedule 3

Land (leased area)

[Instructions to drafter: below are examples of how to describe the land exclusively occupied by the School with option 1 being the best option:]

1. insert detailed plan of Land

2. insert other details of land (eg. detailed sketch, Google Maps photo with boundaries drawn on it; and/or written description relating to the photo)

3. detailed written description of the leased area that would be well understood by a person who has never seen the school before.

This schedule should not include any shared areas that are defined as 'Owner Facilities Common Areas' in this agreement.]

Signing page

Executed as an agreement.

Dated

Signed by the Parish Priest in the presence of:

Signature of Witness

Name of Witness (Block Letters)

Address of Witness (Block Letters)

Occupation of Witness (Block Letters)

Signature of the Parish Priest

**The Common Seal of The Roman)
Catholic Trusts Corporation for the)
Diocese of Melbourne** was hereunto)
affixed by its order in the presence of:)

..... Corporation Trustee
..... Full name of Corporation Trustee

..... Corporation Trustee
..... Full name of Corporation Trustee

..... Corporation Trustee
..... Full name of Corporation Trustee

Signed for and on behalf of **Melbourne)
Archdiocese Catholic Schools Ltd ACN 643)
442 371** by its authorised representative in the)
presence of:

Signature of authorised representative

Date:

Signature of witness

Full name of authorised representative (print)

Name of witness (print)

Position of authorised representative (print)