

School Transition Agreement

Melbourne Archdiocese Catholic Schools Ltd

The person or entity specified in Item 1 of the Schedule



CATHOLIC ARCHDIOCESE
OF MELBOURNE

Contents

1. Parish under an Administrator	2
2. Transition	2
3. Proprietor's conduct prior to Completion	3
4. Effect of Completion	4
5. Conditions	4
6. Transitioning Contracts	6
7. Accounts Receivable	7
8. DGR Funds	8
9. Transitioning Employees and superannuation	8
10. Student Enrolments	10
11. Motor Vehicles	10
12. School Land and School Buildings	10
13. Wrong Pockets	11
14. Indemnity	12
15. Actions	13
16. Dispute Resolution	14
17. GST	14
18. Capacity	15
19. General provisions	16
20. Definitions and interpretation	18
Schedule	27

School Transition Agreement

Parties

1. **Melbourne Archdiocese Catholic Schools Ltd ACN 643 442 371** of 228 Victoria Pde, East Melbourne, Victoria, 3002 (**MACS**).
2. The person or entity specified in Item 1 of the Schedule (**Proprietor**).

Background

- A. The Proprietor is the owner of the School and operates the School in an unincorporated form.
- B. MACS has been established by the Archbishop to assume the governance and operation of Catholic schools previously 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 the Company in the Archdiocese.
- C. The establishment of MACS is in response to a recommendation made by the Royal Commission into Institutional Responses to Child Sexual Abuse and to meet the Victorian Government's requirement that non-government organisations delivering services to children be incorporated in order to remain eligible for government funding.
- D. The Proprietor therefore agrees to transition to MACS the ownership and operation of the School such that MACS will become registered as a proprietor of the School with the VRQA, and will accept all assets and assume liabilities associated with the School operations, on the terms and conditions set out in this agreement.
- E. Furthermore, in order to give full effect to the intention of the parties and so that the operation of the School will continue in an uninterrupted manner, the Proprietor and MACS will separately enter into an agreement by which MACS will be granted a long term right by the RCTC to occupy the School Land and use the School Buildings, as and from the Completion Date, and for so long as MACS continues to provide Catholic education and/or associated educational services therefrom.
- F. Following the transition, the School will be conducted under the strategic oversight of the Board of Directors of MACS and its management structure, with the Proprietor retaining his crucial role as spiritual and pastoral leader in the parish community under the reformed governance model.
- G. The Proprietor's responsibilities shall remain unchanged in providing strong pastoral support to, and effective Catholic leadership of, the parish which includes the School community, notwithstanding the Proprietor no longer performing the governance, administrative and employer roles for the School, following Completion.

Operative provisions

1. Parish under an Administrator

Not used.

2. Transition

2.1 Transition of the School Operation, School Assets and School Liabilities

On and subject to the terms of this agreement, the Proprietor agrees to transition to MACS, and MACS agrees to accept the transition of, the School Operation together with the School Assets and the School Liabilities on the Completion Date, subject to the Conditions being satisfied or waived by Completion under clause 5.2.

2.2 Consideration

The Proprietor acknowledges and agrees that the only consideration to be received by the Proprietor in respect of the transition under clause 2.1 comprises the assumption by MACS of the School Liabilities and nothing else.

2.3 Manner of transition

The parties agree that the School Operation, the School Assets and the School Liabilities will be transitioned in the following manner:

- (a) in the case of the Transitioning Contracts, in accordance with clause 6;
- (b) in the case of any Accounts Receivable, in accordance with clause 7;
- (c) in the case of any DGR Fund, in accordance with clause 8;
- (d) in the case of the Transitioning Employees, in accordance with clause 9;
- (e) in the case of the Enrolment Contracts, in accordance with clause 10;
- (f) in the case of the Motor Vehicles, in accordance with clause 11;
- (g) in the case of any movable School Assets, such as Stock, Records, Plant and Equipment and Motor Vehicles, by delivery or by leaving them at the property where they are ordinarily located or such other place as is agreed between the parties; and
- (h) in the case of any other School Assets or School Liabilities and any other rights, obligations and liabilities required to be transitioned pursuant to this agreement, by means of assignment under this agreement, or documents in the agreed terms, as applicable.

2.4 Provision of documents in relation to the School Assets and School Liabilities

On the Completion Date or as soon as practicable thereafter, the Proprietor must give to MACS all documents necessary to effect the transition of each School Asset and each School Liability to MACS and to otherwise give effect to this agreement including those documents listed in clause 2.6.

2.5 Date for Completion

Subject to clauses 5.1 to 5.3 (inclusive), Completion must take place on the Completion Date.

2.6 Security Interests

As soon as possible after Completion, in respect of any PPS Security Interest granted over a School Asset which is registered on the PPS Register immediately before Completion:

- (a) the Proprietor must give to MACS all necessary information and documentation to enable MACS (or its financier) to deal with the relevant Secured Party in relation to any PPS Security Interest from the PPS Register; and
- (b) MACS must give to the Proprietor a novation deed executed by the entity named in the PPS Register as the Secured Party in relation to that PPS Security Interest notifying that Secured Party of the change in Security Provider.

3. Proprietor's conduct prior to Completion

From the date of this agreement until Completion, the Proprietor must:

- (a) conduct the School Operation:
 - (i) in the usual and ordinary course and otherwise in substantially the same manner as before the date of this agreement (except to the extent necessary to undertake any action contemplated or required by this agreement); and
 - (ii) in accordance with all applicable Laws;
- (b) maintain adequate insurances in respect of the School Assets and School Buildings; and
- (c) consult MACS on all material decisions relating to the School Operation and, unless MACS otherwise agrees, which agreement must not unreasonably be withheld, must not in relation to the School Operation:
 - (i) incur any expenditure in a manner inconsistent with approved budgets as at the date of this agreement;
 - (ii) enter into or amend any material contract, or any contract that is for a term that will continue beyond the Completion Date, or breach or cancel any material contract;
 - (iii) make or give any loan, provide or receive any credit or other financial accommodation;
 - (iv) enter into any guarantee or indemnity on behalf of any person or provide security for the obligations of any person;
 - (v) except in the ordinary course of business or otherwise required by law, alter the terms of employment of any employee of the Proprietor or employ any new employees in relation to the School Operation; or
 - (vi) authorise, or agree conditionally or otherwise to do, any of the things referred to in this subclause.

4. Effect of Completion

4.1 Transfer of School Assets and School Liabilities

On and with effect from the Completion Date, and provided that doing so is permissible at law and does not result in a breach of contract, and subject to clause 4.2 the Proprietor assigns, transfers, novates and sets over absolutely to MACS:

- (a) all of the Proprietor's rights, title and interest in, or in respect of the School Operation and the School Assets;
- (b) all of the Proprietor's obligations in respect of the School Liabilities; and
- (c) any remedies, whether arising under statute, at common law or in equity, which are available to the Proprietor in relation to the School Operation and the School Assets, whether such remedies are known or not at the Completion Date,

and MACS agrees to accept such assignments, transfers, novations and set overs and agrees to satisfy the School Liabilities as and when they fall due.

4.2 Historic Abuse Claims

The parties acknowledge and agree that the Proprietor does not transfer any Liability arising from or in connection with any Historic Abuse Claims made against the Proprietor, the Archdiocese or the Archbishop.

4.3 Assumption of School Liabilities

On and with effect from the Completion Date, MACS:

- (a) accepts and assumes responsibility for all of the School Liabilities and irrevocably undertakes to release the Proprietor from any Action in relation to the School Liabilities;
- (b) covenants that it will not commence any Action against the Proprietor relating to the School Liabilities;
- (c) acknowledges and agrees that the Proprietor may use the release given under clause 4.3(a) as a bar against MACS in any court or other proceedings brought by MACS to any Action (whensoever commenced) arising out of, or in relation to, the School Liabilities; and
- (d) indemnifies and holds harmless the Proprietor from and against all Liabilities in respect of the School Liabilities suffered, paid or incurred at any time by the Proprietor.

5. Conditions

5.1 Conditions precedent to Completion

The Proprietor and MACS are only obliged to complete the transition if the following Conditions are satisfied or waived by the parties prior to Completion:

- (a) the parties and the RCTC entering into the Right to Use Agreement contemplated at clause 12 of this agreement;

- (b) the registration of the School under the *Education and Training Reform Act 2006* (Vic) is granted to MACS as registered proprietor;
- (c) any CRICOS, RTO or SEO registration(s) related to the School or the School Operation is transferred or novated to MACS;
- (d) the Proprietor and MACS having obtained all possible Authorisations for the transition from all relevant State and Commonwealth Government departments – in particular with respect to the continuing provision of Government funding for the conduct of the School Operation;
- (e) an Employment Offer having been made by MACS to all Employees; and
- (f) all necessary consultation with all relevant unions in relation to the transition of the Transitioning Employees to MACS has been completed.

5.2 Satisfaction or waiver of Conditions

- (a) Subject to clause 5.2(b), the parties must use their reasonable endeavours to satisfy the Conditions by the Completion Date.
- (b) The party with the benefit of a Condition may, at any time prior to the Completion Date, waive a Condition by giving a written notice to the other party specifying that it no longer requires the Condition to be fulfilled (provided such waiver is permitted by law).

5.3 Failure of Condition

If any of the Conditions have not been fulfilled or waived under clause 5.2(b) by the Completion Date, the 'Completion Date' under this agreement will be the date that is one Business Day after the date on which all outstanding Conditions have been fulfilled or waived under clause 5.2(b), or such other date agreed between the parties in writing.

5.4 Post Completion obligations

The parties must use all reasonable endeavours within their own respective capacities to ensure that the following things are done as soon as possible after Completion:

- (a) the execution by the Proprietor of any assignment or licence as may be required to transition or licence the School IP in favour of MACS;
- (b) the transition by the Proprietor of the Domain Name to MACS, including:
 - (i) doing all things necessary to transition the licence of the Domain Name to MACS and to give effect to MACS being recorded as the licensee of the Domain Name with the relevant domain name registrar; and
 - (ii) providing all user names and passwords needed for MACS to access the relevant websites, change ownership of the Domain Name and otherwise take control of any online presence held by or relating to the School Operation;
- (c) the execution of a deed of novation for each Transitioning Contract identified for novation, or the entering into of new contracts by MACS, as contemplated under clauses 6.1(d) and 6.3;
- (d) the transition of the Bank Accounts, School Investments and any School Loans, including that the parties must work with all relevant investors, banks and other lenders to effect the transitions;

- (e) the completion and lodgement of all forms required to notify the Australian Securities and Investments Commission of the change in proprietorship of all relevant business names;
- (f) the completion and lodgement of all required notifications with the Australian Charities and Not-for-Profits Commission and the Australian Taxation Office;
- (g) the completion, execution and lodgement of all forms necessary to transition all Authorisations required by MACS to conduct the School Operation;
- (h) the delivery of the documents and information referred to in clause 2.6; and
- (i) the execution of any other document, or the undertaking of any other act, required to effect Completion.

5.5 Post Completion commitments

MACS commits to the following matters on and from the Completion Date:

- (a) the name of the School will not be changed without the prior consent of the Proprietor;
- (b) the history of the School will be acknowledged and preserved with retention of key symbols and School related nomenclature where practicable; and
- (c) the Proprietor will be a custodian of the mission of the School and will have a key role of supporting the School in its distinctive Catholic identity, spirituality and life by continued responsibility for faith education, sacramental life and pastoral care.

6. Transitioning Contracts

6.1 Transitioning Contracts

- (a) The parties must use their best endeavours to transition the Transitioning Contracts to MACS in accordance with this clause 6 on Completion or, if not transitioned on Completion, as soon as possible after Completion.
- (b) The benefit and rights of all the Transitioning Contracts which the Proprietor is entitled to assign without the consent of any third party and that are not otherwise being novated to MACS are assigned to MACS, in each case with effect from the Completion Date.
- (c) MACS assumes the obligations and liabilities and must carry out, complete and discharge all of the obligations of the Proprietor under the Transitioning Contracts with effect from the Completion Date.
- (d) Where third party consents are necessary for the transition of the Transitioning Contracts, the Proprietor and MACS must use their best endeavours to obtain all necessary consents for and effect the assignment or novation of each of the Transitioning Contracts, or procure the entry by the counterparty into a new contract with MACS, as soon as reasonably practicable after the date of this agreement and with effect from Completion Date.
- (e) Subject to Completion occurring, MACS indemnifies the Proprietor from and against all Liabilities suffered, paid or incurred by the Proprietor from or in relation to any breach, non-performance or non-observance of any obligation of MACS under a Transitioning Contract.

6.2 Receipt of payments before and after Completion

To the extent that any payment is made to the Proprietor in connection with any Transitioning Contract (on or after Completion), it must:

- (a) receive such payment as trustee, to be kept separate and apart from all of its other assets; and
- (b) pay an amount equal to such payment to MACS as soon as reasonably practicable following receipt.

6.3 Novation or assignment of Transitioning Contracts

- (a) This clause 6.3 applies to any Transitioning Contract that, for whatever reason, is not transitioned to MACS on the Completion Date.
- (b) Where this clause 6.3 applies to any Transitioning Contract, that relevant Transitioning Contract must:
 - (i) not be assigned by this agreement, so as to cause a breach of or event of default (or the like) under a Transitioning Contract; and
 - (ii) if the Transitioning Contract has not been novated to MACS at Completion in accordance with clause 6.1, be held in trust for MACS, with all profits and losses arising from it belonging to and to be borne by MACS from the Completion Date until such agreement or consent is obtained and the relevant Transitioning Contract is so novated or assigned.
- (c) Subject to clause 6.3(d) and subject to the Proprietor performing its obligations under this clause 6, at all times when a Transitioning Contract is held in trust for MACS under clause 6.3(b)(ii), MACS must perform, carry out and discharge at its own expense all the obligations of the Proprietor under that Transitioning Contract, must not take any action which would constitute a breach of that Transitioning Contract and must otherwise co-operate in any reasonable arrangements proposed by the Proprietor designed to procure for MACS the benefits of the relevant Transitioning Contract.
- (d) If MACS is not able to lawfully perform the obligations of the Proprietor, in accordance with clause 6.3(c) under a Transitioning Contract which is held in trust for MACS under clause 6.3(b)(ii), the Proprietor must perform those obligations on the reasonable direction, and at the cost, of MACS, to the extent it has control over the resources necessary to perform those obligations and is lawfully able to do so.

6.4 Failure to transition Transitioning Contracts

The Proprietor is not liable to MACS for any loss suffered or incurred by MACS as a result of a Transitioning Contract not being transitioned to MACS.

7. Accounts Receivable

- (a) On Completion, the Proprietor assigns all of its rights, title and interests in the Accounts Receivable to MACS and MACS accepts the assignment.
- (b) From Completion, MACS will be responsible for collecting the Accounts Receivable.
- (c) If the Proprietor receives a payment for any of the Accounts Receivable, it must pay that amount as directed by MACS within 5 Business Days of receiving it.

8. DGR Funds

If the Proprietor operates any DGR Funds as at the Completion Date, then the parties acknowledge and agree that, notwithstanding all other provisions of this agreement:

- (a) in respect of any DGR Fund for which endorsement has been granted under the ABN of the School, on Completion the Proprietor shall transfer control of the bank accounts of such DGR Fund to MACS for the purposes of the School; and
- (b) in respect of any DGR Fund for which endorsement has been granted under the ABN of the parish or otherwise a separate ABN that is under the control of the Proprietor, the Proprietor will, on the Completion Date or as soon as practicable thereafter, transfer the balance of funds in the bank accounts of such DGR Fund to a bank account for a new deductible gift recipient fund, endorsement of which will be obtained by MACS for the purposes of the School.

9. Transitioning Employees and superannuation

9.1 Employment offers

- (a) Prior to the Completion Date, MACS must make an Employment Offer to each of the Employees.
- (b) Each Employment Offer must:
 - (i) be for employment with MACS on terms and conditions that are:
 - (A) subject to subclause 9.1(b)(i)(B), substantially similar to and, considered on an overall basis, no less favourable than the Employee's terms and conditions of employment with the Proprietor immediately prior to the Completion Date; or
 - (B) if the *Victorian Catholic Education Multi-Enterprise Agreement 2018 (VCEMEA 2018)* applies in respect of a Transitioning Employee's employment with the Proprietor, the same as those provided for in the VCEMEA 2018 for the role undertaken by the Transitioning Employee immediately prior to the Completion Date;
 - (ii) agree to recognise the Employee's period of continuous service with the Proprietor as service with MACS, for the purpose of calculating all service-related entitlements (save for the entitlements referred to in clause 9.2(a));
 - (iii) provide that, by accepting the Employment Offer, the Employee will be taken to have transitioned from employment with the Proprietor immediately prior to the Completion Date;
 - (iv) be conditional on Completion occurring; and
 - (v) be expressed to take effect on and from the Completion Date.
- (c) The Proprietor will use its best efforts to procure the Employees' acceptance of MACS' Employment Offer.

9.2 Proprietor's obligations

The Proprietor will:

- (a) ensure the School arranges that all Employees are paid by the School all accrued wages, salary, commissions and bonuses, as at the Completion Date, in respect of that Employee's contract of employment with the Proprietor;
- (b) release each Transitioning Employee from their employment with the Proprietor on the Completion Date;
- (c) ensure that all employer superannuation contributions due to be made by the Proprietor before the Completion Date in respect of each Employee have been made; and
- (d) ensure that all contributions, if any, due to be made by the Proprietor to the Catholic Education Commission of Victoria Long Service Leave Scheme (**LSL Scheme**) before the Completion Date in respect of each Transitioning Employee have been made.

9.3 MACS' obligations

- (a) From the Completion Date, MACS will:
 - (i) be responsible for all wages, salary, commissions and bonuses which accrue to Transitioning Employees;
 - (ii) treat the period of service (including any period of service deemed by any applicable award, enterprise agreement, statute or contract) which each Transitioning Employee had with the Proprietor as continuous service with MACS;
 - (iii) will assume, recognise, and become solely responsible for all accrued and untaken entitlements of each Transitioning Employee for annual leave (including loading), personal leave (comprising sick leave and carer's leave) as at the Completion Date; and
 - (iv) subject to 9.2(d), will recognise and become solely responsible for all accrued and untaken entitlements of each Transitioning Employee for long service leave.
- (b) For the avoidance of doubt, MACS will not be responsible for any payments of any kind, benefits, entitlements, superannuation commitments including redundancy payments in respect of any Employees that are not Transitioning Employees.

9.4 Nomination of fund and responsibility for Superannuation Commitments

- (a) MACS must ensure that it makes each Transitioning Employee aware of his or her right to nominate a superannuation fund to which MACS will make superannuation contributions in respect of the Transitioning Employee.
- (b) If a Transitioning Employee does not nominate a superannuation fund, MACS may nominate a default fund in accordance with the SGA.
- (c) MACS is responsible for and must pay all Superannuation Commitments in connection with Transitioning Employees arising after Completion.

9.5 MACS' employee indemnity

MACS indemnifies the Proprietor against, and must pay to the Proprietor on demand the amount of, any Liabilities arising as a result of an Action against the Proprietor in relation to:

- (a) a Transitioning Employee; or
- (b) any entitlements to which clause 9.3(a) relates.

10. Student Enrolments

Upon Completion, the Proprietor assigns to MACS all contracts directly related to the enrolment of and provision of educational services to School Students (**Enrolment Contracts**) and all benefits and rights contained therein including:

- (a) the right to receive student fees; and
- (b) the right to enforce the terms of any such contracts, such as to apply disciplinary measures in relation to School Students.

11. Motor Vehicles

11.1 MACS' obligations

MACS must:

- (a) at its cost:
 - (i) obtain a certificate of roadworthiness or any other similar document required under the relevant motor vehicle legislation; and
 - (ii) prepare and lodge any vehicle transfer form or other documents required to be lodged under the relevant motor vehicle legislation; and
- (b) pay all duties payable,

with respect to the transition of ownership of any Motor Vehicle under this agreement.

11.2 Proprietor's obligations

The Proprietor must sign any form or other document and provide all reasonably necessary assistance to MACS required to transition the ownership of any Motor Vehicle under this agreement.

12. School Land and School Buildings

- (a) The Proprietor acknowledges and agrees that, as from the Completion Date, MACS will be granted a long term right by the RCTC to occupy the School Land and use the School Buildings, for so long as MACS continues to provide Catholic education and/or associated educational services therefrom.

- (b) The terms and conditions of occupancy will be recorded in a Right to Use Agreement to be entered into by MACS and the RCTC by no later than the Completion Date.
- (c) The Proprietor agrees not to undertake any action in respect of the School Land or the School Buildings, which may adversely affect the registration of the School under the *Education and Training Reform Act 2006* (Vic).
- (d) MACS acknowledges and agrees that:
 - (i) it must effect and maintain on and from the Completion Date:
 - (A) public liability insurance in respect of the School Land and the operation of the School, for an amount the Proprietor reasonably requires;
 - (B) insurance for the School Buildings and the Portable Buildings for loss and damage from risks including fire and water damage for their full replacement value; and
 - (C) any other insurances the Proprietor reasonably requires;
 - (ii) the insurance policies maintained under clause 12(d)(i) must:
 - (A) be in the name of MACS and note the interests of the RCTC, the Proprietor and the parish;
 - (B) be with an insurer approved by the RCTC (which approval must not be unreasonably withheld); and
 - (C) provide that the insurer must notify the RCTC at least 14 days before the policies lapse; and
 - (iii) it must punctually pay all premiums for the insurance and deliver on demand to the RCTC a certificate of currency for that insurance.

13. Wrong Pockets

13.1 Misplaced Assets

Following the Completion Date, if either party becomes aware that Proprietor owns, directly or indirectly, any asset that ought properly to have been transitioned under this agreement (**Misplaced Asset**) then that party must promptly notify the other party, and provided the Proprietor and MACS are satisfied (acting reasonably and in good faith) that the Misplaced Asset ought to have been so transitioned under this agreement, then:

- (a) MACS may by written notice request the Proprietor to use reasonable endeavours to procure the transition of the relevant Misplaced Asset for nil consideration at the direction of MACS, including executing (or procuring the execution of) all such documents as may be necessary for the purpose of transitioning all rights, title and interest (as applicable) in the Misplaced Asset to MACS; and
- (b) the Proprietor undertakes to do so.

13.2 Misplaced Liabilities

Following the Completion Date, and subject to clause 14, if either party becomes aware that the Proprietor is liable for a Liability arising directly or indirectly as a result of the conduct of the School Operation (**Misplaced Liability**), then that party must promptly notify the other party, and provided the Proprietor and MACS are satisfied (acting reasonably and in good faith) that the Misplaced Liability does form part of the School Operation acquired by MACS under this agreement, then MACS undertakes to indemnify the Proprietor against any Misplaced Liability for which the Proprietor is held liable.

13.3 Assets transitioned by mistake or error

Following the Completion Date, if either party becomes aware that the Proprietor has by mistake or error transitioned an asset to MACS under this agreement (**Wrong Asset**), then that party must promptly notify the other party, and provided the Proprietor and MACS are satisfied (acting reasonably and in good faith) that the Wrong Asset does not form part of the School Operation acquired by MACS under this agreement, then:

- (a) the Proprietor may by written notice request MACS to use reasonable endeavours to procure the transition of the Wrong Asset for nil consideration at the direction of the Proprietor free from any Security Interest, including executing (or procuring the execution of) all such documents as may be necessary for the purpose of transitioning all rights, title and interest (as applicable) in the Wrong Asset to the Proprietor; and
- (b) MACS undertakes to do so.

14. Indemnity

14.1 Indemnity given by Proprietor

- (a) To the maximum extent permitted by law and subject to clause 14.1(b), and with effect from the Completion Date, the Proprietor indemnifies MACS and each of its Officers for any Liability suffered, paid or incurred by them arising from or in connection with any Historic Abuse Claim.
- (b) The indemnity in clause 14.1(a) above:
 - (i) does not apply to the extent that the Liability was caused by MACS; and
 - (ii) does not cover any Liability or Loss to the extent that the Proprietor is prohibited from providing the indemnity under statute or where the indemnity would, if given, be made void under statute.

14.2 Indemnity given by MACS

To the maximum extent permitted by law, MACS indemnifies:

- (a) the Proprietor; and
- (b) the Archbishop and the Archdiocese (with the benefit of and interest in any such indemnity to be held by the Proprietor for the benefit of the Archbishop and the Archdiocese),

for any Liability suffered, paid or incurred by them arising from or in connection with any Employee Abuse Claim.

14.3 Operation of indemnities

Subject to the other provisions of this agreement, the indemnities provided by clause 14.1 and 14.2:

- (a) are irrevocable;
- (b) continue irrespective of one or more previous applications of the agreement; and
- (c) continue in full force and effect with respect to each Officer of MACS notwithstanding that the Officer has ceased to be an Officer of MACS before any Claim is made under this agreement.

15. Actions

15.1 Notification

Each party must notify the other in writing as soon as reasonably practicable on becoming aware of any facts or circumstances that give rise or could reasonably be expected to give rise to an Action against the other party.

15.2 Conduct of litigation

- (a) Subject to clause 15.2(b), the party liable to satisfy an Action, including as a result of any indemnity under this agreement, must assume conduct of the Action at its cost.
- (b) Unless otherwise agreed by the parties in relation to an Action:
 - (i) the Proprietor will be responsible for the conduct of Historic Abuse Claims and Actions where the Proprietor is named or nominated as a defendant; and
 - (ii) MACS will be responsible for the conduct of Employee Abuse Claims except any Employee Abuse Claim brought against the Archdiocese (which the parties acknowledge and agree will be conducted by the Archdiocese).
- (c) Where the party responsible for the conduct of an Action (**First Party**) has indemnified the other party in respect of that Action or is conducting the Action in the name of the other party (**Second Party**), the First Party:
 - (i) must consult with the Second Party about the Action and its defence;
 - (ii) may issue proceedings, cross claims or third party claims in the name of the Second Party with the consent of the Second Party, which consent must not be unreasonably withheld; and
 - (iii) must not settle or compromise the Action or make any admissions without the consent of the Second Party, which consent must not be unreasonably withheld.
- (d) In relation to an Action under clause 15.2(c), the Second Party:
 - (i) must render all reasonable assistance and co-operation to the First Party and its insurers in the conduct of the Action including, without limitation, providing any relevant documents in its possession, taking reasonable steps to obtain possession of documents when requested to do so and

signing all relevant documents, authorities and directions requested of it;
and

- (ii) must not settle or compromise the Action or make any admissions without the consent of the First Party.
- (e) If an Action is brought against both the Proprietor and MACS, or both parties may suffer, pay or incur any Liability in relation to the Action, the parties will use best endeavours to agree:
 - (i) which party will be responsible for the conduct of the Action; and
 - (ii) any contribution as between them without the need to formally join the other party to the Action.

15.3 Privilege

In an Action under clause 15.2, the parties acknowledge and agree that they have a common interest in the subject matter of the Action and in legal advice and assistance in connection with the Action.

15.4 Archbishop, Archdiocese and RCTC

References to the Proprietor (which include references to him as a 'party') in this clause 15 shall be read as including references to the Archbishop, the Archdiocese and the RCTC as the context requires.

16. Dispute Resolution

If a material dispute arises between the parties, then either 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.

17. GST

17.1 GST Interpretation

Terms defined in the GST Act have the same meaning in this clause 17 unless provided otherwise.

17.2 GST Religious Group

The Proprietor and MACS acknowledge and agree that, at Completion, they intend to each be members of the GST Religious Group and therefore, the transitions by the Proprietor to MACS under this document will be deemed not to be a taxable supply for GST purposes pursuant to section 49-30 of the GST Act.

17.3 Nature of supplies

The parties acknowledge and agree that supplies to be made to MACS pursuant to this agreement are made for the purpose of MACS carrying on the School Operation of the Proprietor on and from the Completion Date, being an acquisition which the parties agree is made by MACS solely for creditable purposes.

17.4 Transfer of a going concern

To the extent the Commissioner of Taxation considers that any supply made by a party under this agreement constitutes a supply made for consideration, the parties agree that supply of all things that are necessary for the operation of the School Operation under this agreement including the School Assets constitutes the supply of a going concern for the purposes of the GST Law, and is intended to be GST-free.

17.5 Payment if not GST-free

- (a) If the Commissioner of Taxation determines that any supply made under or pursuant to this agreement does not constitute the supply of going concern or is not otherwise GST-free, and thus GST is payable by the supplier on that supply, the recipient must pay to the supplier an amount equal to the GST payable on the supply (**GST Amount**). The GST Amount is payable by the recipient in addition to, and at the same time as, the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party is entitled for any acquisition relating to that payment or reimbursement.

18. Capacity

Each party represents and warrants to each other party that:

- (a) it is validly existing under the laws of its place of incorporation or registration;
- (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) it has taken all necessary action to authorise its entry into and performance of this agreement and to carry out the transactions contemplated by this agreement;
- (d) its obligations under this agreement are valid and binding and enforceable against it in accordance with their terms; and
- (e) the execution, delivery and performance by it of this agreement (and any other agreement required to be entered into by it in connection with this agreement) will not:
 - (i) result in a breach of, or constitute a default under, any agreement or arrangement to which it is party or by which it is bound; or
 - (ii) result in a breach of any law or order, judgment or decree of any court, governmental agency or regulatory body to which it is a party or by which it is bound.

19. General provisions

19.1 Costs

Each party must pay its own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) that party performing any action in complying with any liability arising,

under this agreement, or any agreement or document executed or effected under this agreement, unless this agreement provides otherwise.

19.2 Duties

If there is any duty payable concerning the execution, performance and registration of this agreement, or any agreement or document executed or effected under this agreement, then MACS is responsible for payment of the same.

19.3 Notices

- (a) A notice or other communication given under this agreement including, but not limited to, a request, demand, consent or approval, to or by a party to this agreement:
 - (i) must be addressed to the addressee at the physical address or email address set out at Item 4 of the Schedule or to any other address a party notifies to the other under this clause;
 - (ii) must be signed by an Officer or equivalent of the sender; and
 - (iii) is deemed to be received by the addressee in accordance with paragraph (b).
- (b) Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice is deemed to be received:
 - (i) if sent by hand, when delivered to the addressee;
 - (ii) if by post, 5 Business Days from and including the date of postage or on delivery to the addressee;
 - (iii) if it is sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 3 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first, but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (addressee's time) it is deemed to be received at 9.00 am on the following Business Day.

- (c) In this clause 19.1, a reference to an addressee includes a reference to an addressee's Officers, agents or employees.

19.4 Governing Law and jurisdiction

- (a) This agreement is governed by and construed under the law in the State of Victoria.
- (b) Any legal action in relation to this agreement against any party or its property may be brought in any court of competent jurisdiction in the State of Victoria.
- (c) By execution of this agreement, each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

19.5 Invalidity

- (a) If a provision of this agreement or a right or remedy of a party under this agreement is invalid or unenforceable in a particular jurisdiction:
 - (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
 - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (b) This clause is not limited by any other provision of this agreement in relation to severability, prohibition or enforceability.

19.6 Entire agreement

This agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.

19.7 Assignment

A party must not transfer any right or liability under this agreement without the prior consent of each other party, except where this agreement provides otherwise.

19.8 Survival and merger

- (a) No term of this agreement merges on completion of any transaction contemplated by this agreement.
- (b) Clauses 6 (**Transitioning Contracts**), 7 (**Employees**), 13 (**GST**), 14 (**Indemnity**), 15 (**Actions**) and 18 (**General provisions**) survive termination or expiry of this agreement together with any other term which by its nature is intended to do so.

19.9 Amendments

Any amendment to this agreement has no force or effect, unless effected by a document executed by the parties.

19.10 Third parties

This agreement confers rights only on a person expressed to be a party to it, and not on any other person.

19.11 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

19.12 Waivers

Any failure by a party to exercise any right under this agreement does not operate as a waiver. The single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

19.13 Remedies

The rights of a party under this agreement are cumulative and not exclusive of any rights provided by law.

19.14 Severability

Any clause of this agreement which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this agreement or the validity of that clause in any other jurisdiction.

19.15 Counterparts

This agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute the same document.

20. Definitions and interpretation

20.1 Definitions

In this agreement, unless the context requires otherwise:

Accounts Payable (also known as trade creditors) means all sums owing by the Proprietor exclusively in connection with the School Operation at the Completion Date, including any amounts owing to any supplier relating to any asset acquired or any service supplied in connection with the School Operation whether or not then due and payable.

Accounts Receivable (also known as trade debtors) means all sums owing to the Proprietor exclusively arising from or in connection with the School Operation and which are due and payable on the Completion Date, or which become due and payable after the Completion Date but which relate to the provision of goods or services prior to the Completion Date, and any interest payable on any such sum.

Accrued Expenses means expenses and Liabilities accrued exclusively in the ordinary course of the School Operation.

Accrued Income means the income earned by, but not yet paid to, the Proprietor exclusively in connection with the School Operation.

Action means any claim, notice, demand, action, proceeding, litigation, or judgment, however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or otherwise and whether involving a third party or a party to this document, and includes a Claim.

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

Archdiocese means the Catholic Archdiocese of Melbourne

Authorisation includes:

- (a) any authorisation, consent, approval, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, permit, authority or exemption from, by or with a Government Agency; and
- (b) in relation to anything which will be prohibited or restricted in whole or in part by law if a Government Agency intervenes or acts in any way within a specific period after lodgement, filing registration, registration or notification, the expiry of that period without intervention or action.

Bank Accounts means such bank accounts as are agreed by the parties and includes but is not limited to any bank accounts associated with credit cards and term deposits.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria.

Church Laws means the universal laws of the Roman Catholic Church and the Code of Canon Law.

Claim means a claim under an indemnity under this agreement or to which the indemnity applies, including any proceedings commenced or threatened.

Completion means completion of the transition of the School Operation and the School Assets and **Complete** has a corresponding meaning.

Completion Date means 1 January 2021 or such other date agreed between the parties in writing, subject to clause 5.3.

Condition means each of the conditions precedent set out in clause 5.1.

Corporations Act means the *Corporations Act 2001* (Cth).

CRICOS means Commonwealth Register of Institutions and Courses for Overseas Students.

DGR Fund means any fund operated by the Proprietor for the purposes of the School, which is endorsed as a deductible gift recipient by the Australian Taxation Office under Item 1 of the table in section 30-15 of the *Income Tax Assessment Act 1997* (Cth), irrespective of whether such endorsement has been granted under the ABN of the School or of the parish that is under the control of the Proprietor which may include, by way of example, a school building fund, a school library fund or a scholarship fund.

Domain Name means any registered domain name used exclusively in connection with the School Operation.

Employee Abuse Claim means any Action in which abuse is alleged against or in respect of an employee, contractor or volunteer of the Proprietor or MACS who is or was engaged in the conduct of the School Operation (regardless of whether the allegations relate to acts or omissions alleged to have occurred prior to or after the Completion Date), but does not include abuse by the Proprietor.

Employees means all persons employed by or on behalf of the Proprietor in connection with the School Operation.

Employment Offer means an offer of employment made in any form considered appropriate by MACS.

Enrolment Contract has the meaning provided at clause 10.

First Party has the meaning provided in clause 15.2(c).

Goodwill means the goodwill of the School Operation with the exclusive right to carry on the School Operation in succession to the Proprietor and the right for MACS to represent itself as carrying on the School Operation in succession to the Proprietor.

Government Agency includes, without limitation, any government, whether federal, state, territorial or local, and any minister, department, office, commission, delegate, instrumentality, agency, board, authority or other organ of government, whether statutory or otherwise.

GST means goods and services tax, or similar value added tax, levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Religious Group means the Catholic GST religious group pursuant to Division 49 of the GST Act.

Historic Abuse Claim means an Action brought by a School Student or former student of the School or an Employee or a person previously employed in the School Operation in which sexual, physical and/or psychological abuse is alleged against or in respect of a priest (including the Proprietor), or a volunteer or other person under the control of the Archbishop or a predecessor who is not engaged in the conduct of the School Operation, where the allegations relate to acts or omissions alleged to have occurred prior to the Completion Date, but does not include an Employee Abuse Claim.

Law includes:

- (a) any law, regulation, authorisation, ruling, judgment, order or decree of any Government Agency; and
- (b) any statute, regulation, proclamation, ordinance or by-law, in either case, in:
 - (i) Australia; or
 - (ii) any other jurisdiction.

Liability means any liability (whether actual, contingent or prospective), Loss, damage, cost and expense of whatsoever description and howsoever arising (including the Accounts Payable and including reasonable legal fees).

Loss means any loss, damage, judgment, cost, charge, expense, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is liable for, however arising.

Misplaced Asset has the meaning given in clause 13.1.

Misplaced Liability has the meaning given in clause 13.2.

Motor Vehicles means all motor vehicles used exclusively in connection with the School Operation.

Officer has the same meaning as in the Corporations Act.

Plant and Equipment means all plant and equipment used exclusively in connection with the School Operation.

Portable Buildings means all demountable buildings on the School Land as at the Completion Date.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

PPS Register means the Personal Property Securities Register established under the PPS Act.

PPS Security Interest means a security interest as defined in the PPS Act.

Prepays means all rights and interests of the Proprietor in all fees and expenses (including Taxes relating to the same) paid by or on behalf of the Proprietor prior to the Completion Date relating to services to be received exclusively by the School Operation following the Completion Date.

RCTC means the Roman Catholic Trusts Corporation for the Diocese of Melbourne.

Records means all books, accounts, School Student information, business plans, market plans, market research, credit reports, policies and procedures, manuals, school curriculum, cost records, sales prospects, advertising and all other documents, papers and records (however stored) (including any accounting records, financial statements, financial data and operating statements) used by the Proprietor exclusively in relation to the School Operation.

Refundable Parent Deposit means a deposit received by the Proprietor in relation to the enrolment of a child at the School.

RTO means Registered Training Organisation.

School means the Catholic school operated by the Proprietor specified in Item 2 of the Schedule.

School Assets means all property, rights and assets owned by the Proprietor (or on its behalf) which are used in the conduct of the School Operation, whether tangible or intangible and whether owned, leased or used by the Proprietor under some arrangement, including but not limited to (noting that some assets may fall into two or more of the following categories):

- (a) all assets that fall within a category listed under the heading "Current Assets" or "Non-Current Assets" in the final financial statements of the School as at 31 December 2020, including but not limited to:
 - (i) cash and cash equivalents;
 - (ii) Accounts Receivable;
 - (iii) trade and other receivables;
 - (iv) other debtors;
 - (v) Accrued Income;
 - (vi) Prepays;
 - (vii) prepayments;
 - (viii) Stock;
 - (ix) inventories;
 - (x) School Investments;

- (xi) furniture and machinery;
 - (xii) information technology equipment;
 - (xiii) Plant and Equipment;
 - (xiv) Motor Vehicles;
 - (xv) Portable Buildings;
 - (xvi) library (including capital class sets);
 - (xvii) other fixed assets; and
 - (xviii) intangible assets;
- (b) the benefit of the Transitioning Contracts;
 - (c) the Records;
 - (d) the Goodwill;
 - (e) the benefit of any lawfully transferable Authorisations;
 - (f) the School IP; and
 - (g) any DGR Fund,

but excludes the School Land and the School Buildings.

School Buildings means:

- (a) all structures on the School Land which are owned by the Proprietor and used in the conduct of the School Operation;
- (b) all fixtures, fittings, Services, partitions or other 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 School Land or service the School Land; and
- (c) any other additions, modifications or improvements made to the School Land from time to time including without limitation the School's oval, all landscaping and other similar improvements,

excluding the Portable Buildings.

School Investments means all investments made by the Proprietor for the benefit of the School and includes but is not limited to any shares or derivatives held by or on behalf of the Proprietor for the benefit of the School.

School IP means all intellectual property and proprietary rights (whether registered or unregistered) owned by or on behalf of the Proprietor in the conduct of the School Operation including:

- (a) the Domain Name;
- (b) all pages maintained on social media accounts, including Facebook, Twitter and LinkedIn;

- (c) patents, patent applications, discoveries, inventions, improvements, know-how, trade secrets, technical data or formulae;
- (d) computer programs or databases;
- (e) know-how, logos or marks;
- (f) drawings, designs or design rights;
- (g) copyright or any material in which copyright exists; and
- (h) any similar industrial or intellectual property rights.

School Land means the land specified in Item 3 of the Schedule.

School Liability means any Liability incurred in connection with the School Operation or School Assets and includes but is not limited to (noting that some liabilities may fall into two or more of the following categories):

- (a) all liabilities that fall within a category listed under the heading "Current Liabilities" or "Non-Current Liabilities" in the final financial statements of the School on the day prior to the Completion Date, including but not limited to:
 - (i) Accounts Payable and trade payables;
 - (ii) sundry creditors and accruals (including clearing accounts and indirect tax payables);
 - (iii) deposits held on behalf of third parties;
 - (iv) special purpose funds;
 - (v) accrued salaries and wages;
 - (vi) deferred enrolment fees;
 - (vii) revenue invoiced or received in advance (includes fees and levies);
 - (viii) other creditors;
 - (ix) employee entitlements;
 - (x) lease liabilities;
 - (xi) School Loans and interest bearing liabilities;
- (b) the Transitioning Contracts;
- (c) the Enrolment Contracts;
- (d) the Accrued Expenses;
- (e) the Unearned Income; and
- (f) Employee Abuse Claims,

but does not include Historic Abuse Claims.

School Loans means all loans and debt facilities taken out by the Proprietor for use in relation to the School Operation.

School Operation means the business or activities of the Proprietor relating to the operation of the School.

School Student means a student enrolled as a student at the School.

Second Party has the meaning provided in clause 15.2(c).

Secured Party has the meaning given under section 10 of the PPS Act.

Security Interest means:

- (a) any mortgage, lien, charge, pledge, assignment by way of security, encumbrance, title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect or any agreement to create any of them; and
- (b) a PPS Security Interest,

and includes any agreement to create any of them or allow them to exist.

SEO means Student Exchange Organisation.

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

SGA means the *Superannuation Guarantee (Administration) Act 1992* (Cth).

Stock means all materials used exclusively in connection with the School Operation, including but not limited to school uniforms and canteen items.

Taxation or **Tax** means any tax, levy, charge, impost, fee deduction, goods and service tax, compulsory loan or withholding, that is assessed levied, imposed or collected by any governmental agency and includes any interest, fine, penalty, charge, fee or other amount imposed on, or in respect of any of the above.

Transitioning Contracts means any contract or agreement between the Proprietor and a third party exclusively related to the operation of the School Operation that are not fully performed at the Completion Date.

Transitioning Employees means the Employees who agree to be transitioned to the employment of MACS pursuant to an offer made in connection with this agreement.

Unearned Income means the income received by the Proprietor exclusively in connection with the School Operation in advance of the services being provided including school fees.

VRQA means the Victorian Registration and Qualifications Authority.

Wrong Asset has the meaning given at clause 13.3.

20.2 Interpretation

In this agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this agreement.
- (b) the singular includes the plural and vice versa.
- (c) words that are gender neutral or gender specific include each gender.
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation.
- (f) unless a contrary indication appears, terms (whether capitalised, italicised or not) that are defined in the PPS Act and not otherwise defined in this document have the meaning given to them in the PPS Act when used in this document.
- (g) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement;
 - (vi) this agreement includes all schedules and attachments to it;
 - (vii) a law includes:
 - (A) any constitutional provision, treaty, decree, statute, regulation, by-law, ordinance or instrument;
 - (B) any order, direction, determination, approval, requirement, licence or licence condition made, granted or imposed under any of them;
 - (C) any judgment; and
 - (D) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated, replaced, overruled or applied to new or different facts;
 - (viii) an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (ix) a monetary amount is in Australian dollars.

- (h) an agreement, representation or warranty on the part of two or more persons binds them severally.
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.
- (j) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (k) in determining the time of day where relevant to this agreement, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this agreement, the time of day in the place where the party required to perform an obligation is located.
- (l) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any clause of it.
- (m) if there is any conflict between the body of this agreement and its schedules and attachments the terms of the main body of this agreement will prevail.

Schedule

<p>Item 1 Proprietor</p>	<p>[Parish Priest] for and on behalf of [Parish]</p>
<p>Item 2 School</p>	<p>[School Name] [School VRQA Reg. No.] [School E No.]</p>
<p>Item 3 School Land</p>	<p>[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 that is used, or that the parties have agreed may be used, in the operation of the School</p>
<p>Item 4 Addresses for Notices</p>	<p>MACS [postal address] [email address]</p> <hr/> <p>Proprietor [postal address] [email address]</p>

Signing Page

Executed as an agreement.

Dated

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)

Signed by the Proprietor 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 Proprietor