RFT Part C – Proposed Contract

WESTERN HEIGHTS COLLEGE

Licence Agreement for the Operation of a Cafe and Canteen

WESTERN HEIGHTS SECONDARY COLLEGE COUNCIL
GREATER GEELONG CITY COUNCIL
[INSERT NAME OF OPERATOR]
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ANNEXURE A

Plan 1

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List of Fittings and Equipment supplied by the College Council
PARTIES
Western Heights Secondary College Council of 37-61 Vines Road, Hamlyn Heights, Victoria, 3215 (College Council)
Greater Geelong City Council of 30 Gheringhap Street, Geelong, Victoria 3220 (CoGG)
[Insert name of Operator] ABN [Insert ABN/ACN] of [insert address of Operator] (Operator)

BACKGROUND
A The Minister, the College Council and CoGG entered into the Joint Use Agreement – Library regarding the operation and use of the Library and related facilities located at the Vines Road site of the College.
B Pursuant to the Joint Use Agreement - Library, the Minister and College Council licensed use of the Library and Shared Lounge and Shared Amenities to CoGG and agreed with CoGG their shared use of the Cafe and Kitchen Area located adjacent to the Library.
C The College Council agrees to grant a licence to the Operator to operate a Cafe and Canteen from the Cafe and Kitchen Area, subject to and upon the terms and conditions of the Joint Use Agreement - Library.
D CoGG acknowledges and agrees to the licence to the Operator on the terms as set out in this Agreement.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement, unless inconsistent with the context or subject matter:

Adjustment Event has the meaning given to it in the GST Legislation.
Agreement means this Licence Agreement including any Annexures and Schedules.
Approval means any licence, permit, consent, approval, determination, certificate or other requirement of any authority, body or other organisation having any jurisdiction in connection with the activities of the Operator or under any other applicable Regulatory Requirement, which shall be obtained to:

(a) carry out activities with respect to the Cafe and Kitchen Area; or
(b) occupy and use the completed Cafe and Kitchen Area.

Cafe means the cafe that is a part of the Cafe and Kitchen Area.
Cafe and Kitchen Area means the area shown coloured in blue on Plan 1.
Canteen means the canteen that is a part of the Cafe and Kitchen Area.
College means Western Heights Secondary College.
**Commencement Date** means the date in Item 1 of the Schedule.

**CPI** means the All Groups Consumer Price Index number published by the Australian Bureau of Statistics or, if the All Groups Consumer Price Index number ceases to be published, the nearest equivalent economic indicator.

**Department** means the Department of Education and Early Childhood Development of the State of Victoria.

**Further Term** means the period/s by which the Licence is extended (if at all) pursuant to clauses 2.9 to 2.10, as specified in Item 4 of the Schedule.

**Government Agency** means a body or person charged with the administration of any Law.

**GST** means the tax payable on taxable supplies under GST Legislation.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

**Initial Term** means the period of time for which the Licence is granted under clause 2.8, as specified in Item 3 of the Schedule.

**Input Tax Credit** has the meaning given to it in the GST Legislation.

**Insolvent** has the meaning given to that term under the *Corporations Act 2001* (Cth).

**Joint Use Agreement - Library** means the agreement between the Minister, the College Council and CoGG dated 25th July, 2011 regarding the use and operation of the Library and related facilities located at the Vines Road site of the College.

**Law** means any legislation and includes any subordinate legislation, ordinances, by-laws, regulations, rules, other statutory instruments issued and orders made under that legislation.

**Library** means the area shown coloured in green on Plan 1.

**Library Opening Hours** means the opening hours for the Library as set out in Item 5 of the Schedule, or as otherwise agreed between CoGG and the College Council.

**Licence** is the non-exclusive licence to use the Cafe and Kitchen Area granted under clause 2.1.

**Licence Fee** means the fee payable by the Operator to licence the Cafe and Canteen under clause 2.3, the amount as stated in Item 2 of the Schedule.

**Licence Term** means:

(a) the term of the Licence, comprising the Initial Term and the Further Term; or

(b) if this Agreement is terminated prior to the end of the Initial Term or the Further Term (as the case may be), the period up to and including the date of such termination.

**Minister** means the Minister for Education of the State of Victoria.

**Operator** means the [insert name of the Operator].
Plan 1 means the plan showing the Library, the Cafe and Kitchen Area, the Shared Lounge and the Shared Amenities annexed as Annexure A.

Principal means the principal of the College or any other person acting from time to time as and with the authority of the principal of the College.

Regulatory Requirement means any legislation, ordinances, regulations, bylaws, local laws, orders, proclamations, Approval, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver and conditions attaching to any of them (as applicable) by any Government Agency and includes any renewal of, or variation to, any of them.

School Day means a day on which the College is open and does not include Student Free Days.

School Hours means 8.30 am to 1.30 pm – (or as negotiated between the College and the Operator) on School Days.

Services means the services that are required to be undertaken by the Operator in preparing and serving food and beverage in the Cafe and Kitchen Area and all incidental services including but not limited to cleaning the Cafe and Kitchen Area before and/or after use and delivery of any goods.

Shared Amenities means the toilets shown coloured in red on Plan 1.

Shared Lounge means the area shown coloured in yellow on Plan 1.

Staff means the people employed or engaged by the Operator to work in the Cafe and Kitchen Area.

Student means a student of the College.

Student Free Day means a day during school term on which no students are present at the College and College staff are engaged in professional development, school planning and administration, curriculum development and/or student assessment and reporting, as scheduled by the College in accordance with applicable government policy.

Tax means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on net overall income.

Taxable Supply has the meaning given to it in the GST Legislation.

Working with Children Check means the process under Part 2 of the Working with Children Act 2005 (Vic) for assessing or re-assessing whether a person is suitable to work in child-related work.

Interpretation

1.2 In this Agreement, unless inconsistent with the context or subject matter:

1.2.1 a reference to any legislation or legislative provision:

(a) includes any statutory modification or re-enactment of, or legislative provision substituted for that legislation or legislative provision; and
(b) includes any subordinate legislation, ordinances, by-laws, regulations, rules, other statutory instruments issued and orders made under that legislation or legislative provision;

1.2.2 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;

1.2.3 any marginal notes or headings are included for convenience and will not affect the interpretation of this Agreement;

1.2.4 a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;

1.2.5 the singular includes the plural and vice versa;

1.2.6 words denoting any gender include all genders;

1.2.7 if any day specified by this Agreement falls on a Saturday, Sunday or a day appointed under the Public Holidays Act 1993 (Vic) as a holiday for the whole day, that day will be the next day following the specified day which is not a Saturday, Sunday or day appointed under the Public Holidays Act 1993 (Vic);

1.2.8 a reference to this Agreement includes any schedule, annexure, special conditions or attachment to it;

1.2.9 a reference to a recital, clause, subclause, paragraph, schedule, annexure or attachment is to a recital, clause, subclause, paragraph, schedule, annexure or attachment of or to this Agreement;

1.2.10 a reference to this Agreement or to any deed, agreement, document or instrument includes a reference to such documents as amended, novated, supplemented, varied, altered or replaced from time to time;

1.2.11 a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government body and vice versa;

1.2.12 a reference to any thing is a reference to the whole and each part of it;

1.2.13 a reference to a group of persons is a reference to all of them collectively and to each of them individually;

1.2.14 a reference to 'dollars' or '$' is reference to Australian currency;

1.2.15 the terms 'including' and 'include' are not terms of limitation; and

1.2.16 a reference to a matter being 'to the knowledge' of a person means that the matter is to the best of the knowledge and belief of that person after making reasonable enquiries in the circumstances.
2 LICENCE

Grant of Licence

2.1 The College Council grants a licence to the Operator, commencing on the Commencement Date, for the Initial Term:

2.1.1 to use the Cafe and Kitchen Area for the purposes of operating a Cafe and Canteen for members of the public and students;

2.1.2 to access the Shared Lounge and Shared Amenities during the times that the Operator is entitled to use the Cafe and Kitchen Area, with such access to be shared with CoGG, the College Council, students and members of the public;

2.1.3 to park in the areas approved by the College Council; and

2.1.4 to enter onto the College site for the purpose of accessing the Cafe and Kitchen Area, subject to any reasonable conditions with regards to access specified by the College Council,

subject to the terms and conditions of this Agreement.

2.2 CoGG acknowledges and agrees to the Licence granted by the College Council and the terms of such Licence, as set out in this Agreement.

Licence Fee

2.3 The Operator shall pay to the College Council the annual Licence Fee as specified in Item 2 of the Schedule subject to clauses 2.4 to 2.7 below.

2.4 The Operator shall pay the Licence Fee in each year by twelve equal and consecutive calendar monthly payments payable by the first day of the months of January to December (inclusive).

2.5 The Operator and CoGG acknowledge that the Licence Fee belongs to the College Council.

Interest

2.6 The Operator shall pay interest to the College Council on any money which is or becomes due and payable under this Agreement from when it fell due to be paid until the date it is actually paid at the rate of 2% per annum. Such interest shall accrue and be calculated on a daily basis.

Annual Review of Licence Fee

2.7 This Licence Fee shall be reviewed annually, commencing on the anniversary of the Commencement Date in accordance with the following process:

2.7.1 The College Council shall consider whether the Licence Fee should be increased, taking into account:

(a) the commercial licence fee which would be payable in respect of the Cafe and Kitchen Area;

(b) the operation of the business over the past 12 months; and
any submissions by the Operator as to an appropriate increase for the Licence Fee.

2.7.2 Following the College Council's consideration pursuant to clause 2.7.1 above, a representative of the College Council shall meet with a representative of the Operator to discuss the proposed Licence Fee increase (if any).

2.7.3 Following the meeting referred to in clause 2.7.2 above, the College Council shall notify the Operator in writing of any increase to the Licence Fee for the following 12 month period which it has determined shall apply. The determination of an increase is at the sole discretion of the College Council, which shall act reasonably in making its determination.

2.7.4 If the College Council does not determine that there should be a fee increase following the procedure contained in this clause 2.7, then the Licence Fee will increase by CPI, if there has been an increase in the CPI over the preceding 12 month period. If there has been no increase in the CPI over this time and the College Council has not determined a fee increase pursuant to the procedure contained in this clause 2.7, the Licence Fee shall remain the same.

Initial Term of the Licence

2.8 The Initial Term of the Licence shall be for that period specified in Item 3 of the Schedule and shall run from the date of this Agreement.

Further Term of the Licence

2.9 The Operator has the right to renew this Agreement for the Further Term as specified in Item 4 of the Schedule by giving written notice to the College Council at least 3 months before the expiration of the Initial Term, unless:

2.9.1 the College Council has given the Operator a notice in writing of breach, which has not been remedied by the Operator; or

2.9.2 the Operator has been repeatedly or consistently committing breaches of this Agreement during the Initial Term and the College Council has given the Operator notice in writing of such breaches, whether or not such breaches have been remedied.

2.10 If the College Council considers that the Operator does not have the right to renew this Agreement for a reason contained in clauses 2.9.1 or 2.9.2, the College Council shall state this in writing to the Operator.

Renewal process

2.11 If the Operator renews the Licence in accordance with clause 2.9, the Licence shall be automatically renewed from the expiry of the Initial Term for the Further Term on the terms and conditions of this Agreement (other than clause 2.8 or this clause 2.11) with the Licence Fee for the Further Term to be determined in accordance with clauses 2.3 and 2.7.

Assignment or further licensing

2.12 The Operator shall not, without the prior written consent of the College Council, assign or transfer any part of its rights or obligations under this Agreement.
2.13 The Operator shall not further licence the Cafe and Kitchen Area.

**Rights not to be exclusive**

2.14 The Operator acknowledges that this Agreement does not confer on the Operator any right to exclusive occupation of any part of the Cafe and Kitchen Area or other areas of the College.

2.15 The Operator acknowledges that the Operator's rights rest in contract only and do not create or confer upon the Operator any tenancy or estate or interest in or over the Cafe and Kitchen Area or any other area of the College.

**3 PERMITTED USE**

3.1 The Operator shall use the Cafe and Kitchen Area for the purpose of operating a Canteen service for students and staff of the College and operating a Cafe service for members of the public, subject to the terms and conditions contained in this Agreement.

**4 TIMES OF USE**

4.1 The parties acknowledge that the Operator is entitled to use the Cafe and Kitchen Area during the Library Opening Hours as specified in Item 5 of the Schedule, or as otherwise agreed between the Operator and the Principal. The Principal shall advise the Operator of any changes to the Library Opening Hours that are agreed between the College Council and CoGG.

4.2 During School Hours, the Operator shall operate a Canteen for students from the serving window located in the northern wall of the kitchen area within the Cafe and Kitchen Area. The Operator shall operate a Cafe for members of the public from the Cafe area shown on Plan 1 at such times as it determines during the Library Opening Hours, negotiated with the College.

4.3 The Operator shall inform the Principal of its proposed operating hours for the Cafe business, within the Library Opening Hours, on an annual basis and must inform the Principal of any changes to those operating hours.

4.4 The College Council shall advise CoGG and the Operator in writing at the commencement of the school year of the school term times for that year and shall give the Operator 4 weeks (or as much notice as possible) written notice of Student Free Days.

4.5 The Operator is entitled to access (on a non-exclusive and shared basis) the Shared Lounge and the Shared Amenities at the times that it is entitled to use the Cafe and Kitchen Area.

4.6 The College Council shall provide the Operator with keys to access the Cafe and Kitchen Area. The Operator must secure the Cafe and Kitchen Area at the close of business each day.
5 CONDUCT OF SERVICES

Guidelines and policies

5.1 In respect of the Canteen service offered to students and staff:

5.1.1 The Operator shall comply with the requirements contained in all guidelines or policies issued by the Department (DEECD) with respect to the operation of a Canteen for school students, including the School Canteens and other School Food Services Policy published by the Department of Education dated December 2006 (and available from www.education.vic.gov.au). The Principal shall provide the Operator with a copy of any such guidelines or policies in addition to the School Canteens and other School Food Services Policy. The Principal shall also inform the Operator of any updates to such guidelines or policies occurring during the Licence Term.

5.1.2 The Operator shall comply with the College's canteen and food service policy, as developed by the College Council. The Principal shall provide the Operator with a copy of this policy.

5.1.3 The College Council may, in its absolute discretion, but acting reasonably, direct that certain foods cannot be sold as a part of the Canteen service provided by the Operator.

5.2 In respect of the Cafe service offered to members of the public, the Operator agrees to operate with a healthy foods focus and provide a reasonable selection and quantity of nutritional and wholesome foodstuffs.

Prices

5.3 The Operator shall obtain the Principal's approval of the prices for the food and beverages offered to College students and staff through the Canteen service. The Operator shall provide the Principal with a proposed price list prior to commencing operation and thereafter the Operator and the Principal shall meet on a quarterly basis to discuss the Canteen price list. All Canteen prices are subject to approval by the College Council's finance committee. Approval of the College Council is not required in respect of the food and beverages offered to the public through the Cafe service.

Compliance with relevant legislation

5.4 The Operator shall, at its own cost, obtain all Approvals and comply with and observe all relevant Regulatory Requirements that relate to its use of the Cafe and Kitchen Area including without limitation those contained in the Food Act 1984 (Vic) and the Food Standards Code (including the Food Safety Standards) referred to in that Act.

Advertising

5.5 The Operator shall not advertise or allow the use of advertising in the Cafe and Kitchen Area without the prior written approval of the College Council, which shall not be unreasonably withheld. All advertising in the Cafe and Kitchen Area must be appropriate for a facility which is used by school students.
Alcohol

5.6 The Operator shall not:

5.6.1 sell or issue alcohol from the Cafe and Kitchen Area;

5.6.2 permit alcohol to be consumed in the Cafe and Kitchen Area during School Hours; and

5.6.3 permit alcohol to be consumed in the Cafe and Kitchen Area outside School Hours without the written approval of the Principal.

Smoking

5.7 The Operator shall not sell or issue any cigarettes or tobacco products or permit any such products to be used by its Staff or any other persons in the Cafe and Kitchen Area.

5.8 The Operator acknowledges that all College premises are non smoking sites.

Deliveries and parking

5.9 The Operator acknowledges that vehicles making deliveries to the Cafe and Kitchen Area are entitled to park for short periods of time, solely for the purpose of loading and unloading, adjacent to the Cafe and Kitchen Area, provided that this does not interfere with the use of the Library and associated facilities by students and members of the public.

5.10 The Operator shall ensure that all other delivery vehicles or vehicles belonging to Staff associated with the provision of the Services, park in an area nominated by the College Council.

6 GENERAL OBLIGATIONS AND PROHIBITIONS

General obligations

6.1 In connection with the use of the Cafe and Kitchen Area, the Operator shall:

6.1.1 use the Cafe and Kitchen Area in a business-like and reputable manner;

6.1.2 not cause any injury or nuisance to other users of the building in which the Cafe and Kitchen Area is located, or staff and students of the College;

6.1.3 comply with all the College Council's policies or guidelines which deal with the safety or health of persons in buildings on the Department's premises or otherwise under its control;

6.1.4 obey all reasonable rules from time to time made by the College Council with regard to the management of building in which the Cafe and Kitchen Area is located;

6.1.5 observe fire precautions; and

6.1.6 at all times exercise due care, skill and judgement and act with the utmost good faith.
General prohibitions

6.2 The Operator shall not:

6.2.1 carry out any structural or other alterations to the Cafe and Kitchen Area or any other area it is permitted to access on the College site;

6.2.2 spread any damaging substances on any surfaces of the Cafe and Kitchen Area or any other area it is permitted to access on the College site;

6.2.3 permit in or upon the Cafe and Kitchen Area or any other area it is permitted to access on the College site, any:

(a) noxious, noisome, hazardous or offensive act, trade, business or occupation;

(b) act, matter or thing whatsoever which in the reasonable opinion of the Principal may cause disturbance, nuisance, damage or danger to people at or entering the Cafe and Kitchen Area, the Library building or any other part of the College or to the owners or occupiers of neighbouring premises; or

(c) chemical or hazardous things except to the extent that it is necessary for the purposes of the using or operating the Cafe and Kitchen Area in accordance with this Agreement.

Security call-outs

6.3 The Operator shall pay the cost of any security call-outs instigated by or arising out of or in connection with an act or omission of the Operator.

7 STAFF FOR THE CAFE AND KITCHEN AREA

Staff requirements

7.1 Unless otherwise agreed between the Operator and the College Council, the Operator is responsible for providing all staff required to deliver all Services provided by the Operator from the Cafe and Kitchen Area.

7.2 The Operator shall ensure:

7.2.1 it employs sufficient staff to operate the Canteen service for students of the College, which includes arranging for appropriate levels of staff during peak periods such as recess and lunch times;

7.2.2 that all members of Staff are appropriately qualified and experienced;

7.2.3 that all members of Staff have been trained regarding handling and preparing food in a safe and competent manner; and

7.2.4 that all members of Staff undergo a Working With Children Check and, if required by the Principal, a police check.
Proper Persons

7.3 The parties acknowledge that if at any time the Principal, acting reasonably, forms the opinion that a person employed or engaged by the Operator in connection with the Cafe and Kitchen Area is not a proper person to be acting in that role having regard to the welfare of the College students, then, to the extent permitted by Law:

7.3.1 the Principal may require the Operator to remove the person from the role, and if appropriate, to replace the person with someone of equal competence and/or experience; or

7.3.2 the Principal may give written notice to the Operator requesting the Operator to cease to employ or engage that person in connection with the Cafe and Kitchen Area or take such other action as may be appropriate.

7.4 Upon receipt of a notice given under clause 7.3.2, the Operator shall promptly consider the terms of the notice and determine an appropriate course of action, which may include termination of the person's employment.

Staff Register

7.5 The Operator shall keep a current register of all Staff employed by the Operator to work in the Cafe or Kitchen Area and provide a copy to the Principal upon request.

8 CLEANING OF THE CAFE / KITCHEN AREA AND SHARED AMENITIES

Cleaning

8.1 The Operator shall be responsible for the cleaning of the Cafe and Kitchen Area, with biodegradable cleaning substances where possible, such as to ensure a clean and hygienic environment is maintained at all times and daily, regular oversight of shared amenities.

8.2 Without derogating from clause 8.1, the Operator shall, at its own expense, clean the Cafe and Kitchen Area daily, in accordance with the requirements agreed between the Operator and the Principal.

Waste disposal

8.3 The College Council shall make available appropriate garbage bins, for the use of the Operator, the contents of which shall be removed in a timely manner by the College Council. The Operator shall keep the area surrounding the bins tidy.

Pest control

8.4 The Operator shall be responsible for any pest control required in the Cafe and Kitchen Area.

9 REPAIRS AND MAINTENANCE

9.1 The Operator shall, at its own cost, maintain and undertake all repairs to the Cafe and Kitchen Area, including but not limited to, repairs required as a result of fair wear and tear or as a result of damage caused by the Operator and its customers, but excluding structural and capital works.
9.2 The College Council is responsible for all structural and capital works to the Cafe and Kitchen Area. If any structural or capital works to the Cafe and Kitchen Area are required, they can be scheduled at a time when the Operator is entitled to use the Cafe and Kitchen Area. The College Council shall give as much notice to the Operator as possible (except in the case of urgent work) as to the timing and duration of the structural or capital works and its impact.

10 FITTINGS AND EQUIPMENT

10.1 The parties acknowledge that the College Council has provided in the Cafe and Kitchen Area the fittings and equipment that are specified in Annexure B. The Operator may use these items without additional charge but the College Council is under no obligation to repair or replace any such item that may be damaged, destroyed or become worn out.

10.2 If any of the items specified in Annexure B should be damaged, destroyed or worn out, the Operator shall either repair or replace such items, whichever is reasonable in the circumstances, at its own expense.

10.3 The Operator shall supply any other fittings and equipment necessary for the provision by it of the Services to be undertaken in the Cafe and Kitchen Area at its own expense.

Termination

10.4 On the termination of this Agreement, the Operator shall restore the Cafe and Kitchen Area to their state and condition as at the commencement of this Agreement, subject to its obligations to repair and maintain the Cafe and Kitchen Area under this Agreement.

10.5 On the termination of this Agreement, the Operator shall remove all items of fitting and equipment it has supplied and ensure that no damage is caused to the Cafe and Kitchen Area or any other area it is permitted to access on the College site as a result of such removal. The Operator shall immediately rectify any damage which is caused, at its own expense. If the Operator fails to either remove its fittings and equipment, or to rectify any damage caused in the removal, the College Council shall be entitled, at its discretion, to remove such items and make good any damage and to recover from the Operator any costs in so doing.

10.6 The Operator acknowledges that upon expiry of the Licence Term, the Operator has no entitlement to recover from the College Council any compensation for the value of any fittings and equipment listed in Annexure B which were repaired or replaced by the Operator during the Licence Term.

11 UTILITIES

11.1 The Operator acknowledges that it is responsible for paying the cost of mains water, electricity and gas supplied to the Cafe and Kitchen Area in accordance with clauses 11.2 and 11.3.

11.2 The College Council shall calculate the cost of mains water, electricity and gas supplied to the Cafe and Kitchen Area, and on a quarterly basis and provide the Operator with a tax invoice in respect of such costs.
The Operator shall pay this invoice within 30 days of receipt.

**Telephone**

The Operator shall pay all costs associated with the connection fee and use of a telephone and any other telecommunications facilities in the Cafe and Kitchen Area.

**12 COLLEGE COUNCIL’S RIGHT TO UNDERTAKE WORKS**

**The College Council reserves rights**

12.1 The College Council reserves the right to undertake works which are necessary to comply with any Law or to ensure the safe and proper use of the Cafe and Kitchen Area including:

12.1.1 maintaining and upgrading the Cafe and Kitchen Area;

12.1.2 providing or maintaining any services to any part of the Cafe and Kitchen Area; and

12.1.3 constructing any structures or fixtures in, over or through the Cafe and Kitchen Area provided always that the College Council shall use all reasonable endeavours to minimise any interference with the Operator's use of the Cafe and Kitchen Area.

**Entry**

12.2 The Operator acknowledges that anyone authorised by the College Council may enter the Cafe and Kitchen Area at any reasonable time in order for the College Council to exercise its rights under clause 12.1. If the College Council intends to enter the Cafe and Kitchen Area during the time the Operator is entitled to use this area, the College Council shall give the Operator reasonable notice before exercising its rights. The College Council shall exercise its rights at a reasonable time and in a way which minimises any interference with the Operator’s use of the Cafe and Kitchen Area. If there is an emergency, any person authorised by the College Council may enter the Cafe and Kitchen Area at any time without notice.

**13 INDEMNITY**

13.1 The Operator indemnifies the College Council and CoGG against any liability, loss, damages, costs (including, without limitation, all legal costs), claims, proceedings and demands (*Loss*) which they suffer or incur in connection with:

13.1.1 any damage to the Cafe and Kitchen Area;

13.1.2 any loss of or damage to any property (real or personal) of the College Council or CoGG or their employees, agents, staff or students;

13.1.3 personal injury to or the death of any person; and

13.1.4 any breach of this Agreement by the Operator or its employees, agents, servants, contractors or anyone else for whom the Operator is responsible.
13.2 The liability of the Operator under clause 13.1 is reduced to the extent that negligence of the College Council or CoGG or their employees, agents, staff or students contributed to the Loss.

13.3 Any indemnities given by the Operator in this Agreement are continuing obligations, separate and independent from the other obligations of the Operator, and survive termination of this Agreement.

14 CONSULTATION

14.1 The College Council and the Operator agree to consult on a regular basis during the Licence Term, and at least quarterly, in respect of the provision of the Cafe and Canteen Services under this Agreement. The College Council and the Operator shall each nominate a representative for the purpose of this consultation.

15 DAMAGE TO STOCK OR PROPERTY AND RELEASE

15.1 The Operator agrees that the College Council shall not be liable to the Operator or to any other person for any loss or damage to any property of the Operator, including stock, which is used or to be used for the Services regardless of how this loss may have arisen including if it arises out of any negligent or unlawful act or omission of the College Council.

16 INSURANCE

16.1 The Operator shall take out the insurance specified in Item 6 of the Schedule and maintain such insurance for the Licence Term.

16.2 The Operator shall provide a copy of any of its insurance policies to the College Council upon request.

16.3 The Operator shall not do or permit any act, matter or thing to be done which may invalidate any insurance in respect of the Cafe or Kitchen Area or the Services, make any such insurance void or voidable, or increase the rate of premium of any such insurance.

17 DISPUTES

Notice of dispute

17.1 The parties agree to consult in good faith with each other, but if a dispute arises between any of the parties in connection with this Agreement, it shall be resolved in the manner set out in this clause 17. If a dispute arises in connection with this Agreement, any party may serve upon the other parties a written notice of the dispute (Dispute Notice). The Dispute Notice shall adequately identify and give reasonable details of the nature of the dispute.

Meeting of Senior Representatives

17.2 If the dispute set out in a Dispute Notice is not settled within 7 days of receipt of the Dispute Notice, then the parties to the dispute shall each nominate a senior representative
(the Senior Representatives) who shall meet within a further 14 days and use their best endeavours to negotiate a resolution of the dispute.

Litigation

17.3 If the Senior Representatives are unable to resolve the dispute within 14 days of their meeting, then any party to the dispute may issue proceedings in respect of the dispute.

Compliance is a precondition to litigation

17.4 The parties agree that the provisions of clauses 17.1 to 17.2 shall be complied with before the issue of any legal proceedings, except for proceedings issued pursuant to clause 17.5.

Urgent interlocutory relief

17.5 The parties agree that clauses 17.1 to 17.2 do not apply if a party commences proceedings for urgent interlocutory relief.

Performance of obligations

17.6 Pending the resolution of a dispute under this clause 17:

17.6.1 the parties shall continue to perform their respective obligations under this Agreement; and

17.6.2 each party shall pay all amounts under this Agreement when due in accordance with this Agreement without regard to the pending dispute, regardless of whether the dispute relates to payment of money.

18 TERMINATION

Termination of the Joint Use Agreement

18.1 This Agreement will automatically terminate upon termination of the Joint Use Agreement - Library. The College Council shall advise the Operator in writing if this occurs. Termination of the Licence shall be effective from the date of termination of the Joint Use Agreement - Library.

18.2 Upon termination of this Agreement pursuant to clause 18.1, each party shall be liable for any payments that were due by it to the other party under this Agreement before the effective date of the termination, but shall not be liable for any other costs or compensation to the other party.

Termination by the College Council due to default by the Operator

18.3 If the Operator commits a breach of this Agreement (including a failure to make a payment under this Agreement), the College Council may give the Operator written notice that the Operator is in breach and require the Operator to rectify the breach within the time specified in the notice, which shall be a reasonable time.

18.4 If the Operator becomes Insolvent or fails to rectify the breach notified under clause 18.3 to the reasonable satisfaction of the College Council within the time specified in the notice, the College Council may:
18.4.1 do anything that the College Council reasonably believes is necessary to rectify the breach; or

18.4.2 terminate this Agreement by written notice to the Operator.

18.5 All costs incurred by the College Council in rectifying the breach shall be a debt due from the Operator to the College Council, due and payable 30 days from receipt by the Operator of an invoice provided by the College Council to the Operator for such costs.

18.6 Nothing in this clause 18 affects any of the College Council's other rights under or in connection with this Agreement.

18.7 Termination in accordance with clause 18.4.2 will be effective from the date or receipt of the written notice referred to in clause 18.3.

18.8 The parties agree that no compensation is payable to the Operator if this Agreement is terminated in accordance with clause 18.4.2.

Termination for convenience

18.9 Either the Operator or the College Council may terminate this Licence for any reason by giving the other parties at least 6 months written notice.

19 DISSOLUTION OR CHANGE OF COLLEGE COUNCIL NAME

Dissolution of the College Council

19.1 Notwithstanding anything to the contrary in this Agreement, the parties acknowledge and agree that any order or legislative enactment or regulation dissolving the College shall for all purposes be deemed to have simultaneously effected a transfer by the College Council to the Minister of the whole of the College Council's rights, title, interest and obligations under this Agreement except where a new College Council is to be substituted, in which case the deemed transfer is to the new College Council rather than the Minister.

Change of College Council or Operator name

19.2 If the College Council or the Operator changes its name, no transfer of its rights, title, interest and obligations occurs, but the College Council or Operator, as relevant, shall notify the other party of the change in name in writing.

20 NOTICES

Method of giving Notices

20.1 A notice, consent, approval or other communication under this Agreement shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

20.1.1 hand delivered;

20.1.2 sent by prepaid and certified mail; or

20.1.3 transmitted by email,

to that person's address.
Address for Notices

20.2 For the purpose of this clause 20.2 the address and facsimile number of each party will be those addresses set out in Item 7 of the Schedule, or such other addresses as may be substituted under clause 20.3.

New address

20.3 Where notice of a new address has been given by any party to another party the new address will be substituted for the previous address of the party giving such notice as and from the date of service of such notice.

Time of receipt

20.4 A notice shall be deemed to have been received by the addressee:

20.4.1 in the case of delivery by hand, on delivery at the address of the addressee;
20.4.2 in the case of a posted letter, on the second (seventh, if posted to or from a place outside Australia) day after posting; or
20.4.3 in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient, unless the delivery is made on a non-business day, or after 4.00pm on a business day, in which case the communication will be deemed to be received on the next business day.

21 GOVERNING LAW

21.1 This Agreement shall be construed according to the law of the State of Victoria.

22 VARIATIONS

22.1 No addition to or variation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of all parties.

23 WAIVERS

23.1 No waiver or indulgence by any party to this Agreement shall be binding upon the parties unless in writing. A waiver of one breach of any term or condition of this Agreement shall not operate as a continuing waiver unless so expressed nor operate as a waiver of another breach of the same or any other term or condition of this Agreement.

24 FURTHER ACTS

24.1 The parties shall promptly do and perform such further acts and execute and deliver all further instruments required by Law or reasonably requested by any other party, to establish, maintain and protect the respective rights and remedies of the other parties and to carry out and effect the intent and purpose of this Agreement.
25 CONFIDENTIALITY

25.1 Except as expressly provided in clause 25.2 below the parties shall treat as confidential all information which comes into their possession pursuant to or as a result of or in the performance of this Agreement and shall not, without the permission of the College Council, disclose such information to an outside party.

25.2 The exceptions to the parties' confidentiality obligations in clause 25.1 above are:

25.2.1 where the information is required to be disclosed in order for the relevant party to perform its obligations under this Agreement;

25.2.2 where disclosure is required by law;

25.2.3 where information is already in the public domain unless it is in the public domain due to a breach of confidence;

25.2.4 where the disclosure is otherwise consented to by all the parties; and

25.2.5 the publication of information such as is necessary to comply with government policy.

26 ENTIRE AGREEMENT

26.1 This Agreement contains the entire agreement between the parties and supersedes any other communications or representations or earlier written or verbal agreements made in connection with the subject matter of this Agreement.

27 COUNTERPARTS

27.1 This Agreement may be executed in any number of counterparts all of which taken together shall be deemed to constitute one and the same instrument.

28 GST

28.1 Where a party to this Agreement (the 'Supplier') makes a Taxable Supply under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement to another party to this Agreement (the 'Recipient') and the consideration otherwise payable for the Taxable Supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Recipient the amount of any GST on the Taxable Supply.

28.2 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the Taxable Supply (taking into account any Adjustment Events that occur in relation to the Taxable Supply), an adjustment will be made. If the amount paid by the Recipient exceeds the GST on the Taxable Supply, the Supplier will refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the Taxable Supply, the Recipient will pay the deficiency to the Supplier.

28.3 Where a party to this Agreement is entitled, under or in connection with this Agreement or in connection with any matter or thing occurring under this Agreement, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its
costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credits available in respect of those costs.

28.4 A party will not be obliged to pay any amount in respect of GST to the other party unless and until a valid tax invoice (being an invoice that complies with the GST Legislation) has been issued in respect of that GST.

29 RELATIONSHIP OF THE PARTIES

29.1 No party to this Agreement is a partner, agent or trustee of the other party. No party has the power or authority directly or indirectly through its employees or agents to bind the other party to any agreement, negotiate or enter into any binding relationship for or on behalf of the other party, or pledge the credit of the other party.
EXECUTION AND DATE

Executed as an Agreement.

Date:

The Common Seal of the Western Heights Secondary College Council was affixed by order of the Council and in the presence of the President of the College Council and its Authorised Appointee:

________________________________________  __________________________________________
Signature of President of College Council  Signature of Authorised Appointee

________________________________________  __________________________________________
Name of President of College Council in full  Name of Authorised Appointee in full

Signed for and on behalf of Greater Geelong City Council by

________________________________________
pursuant to a proper delegated authority in the presence of:

________________________________________
Signature

________________________________________
Signature of Witness

________________________________________
Name of Witness in full
Signed for and on behalf of [insert name of the Operator] by its authorised representative in the presence of:

______________________________________________
Signature of authorised representative

______________________________________________
Signature of Witness

______________________________________________
Name of Witness in full

[Note: Execution clause for the Operator may need to change depending on the organisation involved]
SCHEDULE

Item 1  Commencement Date - clause 1.1
[Insert agreed Commencement Date]

Item 2  Licence Fee - clause 2.3
$11,000.00 (GST Inclusive)

Item 3  Initial Term - clause 2.8
3 years

Item 4  Further Term - clauses 2.9 to 2.10
2 years

Item 5  Library Opening Hours - clauses 1.1 and 4.1
Library Opening Hours – During School Term
8.30 am to 4.00 pm Monday, Tuesday, Thursday and Friday
8.30 am to 8.00 pm Wednesday
9.00 am to 12 noon Saturday

Library Opening Hours – During School Holidays
9.00 am to 4.00 pm Monday
9.00 am to 8.00 pm Wednesday
9.00 am to 12 noon Saturday

Item 6  Insurance - clause 16
(a) Public liability insurance which provides the Operator including its employees
(while acting in the course of their employment) with at least $20,000,000
cover per event against any liability resulting from death or personal injury or
the destruction of or damage to property occurring in or on the Cafe and
Kitchen Area or arising out of or in relation to the use of the Cafe and Kitchen
Area and the other areas that the Operator is permitted to access pursuant to this
Agreement.

(b) Product liability insurance which provides the Operator with cover of at least
$10,000,000.

(c) Industrial Special Risks Insurance (or equivalent) in respect of the
reinstatement or replacement value of all apparatus and equipment located in
the Cafe and Kitchen Area, including the fixtures and fittings installed by the
College Council.

(d) Workers compensation insurance or similar insurance as required by State or
Federal Law.
(c) If any volunteer workers are working in the Cafe and Kitchen Area, insurance equivalent to workers compensation insurance in respect of those volunteer workers.

Item 7 Addresses for Notices - clause 20

The College Council:

The Executive Officer
Western Heights Secondary College Council
37-61 Vines Road
HAMLYN HEIGHTS VIC 3215

PO Box 784
GEELONG VIC 3220

Fax: (03) 5215 0245

CoGG:

The General Manager Community & Recreation
Greater Geelong City Council
City Hall
30 Gheringhap Street
GEELONG VIC 3220

PO Box 104
GEELONG VIC 3220

Fax: (03) 5227 0277

The Operator:

[Insert Operator's contact details, including fax number]
ANNEXURE A

Plan 1

Plan showing the Library, the Cafe and Kitchen Area, the Shared Lounge and the Shared Amenities
ANNEXURE B

List of Fittings and Equipment supplied by the College Council

- Hot and cold water supply, sink and hand washing facilities
- Benches and counter tops, power points, lights and fittings
- Exhaust extraction unit
- Commercial gas stove
- Fridges - 1 x 2 door fridge, 1 x 1 display fridge
- Freezer – 1 x 1 door upright freezer
- Domestic dishwasher
- Bain Marie (6 bin) – wet/dry (standard power supply)
- 2 x food warmers
- Microwave
- 3 x Sandwich Toasters – 2 large / 1 small
- Toaster
- Basic kitchen items – saucepans, crockery, utensils
- Inside furniture
- Outside furniture
- Security coverage