

# Stuartholme School Facility Hire Agreement 2016

## Terms and Conditions

### Background

- A The Hirer wishes to hire the Facility from the Owner.  
B The Owner has agreed to hire the Facility to the Hirer on the terms and conditions contained in this Agreement.

### 1 Interpretation

#### 1.1 Definitions

#### 1.2 In this Agreement:

**Agreement** means this agreement including the schedule to it.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Brisbane.

**Equipment** means:

- (a) any plant, equipment, fittings, furnishings, furniture and other items located in or on the Facility; and
- (b) which the Owner otherwise makes available for use by the Hirer.

**Facility** means the facility specified in **item 2** of the **schedule**, including any Equipment located in the Facility.

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

**Hire Fee** means the fee specified in **item 5** of the **schedule**.

**Hire Periods** means the periods specified in **item 3** of the **schedule**.

**Hirer's Associates** includes the Hirer's personnel and the Hirer's contractors, customers, clients and invitees.

**Loss** means any loss (including loss of profit and loss of expected profit), claim, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which a person pays, suffers or incurs or is liable for, including:

- (a) interest and other amounts payable to third parties; and
- (b) legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action whether or not resulting in any liability, and all amounts paid in settlement of any claim or action.

**Owner** means Stuartholme School ABN 19 091 211 451 of Birdwood Terrace, Toowong.

**Permitted Purpose** means the purpose specified in **item 4** of the **schedule**.

**School** means Stuartholme School located at Birdwood Terrace, Toowong.

**Week** means the seven day period commencing on the Commencement Date and each successive seven day period.

### 2 Term

This Agreement commences on the Commencement Date and continues for the Term.

### 3 Hire of Facility

#### 3.1 Hire

Subject to this Agreement, the Owner grants the Hirer the right to use the Facility during the Hire Periods for the Permitted Purpose.

#### 3.2 Conditions of hire

The Hirer must:

- (a) only use the Facility during the Hire Periods and only for the Permitted Purpose;
- (b) not (and ensure that the Hirer's Associates do not) enter upon any areas of the School (other than the Facility and pedestrian access ways within the School for the purposes of accessing the Facility) without the Owner's prior written consent;
- (c) ensure the Facility is left clean and tidy and free from rubbish at the end of each Hire Period;
- (d) ensure that the Facility (including any Equipment) and the School are not damaged by the Hirer or the Hirer's Associates and promptly notify the Owner of any damage to the Facility or the School;
- (e) ensure that no Equipment is removed from the Facility (except with the Owner's prior written consent);
- (f) vacate the Facility (including removing all equipment brought in or on the Facility by the Hirer or the Hirer's Associates) by the end of each Hire Period;
- (g) ensure that any keys and security passes provided to the Hirer to enable the Hirer to access the Facility or the School are not duplicated and are returned to the Owner at the end of the term of this Agreement or when otherwise required by the Owner;
- (h) properly supervise all of the Hirer's Associates while in or on the Facility or at the School;
- (i) not carry on, or permit to be carried on, in or on the Facility or at the School, any activity which may be or become a nuisance, annoyance or danger to the Owner, its personnel, its students or any other third party;
- (j) allow the Owner and its personnel to access the Facility at any time without notice;
- (k) comply with all applicable laws relating to the Hirer's use of the Facility;
- (l) comply with all reasonable policies and procedures (including in relation to safety, security and access) of the Owner in connection with the Facility and the School from time to time;
- (m) comply with all reasonable directions of the Owner (including verbal directions) in connection with the Facility or

- the School; and
- (n) notify the Owner of any accidents or other incidents involving injury to persons or property damage which give, or may give, rise to a claim under a policy of insurance.
- 3.3 Car parking**  
Without limiting **clause 3.2**, the Hirer must, and must ensure that the Hirer's Associates, comply with any reasonable directions (including verbal directions) given by the Owner in connection with car parking arrangements at the School.
- 3.4 Removal from School**  
If, in the opinion of the Owner, the behaviour of a Hirer's Associate at the School is objectionable, improper or undesirable, the Hirer must, on request by the Owner, ensure that the Hirer's Associate immediately leaves the School.
- 4 Hire Fees**
- (a) The Hirer must pay the Hire Fees to the Owner.  
(b) The Owner will invoice the Hirer for the Hire Fees at the times set out in **item 6** of the **schedule**.  
(c) The Hirer must pay each such invoice within 10 Business Days of receipt.
- 5 Indemnity**
- 5.1 Indemnity**  
The Hirer indemnifies the Owner and its personnel against all Loss arising directly or indirectly from any:  
(a) breach by the Hirer or its personnel of this Agreement; or  
(b) act or omission (including any negligence, unlawful conduct or wilful misconduct) by the Hirer or the Hirer's Associates relating to this Agreement.
- 5.2 Independence of indemnities**
- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Hirer and survives the termination of this Agreement.  
(b) It is not necessary for the Owner to incur expense or make a payment before enforcing any indemnity conferred by this Agreement.
- 6 Insurance**
- 6.1 Insurance policies**  
The Hirer must maintain with a reputable insurer during the term of this Agreement:  
(a) public liability insurance of at least the value specified in **item 7** of the **schedule** for each event; and  
(b) workers' compensation insurance as required by law.
- 6.2 Evidence of insurance**  
The Hirer must provide the Owner with a copy of certificates of currency for the public liability insurance required to be maintained under **clause 6.1** within five Business Days after:  
(a) the date of this Agreement; and  
(b) upon reasonable request by the Owner.
- 7 Liability**
- 7.1 Own risk**  
The Hirer uses the Facility entirely at its own risk.
- 7.2 No warranty**  
The Owner gives no warranty or representation that the Facility will be adequate or fit for the purposes of the Hirer (including the Permitted Purpose) and the Hirer acknowledges it has had the opportunity to inspect the Facility.
- 7.3 Exclusion of warranties**  
To the greatest extent permitted by law, all express and implied terms, conditions and warranties which otherwise might apply to, or arise out of, this Agreement are excluded other than:  
(a) as provided in this Agreement; and  
(b) terms, conditions and warranties which by law cannot lawfully be excluded or modified by agreement, including those under Part V of the *Trade Practices Act 1974* (Cth) (other than implied by section 69 of that Act) and corresponding provisions of state legislation.
- 7.4 Limitation of liability**
- (a) If the Owner is liable for a breach of a term, condition or warranty described in **clause 7.3(b)**, the Owner's liability is, to the fullest extent permitted by law, limited to any one or more of the following as the Owner determines in its absolute discretion:  
(i) the re-supply of the services; or  
(ii) the payment of the cost of having the services re-supplied.  
(b) Except as provided for in **clause 7.4(a)**, all of the Owner's liability arising out of or in connection with this Agreement, to the extent that it is not expressly excluded, is limited to the amount or amounts paid under **clause 4** of this Agreement.
- 8 Termination**
- 8.1 Termination by Owner without cause**
- (a) If the Term is for a period of greater than one month, the Owner may terminate this Agreement without cause, for

any reason in its absolute discretion, by giving not less than one month's prior written notice to the Hirer.

- (b) If the Term is for a period of one month or less, the Owner may terminate this Agreement without cause, for any reason in its absolute discretion, by giving not less than one day's prior written notice to the Hirer for each full Week of the Term (for example, if the Term is for a period of 24 days (three Weeks and three days), the Owner must give three day's prior written notice to the Hirer).

## 8.2 Termination for default

Either party (**Terminating Party**) may immediately terminate this Agreement by written notice to the other party (**Defaulting Party**) if:

- (a) the Defaulting Party does not carry out a material obligation under this Agreement and, in the case of a default which is capable of remedy, does not remedy that default within five Business Days after the Terminating Party serves written notice on the Defaulting Party requiring the default to be remedied; or
- (b) the Defaulting Party becomes subject to any form of insolvency or bankruptcy administration.

## 8.3 Other rights

If the Owner terminates this Agreement, it may without prejudice to any additional rights that it may have, retain any money paid to it by the Hirer and the Hirer must pay any amounts owing to the Owner within five Business Days.

## 9 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing; (**Note:** Faxes are considered a legal form of writing; emails are not unless a "Read Receipt" is requested.)
- (b) must be addressed as set out in **item 8** of the **schedule** (or as otherwise notified by a party to the other party from time to time);
- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with **clause 9(b)**; and
- (e) is taken to be received by the addressee:
- (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (iv) (in the case of delivery by hand) on delivery, but if the communication is taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

## 10 GST

Consideration under this Agreement includes GST, unless expressly specified as excluding GST (eg by "GST excl" or "plus GST"). Where GST is payable by an entity in relation to a supply that it makes under or in connection with this Agreement, and the consideration for that supply excludes GST, the party providing the consideration will pay an additional amount equal to the GST when any part of the consideration is first payable.

## 11 General

### 11.1 Legal costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

### 11.2 Amendment

This Agreement may only be varied or replaced by a document executed by the parties.

### 11.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### 11.4 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

### 11.5 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

### 11.6 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising

jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

**11.7 Assignment**

- (a) A party must not assign or deal with any right under this Agreement without the prior written consent of the other parties.
- (b) Any purported dealing in breach of this clause is of no effect.

**11.8 Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

**11.9 Entire understanding**

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. Neither party is liable to the other party in respect of those matters.
- (c) No oral explanation or information provided by a party to the other:
  - (i) affects the meaning or interpretation of this Agreement; or
  - (ii) constitutes any collateral agreement, warranty or understanding between the parties.

**11.10 Relationship of parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

CRICOS No: 00524E

ABN: 19 091 211 451

