

Instructions and Explanatory Notes for Completing a Community Joint Use Proposal

Managing Risk, Creating Certainty



CONTENTS

What do these Instructions and Explanatory Notes Cover?	<u>45</u>
Community Joint Use Agreement Process Flow	<u>56</u>
Glossary	<u>67</u>
What is a Community Joint Use Proposal?.....	<u>78</u>
Community Joint Use Proposal Overview	<u>89</u>
Section A: Administration.....	<u>940</u>
Items 1 and 2: School and Community Partner Details	<u>940</u>
Section B: The Land and the Facility	<u>940</u>
Item 3: The Land on which the Facility will be developed	<u>940</u>
Item 4: The Facility and the Construction Works.....	<u>940</u>
Item 5: Concept Plans of the Facility.....	<u>1044</u>
Item 6: Planning Permits for Development and Use.....	<u>1044</u>
Section C: Construction Phase	<u>1142</u>
Item 7: Construction Costs for the Works	<u>1142</u>
Item 8: Contributions by the Parties	<u>1142</u>
Item 9: Legal Costs for Preparing the Community JUA.....	<u>1142</u>
Item 10: Tendering and Construction.....	<u>1243</u>
Item 11: Construction Phase Insurance	<u>1344</u>
Item 12: Security for the Cost of Construction	<u>1344</u>
Section D: Licence Details and Date of Operation.....	<u>1445</u>
Item 13: Licence Term.....	<u>1445</u>
Item 14: Licence Fee	<u>1546</u>
Item 15: Date of Operation	<u>1546</u>
Section E: Use of the Facility	<u>1546</u>
Item 16: Permitted Use	<u>1546</u>
Item 17: Times of Use	<u>1647</u>
Item 18: Other Use Arrangements.....	<u>1849</u>
Item 19: Hire of the Facility.....	<u>1849</u>
Section F: Expense and Revenue Projections.....	<u>1920</u>
Item 20: Projected Operating Costs and Revenue	<u>1920</u>
Section G: Maintenance	<u>1920</u>
Item 21: Responsibility for General Maintenance	<u>1920</u>
Section H: Capital Works and Capital Expenditure.....	<u>2223</u>

Item 22: Responsibility for Arranging Capital Works.....	22 23
Item 23: Responsibility for Capital Expenditure	24
Item 24: Capital Works Plans.....	27
Section I: Utilities and Telecommunications	27 28
Item 25: Utilities Supplied to the Facility and Metering Arrangements.....	27 28
Item 26: Water.....	27 28
Item 27: Electricity	28
Item 28: Gas.....	28 29
Item 29: Telecommunications.....	29
Item 30: Additional Financial Obligations	29
Section J: Operational Phase Insurance.....	29 30
Item 31: Insurance Arrangements.....	29 30
Section K: Consultation between the parties	30 31
Item 32: Consultation Model.....	30 31
Section L: Final Checklist	31 32
Regional Approval	32
Submission to the Department.....	32

What do these Instructions and Explanatory Notes Cover?

This document is intended for use by School Councils and Community Partners that are local government authorities or not for profit entities, to assist them in understanding and completing a **Community Joint Use Proposal** which will in turn lead to a written **Community Joint Use Agreement**.

These instructions are part of a suite of documents that have been created as a practical resource to assist the parties on the journey from an initial joint use concept through to a legally binding **Community Joint Use Agreement** which must be signed by all parties before construction can commence.

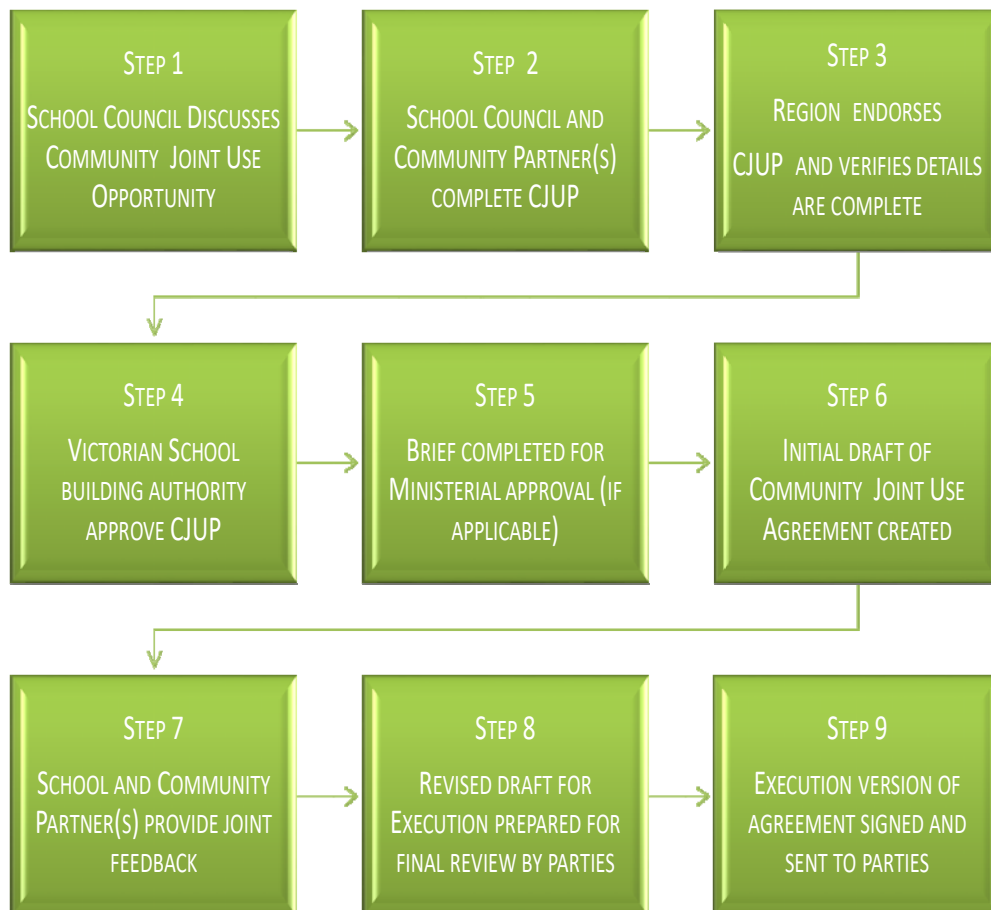
The complete suite of documents is described below.

Document Name	Description	Relevant because...
Guide to Understanding and Developing Community Joint Use Agreements	This is an overview of Community Joint Use Agreements , their key concepts and the processes to be followed to create them.	This document is an initial reference for School Councils and Community Partners to read prior to entering into discussions about a proposed Community Joint Use Facility.
Community Joint Use Proposal	Template document which captures essential information to enable the Community Joint Use Agreement to progress and the Community Joint Use Agreement to be drafted.	Form to be completed by parties to Agreement. Refer to Guidelines and Instructions for Completing a Community Joint Use Proposal
Instructions for Completing a Community Joint Use Proposal	Guidelines that provide supporting information to enable parties to complete the Community Joint Use Agreement .	The instructions assist the parties to understand the concepts and options available to them for the operation and upkeep of the Community Joint Use Facility.
Community Joint Use Agreement comprising: - Core Clauses; and - Options Clauses	The Community Joint Use Agreement is the formal legal agreement setting out the rights and responsibilities of the parties which is prepared by the Department. The Core Clauses form the standard terms and conditions for all Community Joint Use Agreements and are not negotiable. The Options Clauses allow the parties to select the approach that best suits their joint use arrangements.	A formal legal document is necessary to minimise risk and create certainty for the parties. This is important due to the significant investment of time and resources contributed by all parties to the agreement. The use of Core Clauses ensures key rights and obligations are clearly described, the agreement is binding and streamlines the process. The Options Clauses provide flexibility for key operational requirements.
Explanatory Table of Core Clauses	This document provides an explanation of the Core Clauses.	This document assists the parties to understand the content of and reason for the Core Clauses.

Community Joint Use Agreement Process Flow

Pictured below is an extract of the process flow for creating a Community Joint Use Agreement from concept through to producing a legally binding document. This process flow is an extract from "A Guide to Understanding and Developing Community Joint Use Agreements", a copy of which can be found on the Department's website at www.providelink.edu.au

Community Joint Use Agreement Process Flow



Glossary

In this document:

- **'Core Clauses'** means the standard non- negotiable clauses forming the first part of the template **Community Joint Use Agreement**. There are two versions – one for a Facility located on School land and one for a Facility located on land owned or managed by the Community Partner.
- **'Capital Works'** are considered to be those that prolong the life of the asset. These include non-recurrent expenditure required to extend the life of the facility. Examples include replacing floorboards, or buying a new roof. They are not regular maintenance activities
- **'Department'** means the Department of Education and Training.
- **'Facility'** refers to the building or other kind of community resource (such as a sporting field) being constructed, developed or refurbished.
- **'Guide'** means the Guide to Understanding and Developing **Community Joint Use Agreements** published by the Department.
- **'Instructions'** means this document.
- **'Options Clauses'** means the clauses forming the second part of the template **Community Joint Use Agreement** which contain numerous alternatives for the parties to select depending on their circumstances and needs.
- **'Parties'** means the Minister, the School Council (or School Councils if more than one) and the Community Partner (or Community Partners if more than one).
- **'Proposal'** means a Community Joint Use Proposal.
- **'Minister'** means the Minister for Education.
- **'Works'** means the construction or development works to build or refurbish the Facility.

What is a Community Joint Use Proposal?

A **Community Joint Use Proposal** is a document that needs to be completed jointly by a School Council and Community Partner when they wish to enter into a community joint use arrangement.

The **Proposal** form is a document that:

- Confirms the School Council's and the Community Partner's intention to enter into a **Community Joint Use Agreement** covering the construction or refurbishment of the Facility and its ongoing shared use.
- Contains information relevant to the preparation of the formal **Community Joint Use Agreement**, such as the type of Facility being constructed, the ownership of the land on which the Facility is located, joint use arrangements and the division of operational responsibilities for the Facility. This includes information about which Options the parties have selected in respect of key operational issues, such as ongoing maintenance.
- Records the agreement of the School Council and the Community Partner to key aspects of the arrangement, such as the provision of construction security where the Community Partner is responsible for construction but is not a local government authority and their agreement to use a specific type of Australian standard building contract.

The **Proposal** itself is not intended to be legally binding but it will lead to a formal written **Community Joint Use Agreement** which is legally binding.

The **Community Joint Use Proposal** must be completed in full before it is submitted to the Regional Office and the Victorian School Building Authority.

When completing the **Community Joint Use Proposal**, the School Council and the Community Partner need to identify which **Options** they have chosen in respect of the following critical areas related to the development, construction and operation of the Facility:

- construction phase responsibilities;
- permitted type of use of the Facility by each party;
- times for use of the Facility by each party;
- arrangement for payment of utilities;
- insurance;
- responsibility for regular maintenance;
- capital works and capital expenditure;
- consultation between the parties during the operational phase; and

The **Options Clauses** are explained in greater detail later in these Instructions.

Community Joint Use Proposal Overview

The **Community Joint Use Proposal** is made up of a number of Sections, as listed below. When completed, the **Proposal** will be used as the basis for drafting the **Community Joint Use Agreement**.

Section	Description
A	Administration
B	The Land and the Facility
C	Construction Phase
D	Licence Details and Date of Operation
E	Use of the Facility
F	Expense and Revenue Projections
G	Maintenance
H	Capital Works and Capital Expenditure
I	Utilities and Telecommunications
J	Operational Phase Insurance
K	Consultation Between the Parties
L	Final Checklist

These Instructions will cover each of the Sections, in order to assist the parties to complete the **Community Joint Use Proposal**. More detailed explanations are provided for the **Options Clauses** where the parties need to make a selection which best suits their joint use arrangement.

Section A: Administration

Items 1 and 2: School and Community Partner Details

The School Council and the Community Partner must complete their details as required by the **Proposal**. The name of the School Council must be identical to the School Council's Constituting Order. The parties' email addresses are requested for the purpose of corresponding with the parties during the discussion and documentation process.

Section B: The Land and the Facility

Item 3: The Land on which the Facility will be developed

Ownership of the Land

The parties need to state who owns the land on which the Facility will be constructed or developed. The land may be owned by the Minister or it may be Crown land. Alternatively, the land may be owned the Community Partner or may be Crown land which is managed by the Community Partner. Where the land is owned or managed by the Community Partner, the Community Partner is usually a local council.

Sometimes the Facility can be located on land owned or managed by different parties. If this is the case, the Proposal needs to clearly say so, the names of owner or manager must be stated and the parties need to clearly show on a plan which part of the Facility is located on which parcel of land.

Plan of the Land

The parties need to submit a plan of the land with the Proposal, unless the Facility is located wholly on School land, in which case the Department will hold a plan.

The provision of plans and information about the land ownership is critical to allow the Department to prepare an initial draft of the Community Joint Use Agreement. The Agreement cannot be progressed until all information in relation to ownership of the land and location of the Facility is provided.

Item 4: The Facility and the Construction Works

The Community Joint Use Agreement may cover the development or construction of a new Facility or the refurbishment of an existing Facility. Sometimes a Community Precinct is being developed comprising a combination of new and upgraded facilities. Examples can include building a new performing arts centre, upgrading an oval and installing an irrigation system and light towers, refurbishing existing change rooms and constructing a Community Hub.

In describing the Facility in the Proposal, it is important for the parties to include a reasonable level of detail of each element of the development. This includes listing quantities as much as possible. For instance, the parties should identify the number of car parks, including separate disabled spaces, or provide the number of light towers to be installed on an oval.

Item 5: Concept Plans of the Facility

The parties must submit with the **Proposal**, concept plans for the proposed development, which have been prepared by an architect. The Department cannot start preparing the **Community Joint Use Agreement** until these plans have been provided.

A concept plan is a preliminary plan drawn up by an architect showing, in general terms, the location, scale and components of the Facility. This includes both internal and external areas.

For internal areas, the plan should identify:

- the number of rooms, including common areas and storage areas; and
- the name of the room or the purpose for which an area will be used eg. Preschool indoor area, multi-purpose room, server room, storage areas, common areas.

For external areas, the plan should identify:

- the boundary of each external area of the Facility; and
- new landscaped areas and access paths being constructed as part of the development works.

If the parties are more advanced in their discussions preliminary construction plans may have been prepared. A plan of this type showing the entire Facility is also acceptable. However, there is no need to provide all of the preliminary construction plans to the Department.

Item 6: Planning Permits for Development and Use

Depending on the type of land on which the Facility is or will be located, a planning permit may be required for its development and another planning permit may be required for its use. The project architect will be able to discuss what planning permits are required and how these can be obtained.

School Councils do not require planning permits for their own educational activities. However, the Community Partner may require a planning permit for the use of School land if the proposed activity falls outside the operation of the school for educational purposes.

Section C: Construction Phase

Item 7: Construction Costs for the Works

The parties must detail the estimated costs for the construction or development Works. This estimate should include a component for consultants' fees related to the Works and a construction contingency. Consultants include architects, quantity surveyors and engineers.

The parties also need to identify the source of the cost estimate. A cost estimate is usually prepared by an architect or a quantity surveyor based on the concept plans or preliminary construction plans for the proposed Facility.

Item 8: Contributions by the Parties

The parties need to identify all monetary contributions being made towards the costs of the Works and legal fees incurred by the Department in preparing the Community Joint Use Agreement. The contributions of the School Council, Community Partner and the Minister need to be separately identified.

The School Council or the Community Partner will often be contributing funds obtained from grants allocated to them from the State or federal government. These contributions should still be identified as being a contribution made by the School Council or the Community Partner, as they are responsible for directing those funds.

The monetary contributions are in addition to any land that is being contributed by the Minister or the Community Partner.

Critically, the total of all monetary contributions **must** match the estimated total cost of construction as stated in **Item 7** of the **Proposal**, including all contingencies and consultants' fees, plus the estimated legal fees as stated in **Item 9**.

Item 9: Legal Costs for Preparing the Community JUA

The Department has developed a standard Community Joint Use Agreement (CJUA) template. This is comprised of core clauses that are the standard terms and conditions and options clauses, that allow for flexibility to suit the specific nature for each Community Joint Use Agreement. The legal costs incurred by the Department in preparing the Community Joint Use Agreement will be funded by the monetary contributions from the parties.

Item 10: Tendering and Construction

Party responsible for construction

The parties need to decide which of them will administer the tender process and enter into the building works contract, or whether this will be done by the Department on behalf of the Minister.

Required building contract

The building contract must be an **Australian Standard Contract AS2124-1992**, including the Department's current standard special conditions. This is a legal requirement for public construction, which includes construction on School land or construction using any public funds, such as funds contributed by a School Council or funds obtained from a government grant.

AS2124-1992 is a construct only contract which means that the design of the Facility needs to be completed before calling for tenders for its construction.

Tendering

The parties must finalise and sign the formal **Community Joint Use Agreement** before issuing the tender documents.

If the Community Partner is responsible for construction and the land is School land, then the Community Partner must:

- notify the other parties to the Agreement of the planned dates for the tender and evaluation process for the Works and invite the other parties to participate in that process before issuing the tender documents;
- if tenders for the Works are being called for by public notice, provide a copy of the notice to the School Council and the Department for approval prior to it being advertised; and
- comply with all Laws as well as ministerial directions, government policies and other requirements relevant to public construction;

If the Minister or the School Council is responsible for construction and the land is owned or managed by the Community Partner, then the School Council or the Department on behalf of the Minister (as the case may be) will have the same obligations.

Staged construction

Where the Works are to be carried out in stages, the parties will need to provide additional information with the **Proposal**. The parties need to identify:

- The number of stages;
- The Works comprising each stage;
- The proposed dates, or time frames, for each stage; and
- Whether use of the Facility will commence on a staged basis or only upon completion of all Works, that is, when the final stage is complete.

Item 11: Construction Phase Insurance

The prescribed building contract, AS2124-1992 contains specific requirements for insurance during the construction phase.

Where the Department on behalf of the Minister, or the School Council is responsible for construction, the Department or the Minister (as the case may be) will arrange the required insurance, as set out below.

The party responsible for construction must confirm that it will arrange for the following insurances to be in place during the construction phase.

Insurance Type	Description
Public Liability with a limit of \$20 million	<p>The public liability policy must cover:</p> <ul style="list-style-type: none">▪ the rights and interests of the principal under the building contract, the building contractor and all sub-contractors for the Works and their liabilities to third parties;▪ the liability of the building contractor and the principal under the building contract to each other for loss or damage to property (other than property required to be insured under a contract works policy of insurance described below);▪ liability for the death of or injury to any person other than a liability which is required to be insured under a workers' compensation policy of insurance.
Contract Works Insurance	<p>The contract works policy must cover the principal under the building contract, the building contractor and all subcontractors for the Works against loss or damage to the Works resulting from any cause.</p>

In addition, the parties and the building contractor will each hold workers' compensation insurance.

Item 12: Security for the Cost of Construction

Where the Facility is to be constructed on School land and the Community Partner is responsible for construction, but is not a local government authority, the Community Partner is required to provide partial security for the costs of construction.

This is to guard against the risk of the Community Partner failing to complete the construction process and the School being left with a partially completed building on its land.

The amount of security required is 10% of the total estimated construction costs. This is in line with construction industry standards. The security must be in the form of an unconditional bank guarantee or other similar undertaking in a form approved by the Department.

The formal **Community Joint Use Agreement** will provide for the security to be released in two stages – the first half within 14 days of completion of the Facility and the second half within 14 days of the issue of the final certificate under the building contract. The **Community Joint Use Agreement** will also provide that the School Council or the Minister may access the security only in particular circumstances, being:

- if a default event has occurred (as described in the Agreement);
- that event causes the School Council or the Minister to suffer loss;
- a written demand has been made to the Community Partner which has not been met; and
- and the Community Partner has failed to give adequate reasons why is not responsible for the loss.

Section D: Licence Details and Date of Operation

Item 13: Licence Term

The **Community Joint Use Agreement** includes the grant of a licence by the party who owns or manages the land to the other party, to use the land on agreed terms and conditions.

Community Joint Use Agreements generally commit the parties to working together for a long period of time. An initial licence term usually runs from 20 – 30 years. A lesser term may be agreed however, after referring this issue to the Department for consideration.

In addition, the parties often agree to a further licence term. The maximum further term is 20 years but again the parties can agree to a lesser period.

The party to whom use of the land is licensed, is called the licensee. Where the land is School land, the licensee will be the Community Partner. The licensee has a choice whether to apply to extend the **Community Joint Use Agreement** for the further term and does so by notifying its intention in writing to the other party between 6 and 12 months before the end of the initial term of the licence.

Where the Facility is located on School land, the Minister has a discretion whether to renew the licence for the further term. The Minister must consult with the School Council and act reasonably when exercising this discretion. Matters which will be relevant to the exercise of the discretion include whether the Community Partner has consistently met its agreed obligations in relation to the use and upkeep of the Facility and the state of the Facility at the end of the initial term.

Where the Facility is located on land owned or managed by the Community Partner, the process is essentially reversed and this discretion lies with the Community Partner. Again, the discretion must be exercised reasonably.

Item 14: Licence Fee

Where the Community Partner involved is a local government authority or a not for profit entity, the current government policy is that only a 'peppercorn' or nominal licence fee is payable. This licence fee is usually set at \$1.00 and made payable upon demand. The peppercorn licence fee is a legal requirement to ensure the **Community Joint Use Agreement** is binding and enforceable.

The position is different for Community Partners which are commercial entities. If this is the case, the parties should contact the Department as specific rules apply.

Item 15: Date of Operation

The parties need to indicate when they will commence using the Facility. This can be:

- from the completion of the construction or development Works;
- from the date of the formal **Community Joint Use Agreement** (ie. when the Agreement is signed by the Minister); or
- from an agreed date.

If the parties choose the third option above, they need to specify the agreed date.

Section E: Use of the Facility

Item 16: Permitted Use

The *Education and Training Reform Act 2006* (Vic) (**the Act**) sets out what activities are approved for schools and what use may be made of School land. School Councils may permit the use of school buildings and grounds for educational purposes or for recreational, sporting or cultural activities by students, the local community or young persons. The operation of a preschool program from a School is explicitly permitted.

The proposed use of the Facility by the licensee must be included in the Community Joint Use Agreement.

Where the land is owned or managed by the Minister, the School Council is responsible for approving any changes to the permitted use of the Facility. Where the land is owned or managed by the Community Partner, the School's conduct is still governed by the Act. However, the Community Partner is responsible for agreeing to proposed changes in use during the life of the Agreement.

Item 17: Times of Use

The parties need to agree on how they will share the use of the Facility on a day to day basis.

Listed below are the explanatory notes identifying the **Options** available to enable the parties to select the option that best suits their specific circumstances.

Option 1:

School access during agreed school hours and access by the Community Partner outside those hours. No overlapping use.

Option 1 is most frequently used. Under this Option, the School Council is entitled to use the entire Facility during agreed school hours and the Community Partner is entitled to use the entire Facility outside those hours but within agreed limit to those hours. The important feature of this Option is that there is no overlapping use of the Facility by the School Council and the Community Partner.

If the parties choose this Option, they need to identify in the **Proposal**:

- The agreed school hours. In this respect, there are two choices – the parties may select standard school hours of 8.00 am to 4.30 pm on school days or specify non-standard school hours.
- The times of use of the Community Partner outside school hours. This sets the outside limits for use of the Facility. These times may be dependent on the planning permit for use obtained by the Community Partner and the conditions contained in that permit.
- How they have agreed to share use during school holidays and student free days. This can either be stated in the **Community Joint Use Agreement** or parties can leave it to be negotiated at the relevant time.

Option 2:

Overlapping use by the school and the community partner although there may still be agreed school hours. Different parts of the Facility may have different agreed times of use.

Option 2 is often used when the Facility is designed for multiple specific uses, such as a Community Hub.

Under this Option, the School Council uses a part or parts of the Facility during agreed school hours (and sometimes also outside school hours) and the Community Partner uses other areas in the Facility both during and outside school hours. There is overlapping use of the Facility by school students and by the Community Partner or members of the public.

For instance, a Community Centre may house offices and other areas for the use of the School but also contain rooms for the delivery of maternal and child health services plus a community library intended for use by both school students and the general community.

If the parties choose this Option, they need to describe the proposed arrangements for the sharing of use in as much detail as possible. As part of this, the parties should identify whether there are any agreed school hours applicable to the School's use of the Facility. As noted above, standard school hours are 8.00 am to 4.30 pm on school days or the parties can agree to non-standard school hours. This also includes describing what the parties have agreed about sharing use during school holidays and student free days.

Option 3:

Calendar of use agreed between the parties on an annual basis

The third Option is where the School Council and the Community Partner decide to create a Calendar of Use to record all use of the Facility.

A Calendar of Use is prepared once a year, usually a few months before the end of the preceding school year, although it can always be altered during the relevant year, with the consent of both parties. This is done following consultation between both parties. The first Calendar is prepared prior to the Date of Operation regardless of what time of the year it is.

One party takes primary responsibility for preparing and updating the Calendar of Use and providing a copy to the other party.

As with the previous two options, the Calendar of Use may reflect use by the School Council during agreed school hours. The parties need to indicate whether this is the case.

The Calendar of Use will also set out the use by the parties during school holidays and on student free days where this has been agreed in advance.

Free use by the School Council outside School Hours:

Unless the parties specifically agree not to include such a provision, the Community Joint Use Agreement will provide that the School Council is entitled to use the entire Facility, or a part of it, outside school hours, free of any charge for an agreed number of times during each term or year.

If the parties wish for the School Council to have this right they need to identify:

- The number of times per term or per year the School is to such use.
- Whether the School Council is entitled to use the entire Facility or just a section or area of the Facility.

If the parties do not want to include such a provision, they can tick a box in the **Proposal** reflecting this choice.

Item 18: Other Use Arrangements

Responsibility for management and operation of the Facility

Sometimes, the parties agree that one of them will be responsible for the overall management and operation of the Facility at all times. The types of facilities where this occurs are usually large stadiums or mixed sporting facilities.

If this is the case, the parties must advise the Department as this will need to be reflected in the Community Joint Use Agreement.

If the parties have not agreed to such an arrangement, then it is assumed that each party will be responsible for managing its use of the Facility during the times that it is entitled to use the Facility. This is the more typical arrangement.

Sub-licensing the Facility

The parties may agree as part of their arrangement to sub-licence a part of the Facility to another operator. Examples of this are the sub-licensing of a Preschool to a community organisation to run a kindergarten and the sub-licensing of a gymnasium to a skilled operator who will provide programs and potentially also supply and maintain specialised equipment.

If this is proposed, the parties need to advise the Department as it needs to be reflected in the Community Joint Use Agreement. The Department will need to include a specific clause designed to cover this situation.

Item 19: Hire of the Facility

Party responsible for hiring

There are two possible hire scenarios.

First, there is hire by the School Council during the times that it is entitled to use the Facility. This type of hire may be infrequent as the School is more likely to use the Facility for its own purposes. In particular, depending on the nature of the Facility, the School Council may wish to permit other schools in the area to use it during School Hours. The School may or may not charge for this use.

Second there is hire to the local community, which occurs outside school hours, during the times that the Community Partner is entitled to use the Facility. Usually, the Community Partner will be responsible for this hire. However, it is possible for the parties to agree that the School Council will be responsible. The responsible party sets the hire fees and ensures that hirers keep the Facility clean and have public liability insurance unless this is not required for policy reasons.

Area of the Facility available for hire

The parties need to confirm whether the whole of the Facility is available for hire to the community outside school hours or whether only some areas are available.

Hire revenue

The parties need to identify which of them will collect any hire fees. It is usually the party responsible for arranging the hiring. Such party is also usually responsible for maintaining the Facility (sometimes with a contribution from the other party) and the hire fees partially offset these costs.

Sometimes, the parties will have agreed to a revenue sharing agreement, although this is not typical. If so, this needs to be identified in the **Proposal** and may need to be described in the Community Joint Use Agreement.

Section F: Expense and Revenue Projections

Item 20: Projected Operating Costs and Revenue

As part of the discussions between the parties about the sharing arrangements for the proposed Facility, the parties should consider the likely operating costs. These include:

- maintenance costs
- expenditure on capital works (that is non-recurrent expenditure which improves the Facility)
- the cost of insurance
- the cost of utilities such as gas, electricity and mains water
- the need and potential cost of buying additional water for the Facility if it is a grassed area and water restrictions are in place; and
- the cost of employing any additional staff.

The parties should calculate projected operating costs for at least the first 10 years. These should be documented and a copy of these projections attached to the **Proposal** when it is submitted.

The parties should also carry out a similar exercise in relation to revenue generated by the Facility. It is often quite difficult to accurately project revenue, so the parties need to be conservative, especially if they are depending on revenue to partially fund operational costs. Again, such projections need to be submitted with the **Proposal**.

Where the parties are reliant upon the Facility to generate revenue and offset operational expenses, we recommend such projections should be prepared by a suitable independent consultant rather than the parties themselves. The parties also need to turn their minds as to which of them will meet any shortfall.

Section G: Maintenance

Item 21: Responsibility for General Maintenance

The parties need to agree on how they will share the maintenance of the Facility.

Listed below are the explanatory notes identifying the **Options** available to enable the parties to select the option that best suits their specific circumstances. If the Facility is a stadium, the parties must adopt the Department's template maintenance and capital schedules. Contact the Department for further information and a copy of these schedules.

Option 1:

One party is responsible for arranging and paying for all maintenance for the Facility, with the other party to reimburse it an agreed percentage of the costs or pay a fixed annual maintenance contribution. Option 1 is most frequently used.

If the parties choose this Option, they need to:

- Identify who will arrange and pay for maintenance in the first instance.
- Identify the percentage of costs to be reimbursed by the other party or the fixed annual maintenance contribution payable by the other party.
- Select the reimbursement arrangements from the alternatives provided.

Option 2:

One party is responsible for arranging and paying for all maintenance of the Facility, with the other party to reimburse it based on the extent of that party's use of the Facility. This is essentially a user pays system, where each party pays a share of the maintenance costs according to how much they actually use the Facility.

This reimbursement is calculated in arrears, once the use patterns are known.

If the parties choose this Option, they need to:

- Identify who will arrange and pay for maintenance in the first instance.
- Identify who will determine how much each party has used the Facility. This is usually the party who owns or manages the land on which the Facility is located. So, for School land, it will be the School Council and the land owned or managed by the Community Partner, the Community Partner will be responsible.
- Select the reimbursement arrangements from the alternatives provided.

Option 3:

The parties have agreed to be responsible for arranging and paying for the maintenance of separate areas of the Facility. This Option usually applies where there is little or no overlapping use of the different areas of the

Facility. However, this Option may include some areas of shared responsibility, such as common areas, access routes and storage areas.

Option 3 is often used when the Facility is designed for multiple uses and there are distinct areas which are used separately by the School and the Community Partner. An example would be a Community Hub containing a Preschool which is operated separately by a sub-licensee of the Community Partner from the remainder of the building, which is primarily used by the School.

If the parties choose this Option, they need to:

- Identify those areas which the School Council is responsible for maintaining.
- Identify those areas which the Community Partner is responsible for maintaining.
- Identify those areas where the responsibility for maintenance is shared.
- State each parties' share of the maintenance costs for the shared areas.
- State which party will arrange and pay for maintenance of the shared areas in the first instance.
- Select the reimbursement arrangements from the alternatives provided.

Option 4:

The parties have agreed to set out their maintenance obligations in a separate document called a Maintenance Schedule which will be attached to the finalised Community Joint Use Agreement.

A Maintenance Schedule is appropriate where:

- The parties wish to be very prescriptive about which of them is responsible for particular maintenance items e.g. which party is responsible for replacing light globes and which party is responsible for replacing lost keys.
- The parties wish to split responsibility for different components, such as one party being responsible for irrigation infrastructure with the other party responsible for the pump station.
- There are a number of different areas within the Facility and the parties have agreed to a different arrangement for maintenance in respect of those areas.
- The parties wish to identify as part of the Maintenance Schedule the frequency of the particular item of maintenance eg. top dressing an oval twice a year, mowing at least fortnightly in the spring and monthly otherwise.

Unless the Facility is a stadium, the parties may prepare their own Maintenance Schedule, subject to Department approval. This document should be attached to the **Proposal**. If the Facility is a stadium, the parties must adopt the Department's template maintenance schedule. Contact the Department for further information and a copy of the schedule.

Despite the parties' best endeavours, there may still be some items which have not been anticipated and covered by the Maintenance Schedule. This is particularly the case for minor maintenance items, such as pest control. The **Community Joint Use Agreement** will include a catch all provision whereby such costs are shared equally, although the parties are free to agree to a different arrangement on an as needs basis.

Option 5:

One party is responsible for arranging and paying for all maintenance for the Facility with no reimbursement from the other party. Option 5 is the most simple of the Options although it is used less frequently. This Option is often used where the Community Partner agrees to be responsible for operating the entire Facility. A typical example is a swimming pool.

Option 6:

The parties wish to establish and Operating Account to fund the maintenance of the Facility.

Option 6 provides the parties to the Agreement with the opportunity to have one account in which all revenue is collected. The maintenance, and in some cases, the ongoing operational costs can be funded from this account.

The parties may intend the Facility to be self-funding, however they may have to contribute to the operating account if there is a shortfall. It is important that the parties decide what the percentage contribution will be from each party in the event there is a shortfall.

Note that this account is only for operational expenses – it does not cover Capital Expenditure.

Section H: Capital Works and Capital Expenditure

Item 22: Responsibility for Arranging Capital Works

The parties need to agree on which of them is responsible for arranging Capital Works for the Facility. Capital Works refers to non-recurrent works which improve the Facility. Examples include installation of a new roof, the upgrading of services supplied to the Facility and complete replacement of playing surfaces.

Responsibility for the cost of such works, called Capital Expenditure, is addressed in a separately (see **Item 22** below).

This issue is dealt with by the **Options Clauses**.

Option 1:

One party is responsible for arranging all Capital Works in respect of the Facility.

This is the simplest option for the parties.

Option 2:

The parties agree to share responsibility for arranging Capital Works according to the area of the Facility involved.

This Option can be appropriate where there is little or no overlapping use of the different areas of the Facility. However, the parties do need to address which of them is responsible for arranging Capital Works in respect of shared areas, such as a shared entrance area and joint storage areas.

Another issue that the parties need to consider under this Option is responsibility for whole of building Capital Works, which are not otherwise referable to a specific area of the Facility. Examples include the installation of a new roof or the replacement of pipes or services for the entire Facility.

If the parties choose this Option, they need to:

- Identify those areas for which the School Council is responsible for arranging Capital Works.
- Identify those areas for which the Community Partner is responsible for arranging Capital Works.
- Identify who will be responsible for arranging whole of building Capital Works.

Option 3:

The parties have agreed to identify which of them will arrange what Capital Works in a Schedule

Option 3 applies where the parties have agreed to address their responsibility for arranging Capital Works in a separate Schedule to be attached to the completed **Community Joint Use Agreement**. This may occur if the parties have already decided to use a Maintenance Schedule to describe their maintenance responsibilities. The parties may provide separate schedules for maintenance and Capital Works or a combined Schedule addressing both maintenance and Capital Works (and possibly also Capital Expenditure – as discussed in **Item 22** below). If the Facility is a stadium, the parties must adopt the Department's template Schedule. Contact the Department for further information and a copy of the Schedule.

Again, a Schedule may be appropriate where the parties wish to split responsibility for Capital Works depending on the area of the Facility involved or the particular components involved.

The parties may prepare their own separate or combined Schedule, subject to Department approval. This document should be submitted with the **Proposal**.

Item 23: Responsibility for Capital Expenditure

The parties need to agree on how to share the cost of Capital Expenditure in respect of the Facility. Capital Expenditure is payment for Capital Works to the Facility, which was addressed in the previous **Item 21**.

The parties can select from the **Options** listed below.

Option 1:

Capital Reserve Account with Contributions by both parties

Option 1 is frequently used. This Option allows the parties to jointly contribute on an annual basis to a Capital Reserve which is held for the purpose of paying for Capital Works. The benefit of this approach is that the parties grow the Capital Reserve balance by ongoing contributions, leading to a smoothing effect in terms of the impact of Capital Expenditure.

By their nature, Capital Works occur less frequently than recurring maintenance but often represent a large outlay at the time. An example would be the replacement of the synthetic playing surface for a sporting field. This may only occur once every 15 years but the cost is likely to be in the tens of thousands.

A Capital Reserve gives the parties more security that the funds will be available as and when they are required.

Where the Facility is located on School land and the Community Partner is not a local government authority, the Department requires the parties to use this Option.

If the parties choose this Option, they need to identify:

- Which party will be responsible for opening and maintaining the Capital Reserve Account. Where the Facility is located on School land, this is usually the School Council. Where the Facility is located on land owned or managed by the Community Partner, this is usually the Community Partner.
- The amount which the parties' propose to contribute annually to the Capital Reserve, starting from 12 months after the Facility commences operation (ie. the Date of Operation). This issue of what contributions are appropriate is further discussed below.

How the parties have agreed to share responsibility for any shortfall in the Capital Reserve.

Determining the amount of the parties' contributions to the Capital Reserve

The Department of Treasury and Finance has identified a **default position** for annual Capital Reserve contributions for facilities located on School land. That default position calls for a combined annual contribution of 1.5% of the estimated

construction costs for the Facility during the initial term, rising to 2% of the estimated construction costs during the further term.

Usually, both parties contribute equally towards the total annual amount. Where the estimated construction costs are \$1 million, this would translate to an annual joint contribution by the parties of \$15,000 for the initial term, rising to \$20,000 for the further term. With two parties contributing equally towards the total amount, each would pay \$7,500 a year during the initial term and \$10,000 a year during the further term.

For facilities located on School land, if the parties wish to deviate from this default position, they need to:

- Provide the Department with a projected schedule of Capital Reserve Contributions for the initial term and the further term. For many facilities, contributions will be lower during the first 3 years increasing gradually to an amount which is then indexed by CPI for the remainder of the initial and the further term. An example might be \$2,000 in the first year, increasing to \$3,000 for years 2 and 3, then increasing to \$5,000 for the following years, adjusted annually by CPI if there has been an increase in the CPI in the intervening period.
- Supply the Department with Capital Expenditure projections supporting the proposed schedule of contributions. These projections must be submitted with the **Proposal**.

Option 2:

One party responsible for all Capital Expenditure

Option 2 is the most simple. Under this Option, one party is responsible for paying for all Capital Expenditure in respect of the Facility with no reimbursement from the other party.

This Option may be selected if the parties are confident that the Facility will be self-funding from the revenue generated by community use outside school hours. In such a situation, the Community Partner is usually responsible for the hiring of the Facility and receiving the proceeds of such hire. In this scenario, it is not unusual for the Community Partner to take on responsibility for arranging and paying for all maintenance, arranging all Capital Works and paying all Capital Expenditure.

Option 3:

Shared responsibility based on agreed percentage contribution

Under Option 3, the parties have agreed to share responsibility for Capital Expenditure by each contributing an agreed percentage of such costs, as and when the costs arise.

This Option differs from Option 1 in that the parties only pay for Capital Expenditure as it is incurred rather than building a Capital Reserve over time.

The disadvantage with this approach is that, in some years, Capital Expenditure may be very high. The parties need to be very certain of their Capital Expenditure projections and the source of funds to pay for such Capital Expenditure before selecting this Option.

If the parties choose this Option, they need to:

- Identify which party is responsible for payment of Capital Expenditure in the first instance.
- Identify the percentage of costs to be reimbursed by the other party.
- Select the reimbursement arrangements from the alternatives provided.

Option 4:

Each party responsible for specific areas of the Facility

Under Option 4, the parties have agreed to share responsibility for Capital Expenditure according to the area of the Facility involved. This Option may be appropriate where there is little or no overlapping use of the different areas of the Facility. However, the parties do need to address which of them is responsible for paying for Capital Expenditure in respect of shared areas or whole of building Capital Works.

If the parties choose this Option, they need to:

- Identify those areas for which the School Council is responsible for Capital Expenditure.
- Identify those areas for which the Community Partner is responsible for Capital Expenditure.
- Identify any areas for which the responsibility for Capital Expenditure is shared.

Option 5:

The parties have agreed to share Capital Expenditure as identified in a Schedule

Option 5 applies where the parties have agreed to address their responsibility for Capital Expenditure in a separate Schedule to be attached to the completed Community Joint Use Agreement. This may occur if the parties have already decided to use a Schedule to describe their maintenance and Capital Works responsibilities. The parties can provide a separate schedule covering Capital Expenditure or a combined Schedule addressing maintenance, Capital Works and Capital Expenditure together.

Unless the Facility is a stadium, the parties may prepare their own separate or combined Schedule, subject to Department approval. This document should be submitted with the **Proposal**. If the Facility is a stadium, the parties must adopt the

Department's template schedule. Contact the Department for further information and a copy of the schedule.

Item 24: Capital Works Plans

The formal **Community Joint Use Agreement** provides for the parties to prepare and update rolling Capital Works plans.

Where the Facility is located on land owned or managed by the Minister, the parties must meet within 3 months of the Date of Operation and together prepare a 10 year rolling Capital Works plan for the Facility. This plan must be updated annually.

Where the Facility is located on land owned or managed by the Community Partner, the parties must meet within 3 months of the Date of Operation and together prepare a rolling Capital Works plan in accordance with the Community Partner's standard planning cycle.

Section I: Utilities and Telecommunications

Item 25: Utilities Supplied to the Facility and Metering Arrangements

The parties need to identify which utilities are supplied to the Facility and whether they are separately metered.

For facilities on School land, the Department's preference is that all utilities are separately metered from the remainder of the School, or have a check meter or other suitable device installed, where this is feasible.

The Department recognises however that this is not usually feasible for mains water.

Item 26: Water

The parties need to describe the arrangements for the payment of mains water supplied to the Facility if mains water is supplied to the Facility.

This involves:

- Identifying which party is responsible for payment of mains water charges in the first instance.
- Indicating whether there will be any reimbursement by the other party and, if so, will this be done on the basis of a percentage or by use.
- Where this is necessary due to metering arrangements, which party will calculate the amount to be reimbursed? For facilities located on School land, this is usually the School Council. For facilities located on land owned

or managed by the Community Partner, this is usually the Community Partner.

- Selecting the reimbursement arrangements from the alternatives provided.

As noted above, mains water cannot usually be separately metered. It is therefore important for the parties to consider how they will determine what part of the total water bill for all buildings on the land is referable to the Facility. One way this can be done is by area, which is then translated into a percentage of total costs.

Item 27: Electricity

The parties need to describe the arrangements for the payment of electricity costs if electricity is supplied to the Facility.

This involves:

- Identifying which party is responsible for payment of electricity charges in the first instance.
- Indicating whether there will be any reimbursement by the other party and, if so, will this be done on the basis of a percentage or by use.
- Where this is necessary due to metering arrangements, which party will calculate the amount to be reimbursed. For facilities located on School land, this is usually the School Council. For facilities located on land owned or managed by the Community Partner, this is usually the Community Partner.
- Selecting the reimbursement arrangements from the alternatives provided.

Item 28: Gas

The parties need to describe the arrangements for the paying the cost of gas, if this is supplied to the Facility.

This involves:

- Identifying which party is responsible for payment in the first instance.
- Indicating whether there will be any reimbursement by the other party and, if so, will this be done on the basis of a percentage or by use.
- Where this is necessary due to metering arrangements, which party will calculate the amount to be reimbursed. For facilities located on School land, this is usually the School Council. For facilities located on land owned or managed by the Community Partner, this is usually the Community Partner.
- Selecting the reimbursement arrangements from the alternatives provided.

Item 29: Telecommunications

The parties need to identify what any telephone, internet and other telecommunication charges are applicable for the Facility, and which of them is responsible for these costs.

This involves identifying:

- If the School Council is responsible for all such costs.
- If the Community Partner is responsible for all such costs.
- If the parties have agreed to a sharing arrangement, in which case further details need to be provided.

A situation in which this may be particularly relevant is a shared use library facility.

Item 30: Additional Financial Obligations

If there are additional financial obligations in relation to the operation of the Facility, then the School Council and Community Partner use this section to confirm their obligations. This may include the cost of employing staff or engaging contractors.

Section J: Operational Phase Insurance

Item 31: Insurance Arrangements

In formulating the insurance provisions for the template **Community Joint Use Agreement**, the Department has consulted with its insurer, the Victorian Managed Investment Authority (VMIA) and has taken into account the arrangements between VMIA and the insurer of most local government authorities, Civic Mutual Plus (CMP).

Following the completion of construction, the parties are required to arrange three types of insurance during the operational phase.

Public liability insurance

The School Council is automatically covered under the Department's umbrella public liability policy with VMIA.

The Community Partner is required to confirm that it will arrange public liability insurance during the term of the licence (commencing from the Date of Operation) with cover for \$20 million per event.

Property damage insurance

The parties need to agree which of them will be responsible for obtaining insurance in respect of any damage to the Facility and its contents.

Where the Facility is located on School land, unless the Facility is entirely within the School's entitlement, the parties will need to obtain a stand alone insurance policy in respect of the Facility separate from the Department's umbrella policy with VMIA. The issue of entitlement is addressed in more detail in the **Guide**. However, all

Community Joint Use facilities will be partly or completely in excess of the School Council's entitlement. This means the parties need to agree which of them will be responsible for obtaining a separate policy and how the cost will be shared.

For facilities located on land owned or managed by the Minister, either the School Council or the Community Partner may obtain the policy. If the Community Partner obtains the policy, it must also ensure that the School Council and the Minister are named as insureds.

The insurance must cover the reinstatement or replacement value of the Facility and any plant, equipment or property belonging to or used by the State of Victoria, the School Council or the Community Partner which is housed, stored, kept or used in or on the Facility. For facilities located on land owned or managed by the Community Partner, the Community Partner usually obtains this insurance.

Workers' compensation insurance

The Community Partner must enter into and maintain at all times during the licence term workers' compensation insurance or similar insurance as required by State or Federal Law, including in respect of any volunteer workers.

The Minister holds a similar policy covering the School Council.

Section K: Consultation between the parties

Item 32: Consultation Model

It is important for the parties to meet regularly during the term of the **Community Joint Use Agreement** to discuss issues affecting the Facility and its operation.

It is not an option for the parties to select a committee of management model as the Department has in the past experienced difficulties with:

- Committees that failed to meet.
- The preference for the parties as primary stakeholders to have ultimate responsibility for the Facility.
- Obtaining insurance for the actions of the committee and its members.
- Committees with insufficient skills and experience to take on operational responsibilities.
- The risk of legal liability attaching to the members of the committee.

Instead, the Department endorses a consultation model which does not affect the rights and liabilities of the parties as agreed between the parties and contained in the **Community Joint Use Agreement**.

There are two Options for the parties to choose between.

Option 1

Regular meetings scheduled between the school Principal and the Community Partner representative

This Option calls for regular meetings between the School Principal and a representative appointed by the Community Partner who has authority to bind the Community Partner.

The meetings will be held at such places and such times as the Principal may reasonably determine where the Facility is located on School land, or as the Community Partner Representative may reasonably determine where the Facility is located on land owned or managed by the Community Partner.

At the meetings, the Principal and the Community Partner Representative will discuss issues relating to the Facility and its use, recommended actions and where possible reach resolutions on the issues.

The difference between this alternative and the Advisory Group discussed below is that the Principal and Community Partner Representative can reach agreement to bind the parties whereas the Advisory Group makes recommendations to the parties.

Option 2

Advisory Group

The other alternative is for the parties to establish an Advisory Group. This Group must be established within 14 days of the Date of Operation, consisting of:

- The Principal.
- A representative of the School Council.
- A representative of the Community Partner.
- If desired by the parties, a single representative from key users or community groups which the School Council and the Community Partner agree should be represented on the Advisory Group.

The parties need to decide how often the Advisory Group will meet. The Group cannot conduct business unless at least three people are present including the Principal and the Community Partner Representative.

The role of the Advisory Group is to provide advice and recommendations to the School Council and the Community Partner in relation to the operation and use of the Facility. The Advisory Group cannot bind any of the parties to the Agreement.

Section L: Final Checklist

The parties need to complete the final checklist before submitting the **Proposal**.

The purpose of the checklist is to ensure that key information has been provided as part of the **Proposal** and that the parties understand that the formal Community Joint Use Agreement will consist of **Options Clauses**, as selected by the parties, and **Core Clauses**, whose content is discussed in the Explanatory Table that can be read in conjunction with these instructions and the template Community Joint Use Agreement. Each of the **Core Clauses** is discussed in the Explanatory Table.

Signatories

The **Proposal** must be signed by the Principal on behalf of the School and also signed on behalf of the Community Partner by their nominated representative. Before the School Principal signs the **Proposal**, it must be been discussed at a meeting of the School Council and the School Council's approval of the content of the **Proposal** minuted.

Regional Approval

Once the Proposal has been completed and signed the School Council sends the Proposal to the Region for approval.

Submission to the Department

The Region is responsible for ensuring that all required information is contained in the Proposal. If all the required information has been supplied, and the Region otherwise has no concerns about the Proposal, the Regional Director shall sign the Proposal form indicating that the Region has approved the Proposal and send it to the Victorian School Building Authority.

The next steps after this are explained in the **Guide** and illustrated in the process flow diagram for the development of a Community Joint Use Agreement appearing at the start of these Instructions.

Content of the formal Community Joint Use Agreement

In addition to the Options Clauses, the formal Community Joint Use Agreement prepared by the Department will contain a number of Core Clauses. These are standard clauses designed to ensure consistency and clarity. Each of the Core Clauses is discussed in the Explanatory Table.