

# Use of Facilities by Others (“third party”) Application Form and Agreement

From time to time Melbourne Montessori School (“MMS”) permits named third party organisations to use its facilities. These third party organisations are external to the school but may have close connections, some connections or none at all.

The school can use this document as a checklist when a third party applies to use MMS facilities for its own use (e.g. for a meeting) or to use MMS facilities to market, offer or sell its activities, services or products.

An organisation wishing to make an application to use MMS facilities is required to read the MMS Use of Facilities Policy and then complete the Agreement<sup>1</sup>.

There are two parts to the Agreement:

- 1 **Application Form:** The school will use the information contained in the application form as the basis for deciding whether or not to give provisional approval for the third party to use its facilities for the specified purpose.
- 2 **Agreement:** Following provisional approval, the school and the third party will need to exchange and record information to enable the school and the third party to assess the operational and financial impact of entering into the Agreement.

In assessing the proposal, the school will need to weigh up the benefits and the costs of entering into such an agreement. The checklist serves as a reminder to ensure all the relevant benefits and costs are considered.

Application Form (headings only)	Examples and commentary
1 Names, etc. <ul style="list-style-type: none"> <li>• Full name of the third party</li> <li>• Full name of nominated contact person acting on behalf of and with the authority of the third party</li> <li>• Address</li> <li>• Contact details (include phone and email)</li> <li>• ACNC registration status (if applicable)</li> <li>• ABN (if applicable)</li> <li>• DGR status (if applicable)               <ul style="list-style-type: none"> <li>○ As an endorsed entity in its own right</li> <li>○ As a fund within an entity</li> </ul> </li> </ul>	<i>E.g.</i> <ul style="list-style-type: none"> <li>• <i>Caulfield Yoga School</i> <i>Mrs XXXX</i> <i>Address and contact details</i> <i>ABN 12345678</i> <i>ACNC not registered</i> <i>Not DGR endorsed</i></li> </ul>

<sup>1</sup> MMS is advised to create a Business Plan specifically for each third party arrangement. The purpose of this document is to assist MMS by creating a checklist for the items that should or could be included in the Business Plan, the application form and the agreement.

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Application Form (headings only)	Examples and commentary
<p>2 Provide a summary of the third party organisation and its purpose</p>	<p><i>Sample wording:</i></p> <ul style="list-style-type: none"> <li>• Mrs XXXX founded Caulfield Yoga School in 2004. It currently operates from the premises it owns at 23 Smith Street, Caulfield. There are currently 26 classes per week, run by contracted teachers, with approximately 300 adult clients on the books. The business is planning to expand further over the next 12 months.</li> </ul>
<p>3 State in what way the third party is connected to the school.</p> <p>State whether the third party connection is a current parent, current member of staff, past parent, past member of staff, past student</p>	<p><i>Sample wording:</i></p> <ul style="list-style-type: none"> <li>• Caulfield Yoga School is not connected to the school.</li> <li>• The owner of this business is Mrs XXXX who is a past member of staff</li> </ul>
<p>4 Declaration that the third party has read and [promotes/holds values which are aligned to /will not act in a way that is contrary to] the principles and values of the MMS Third Party Marketing Policy<sup>2</sup>, the MMS Use of Facilities by Others Policy and the MMS school values.</p>	<p><i>Sample wording:</i></p> <p>"We declare we will not act in any way that is contrary to</p> <ul style="list-style-type: none"> <li>• The principles as set out in the MMS Marketing Policy,</li> <li>• The principles as set out in the MMS Use of Facilities Policy and</li> <li>• The MMS school values.</li> </ul> <p><i>We understand and support the school's commitment to child safety and its zero tolerance of child abuse"</i></p>
<p>5 Declaration that the school does not endorse the third party or its products and activities</p>	<p><i>Sample wording:</i></p> <p>"We understand that MMS does not endorse Caulfield Yoga School or its activities or products"</p>
<p>6 Declaration that the school will not be brought into disrepute by the third party</p>	<p><i>Sample wording:</i></p> <p>"Caulfield Yoga School undertakes not to bring MMS into disrepute as a result of or during the period of this Agreement"</p>

<sup>2</sup>The Third Party Marketing is only relevant if the third party is seeking to use the facilities to offer or sell activities, services or products.

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Application Form (headings only)	Examples and commentary
<p>7 State the purpose for which the external organisation plans to use the facilities</p> <p>Provide a summary description of the proposed activity, service and/or products being promoted.</p>	<p><i>Sample wording:</i></p> <p><i>The yoga school plans to use the hall for weekly yoga activities. There will be an hour-long class held between 6:30pm and 7:30pm on each of Tuesday and Thursday for 48 weeks per year. The class is open to staff, parents and members of the public.</i></p>
<p>8 State reasons for the third party seeking to use MMS facilities for its proposed activity, service or product</p>	<ul style="list-style-type: none"> <li>• <i>Caulfield Yoga School is expanding its business and so is seeking a facility to use for 3 or 4 years whilst building its client base and before purchasing a second more permanent site.</i></li> <li>• <i>The hall is suited to this purpose with ample parking. There is no other such facility available locally</i></li> </ul>
<p>9 State the maximum number of people using the facility at any one time</p>	<p><i>Sample wording:</i></p> <p><i>The maximum number of people in a class is 15 plus the teacher</i></p>
<p>10 State that the Agreement is subject to renewal on an annual basis.</p>	<p><i>Sample wording:</i></p> <p><i>"The Agreement is subject to renewal on an annual basis. For the avoidance of doubt the Agreement does not confer on the third party any legal estate or interest in the school premises or any part of it."</i></p>
<p>11 State the anticipated length of the time that the third party is likely to wish to use the facilities</p>	<p><i>Sample wording:</i></p> <p><i>The yoga school hopes to use the hall for 4 years but understands that this information is for planning purposes only and is not a binding commitment on either party.</i></p>
<p>12 State how the school will benefit from this use of its facilities</p>	<p><i>Sample wording:</i></p> <ul style="list-style-type: none"> <li>• <i>Financially</i></li> <li>• <i>Being a good neighbour</i></li> <li>• <i>Raising awareness of the school within the local community</i></li> <li>• <i>Staff and parents have access to the services</i></li> <li>• <i>Staff receive a discount</i></li> </ul>

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<p>13 In the case of an activity, service or product is it proposed to charge for all or any part of the activity, service or product?</p> <p>If Yes, how much?</p>	<p><i>Sample wording:</i></p> <p><i>Customers will be required to sign up for either 5 or 10 classes. Charges will be published on an annual basis; they are likely to be in the region of \$xxx + GST for 5 classes.</i></p>
<p>14 Is it proposed that MMS will benefit financially (or in-kind) from this promotion (other than any direct charge made for the use of the facilities)?</p> <p>If Yes, summarise what is proposed</p>	<p><i>Members of staff will receive a 5% discount</i></p>
<p>15 How does the third party plan to market the activity, service or product?</p> <p>State whether the main audience for the promotion is</p> <ul style="list-style-type: none"> <li>• students,</li> <li>• parents</li> <li>• teachers and other staff</li> <li>• other (e.g. visitors, the general public)</li> </ul> <p>If the main audience is children, is the promotion appropriate (see policy) and does the third party recognise that parents are the main decision makers?</p>	<p><i>For example:</i></p> <ul style="list-style-type: none"> <li>• <i>In the school Broadsheet</i></li> <li>• <i>Via the school's Facebook page</i></li> <li>• <i>Flyers for parents and visitors at the front desk</i></li> <li>• <i>Locally in shop windows</i></li> <li>• <i>Posters for the general public in the hospital and GP surgeries</i></li> </ul> <p><i>The main audience for the promotion is parents, staff and the general public</i></p>
<p>16 Will the promotion use the MMS logo or branding?</p> <p>If Yes, summarise the proposal</p>	<p><i>Sample wording:</i></p> <p><i>No</i></p> <p><i>"The marketing material will just use the name and address of the school. The name and phone number on the marketing material will be that of the Caulfield Yoga School contact."</i></p>
<p>17 Declaration that the Agreement does not give exclusive rights to the third part in respect of either the use of the facility or in respect to the activities, services or products</p>	<p><i>Sample wording:</i></p> <p><i>"Caulfield Yoga School accepts that this agreement does not give it exclusive rights to use of the hall nor to the provision of yoga classes"</i></p>
<p>18 Declaration that the Agreement may not be assigned to another party</p>	<p><i>Sample wording:</i></p> <p><i>"Caulfield Yoga School accepts that this agreement is between MMS and Caulfield Yoga School and must not be assigned to any other party"</i></p>

**Melbourne Montessori School Use of Facilities by Others ("third party") Application Form & Agreement**

Application Form (headings only)	Examples and commentary
<p>19 Signed and dated by the nominated contact person acting on behalf of and with the authority of the third party</p> <p>Signed and dated as provisionally approved by the                      [by the Principal/ by the Principal (or as delegated)/                      by the Principal acting on behalf of the School Board/                      by the School Board]</p>	<p><i>Note, it is good practice to notify the third party if a decision is taken not to approve the application.</i></p>

## Use of Facilities by Others ("third party") Agreement

A separate Agreement must be created for each third party arrangement. It is likely that the Agreement is written following consultation by the school and the third party.

Agreement (headings only)	Commentary
<p><b>1 Named Contact people</b></p> <ul style="list-style-type: none"> <li>• Names and contact details of third party personnel involved in the use of the facilities                             <ul style="list-style-type: none"> <li>○ Responsibility for notifying the school if/when those details change</li> </ul> </li> <li>• Names and contact details of school personnel managing the use of the facilities                             <ul style="list-style-type: none"> <li>○ Will the school representative be on site during the time that the facility is being used?</li> </ul> </li> </ul>	<p><i>It is recommended that there is a named person on each side of this agreement so that a one-to-one relationship is formed.</i></p> <p><i>It is recommended that the senior manager under whose auspices this agreement falls be also named.</i></p> <p><i>This is likely to be either the Principal or the Business Manager.</i></p>
<p><b>2 For the stated purpose</b></p> <ul style="list-style-type: none"> <li>• The Agreement must state the purpose for which the facility is being used and that it can't be used for any other purpose</li> </ul>	<p><i>The school will need to judge how restrictive the "purpose" needs to be. A breach of the purpose would be considered a breach of the Agreement and, therefore, grounds for termination.</i></p>
<p><b>3 The detailed activities</b></p> <ul style="list-style-type: none"> <li>• The Agreement must set out line by line the detailed activities, marketing, services, products, commitments that form the basis for the agreement.</li> <li>• The list of activities should specify the third party's responsibilities and the school's responsibilities.</li> </ul>	<p><i>If either party does not fulfil its responsibilities in enabling the agreed activities, this would be considered a breach of the Agreement and, therefore, grounds for termination.</i></p>
<p><b>4 Risk Assessment</b></p> <ul style="list-style-type: none"> <li>• The school should create a risk assessment that specifically addresses                             <ul style="list-style-type: none"> <li>○ This facility (e.g. the hall)</li> <li>○ This third party</li> <li>○ This activity (e.g. yoga)</li> <li>○ This time of day</li> </ul> </li> </ul>	<p><i>The purpose of the risk assessment is to identify any required control or mitigation measures.</i></p> <p><i>The risk assessment should be proportionate to the level of risk.</i></p>

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Agreement (headings only)	Commentary
<p><b>5 Child Safe Standards</b></p> <ul style="list-style-type: none"> <li>• The Third Party must agree to the school’s statement of child safe standards               <ul style="list-style-type: none"> <li>○ The school should keep a written record that this has been agreed</li> </ul> </li> <li>• The school must make and record explicit decisions as to whether the contact person or any people using the facility should be required to hold a Working with Children Check or a Police Check</li> <li>• The school should require that the third party keep and retain a register of everyone entering the facility</li> </ul>	<p><i>The keeping of a register is in the interests of the third party as it manages its own risks.</i></p> <p><i>The register enables the school to check the people on site in the event of something going wrong e.g. fire, damage, theft, child safe standards.</i></p> <p><i>This is quite an onerous requirement and the school needs to decide the extent to which the risk assessment warrants this level of detail.</i></p>
<p><b>6 OHS</b></p> <ul style="list-style-type: none"> <li>• The school owes a duty of care to those entering its premises and is responsible for ensuring the premises are provided in a safe and healthy condition.</li> <li>• The school must ensure Fire Evacuation and Emergency information is clearly signposted.</li> <li>• The school must ensure No Smoking signs are erected and that the third party understands the requirements of the Tobacco Amendment Act 2016 (Vic.)<sup>3</sup>, which makes it illegal for anyone to smoke in and around a school.</li> <li>• The third party is required to abide by relevant school rules, OHS requirements and any other relevant school policies and procedures               <ul style="list-style-type: none"> <li>○ Alcohol and Drugs</li> <li>○ Gambling</li> </ul> </li> </ul>	
<p><b>7 Dates and Times</b></p> <ul style="list-style-type: none"> <li>• Date of the Agreement</li> <li>• Date for first use of the facility</li> <li>• Agreed dates for usage noting in particular dates in the holidays and dates which clash with school use</li> <li>• Agreed times for usage               <ul style="list-style-type: none"> <li>○ How much in advance of the event is it permitted for people to enter the premises and by what time must the facility be vacated</li> </ul> </li> <li>• Date for annual renewal of the Agreement</li> <li>• Anticipated end date for the arrangement (information only)</li> </ul>	<p><i>The school must ensure all dates are checked against the school calendar so that there are no clashes with school use. This is a commercial agreement and so carries with it a commitment to ensure the facility is available as promised.</i></p>

<sup>3</sup>[http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/096B85B9948C101DCA258050009EAE9/\\$FILE/16-055aa%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/096B85B9948C101DCA258050009EAE9/$FILE/16-055aa%20authorised.pdf)

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Agreement (headings only)	Commentary
<p><b>8 Notice and Termination of the Agreement</b></p> <ul style="list-style-type: none"> <li>• When can the Agreement be terminated?</li> <li>• Under what circumstances and on what basis can the Agreement be terminated?               <ul style="list-style-type: none"> <li>○ On annual renewal date</li> <li>○ At the end of the fixed term</li> <li>○ Without cause</li> <li>○ Breach of the Agreement</li> <li>○ By either party</li> </ul> </li> <li>• Notice period for termination</li> <li>• Are there any circumstances under which the Agreement can be summarily terminated without notice?</li> <li>• On what basis will money be reimbursed, partially, or not when the Agreement is terminated?</li> </ul>	<p><i>These opt-out clauses must be written to safeguard the interests of the school</i></p>
<p><b>9 Caretaking</b></p> <ul style="list-style-type: none"> <li>• Caretaking arrangements               <ul style="list-style-type: none"> <li>○ Locking and unlocking</li> <li>○ Key holding</li> <li>○ Hand over procedures</li> <li>○ Managing heating, lighting, security lighting, etc</li> <li>○ Managing security, alarms, etc</li> </ul> </li> <li>• Caretaking arrangements for use of facilities during the school holidays</li> <li>• Access to parts of the school other than the specific facility being used</li> <li>• Specific arrangements for the use of bathrooms</li> </ul>	<p><i>The main issue here is safety and security. If the arrangements give more responsibility to the third party (e.g. they have a key and do their own locking up), the third party becomes accountable for security, damage, theft, etc. that may result from the facility not being properly protected. This has implications for the school's insurance and for the third party's insurance.</i></p>
<p><b>10 The state of the facility and the use of school resources, etc.</b></p> <ul style="list-style-type: none"> <li>• The school's responsibilities for the state of the facility prior to the third party use</li> <li>• The third party's responsibilities for leaving the facility in the same state as it was found               <ul style="list-style-type: none"> <li>○ Rubbish</li> <li>○ Damage to property or equipment</li> <li>○ To whom must damage be reported and how</li> </ul> </li> <li>• The use of school furniture (e.g. tables, chairs) and the responsibility for returning that to its original state</li> <li>• Will arrangements be made for the third party to store equipment? If so where?</li> </ul>	

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<p><b>11 Parking and Access</b></p> <ul style="list-style-type: none"> <li>• The school will specify places where parking is permitted               <ul style="list-style-type: none"> <li>○ On the street</li> <li>○ Neighbours</li> <li>○ Gate to parking</li> </ul> </li> <li>• Need to state that parking is at car owners' own risk</li> <li>• Instructions for parking in the street including the need to control noise</li> <li>• Need for traffic management (if requirement) to be provided by the third party or by the school and at whose cost</li> <li>• Access routes to the facility (map should be provided)</li> </ul>	<p><i>May need a sign in the car park to say at own risk</i></p>
<p><b>12 Complaints, etc.</b></p> <ul style="list-style-type: none"> <li>• Complaints about the Agreement itself and the relationship between the school and the third party should be dealt with under the school's Complaints Policy               <ul style="list-style-type: none"> <li>○ Need to ensure the third party has been provided with a copy of the complaints policy</li> </ul> </li> <li>• The school should not deal with complaints about the third party's activities, services or products. These complaints should be referred to the third party for them to deal with</li> </ul>	<p><i>As always, concerns and issues are best dealt with at the earliest possible stage before they become a formal complaint. The relationship between the named contact people (see §1) is important in managing this. It is recommended that regular informal touch-base meetings be held.</i></p>

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Agreement (headings only)	Commentary
<p><b>13 Finances</b></p> <ul style="list-style-type: none"> <li>• The Agreement sets out the charges to be made               <ul style="list-style-type: none"> <li>○ Peppercorn fee</li> <li>○ At cost – i.e. just to cover the direct costs</li> <li>○ With a margin which can be used to subsidise other school events</li> <li>○ With a charge that is off-set by any non-financial benefit(s) that the Agreement brings to the school</li> </ul> </li> <li>• The charges should be expected to cover               <ul style="list-style-type: none"> <li>○ The use of the facility itself</li> <li>○ Utilities e.g. energy, water</li> <li>○ Staffing e.g. administration, caretaking</li> <li>○ Maintenance, cleaning, wear &amp; tear</li> <li>○ Insurance</li> <li>○ GST</li> <li>○ Income margin</li> </ul> </li> <li>• The third party should be required to pay the charges in advance               <ul style="list-style-type: none"> <li>○ The length of time should be stated as a month, or a term</li> </ul> </li> <li>• The third party should also be required to pay a deposit as surety against damage and any additional cost required for cleaning, caretaking, etc               <ul style="list-style-type: none"> <li>○ Non-refundable?</li> <li>○ Refundable against the final invoice?</li> </ul> </li> <li>• The Agreement must state whether the school is permitted to increase the charges during the term of the Agreement               <ul style="list-style-type: none"> <li>○ Just at the annual renewal?</li> <li>○ Whether any increase is capped</li> </ul> </li> <li>• Method of invoicing and payments</li> <li>• Dates of invoicing and payments</li> </ul>	<p><i>In deciding the appropriate charge, the school should take into account an estimate of the income that the use of this facility will give to the third party. MMS' charge should be proportionate to that income.</i></p> <p><i>It is recommended that the basis on which the charging decision is made be recorded as protection against a claim of unfairness being brought by this third party or, indeed, another.</i></p> <p><i>The Board is responsible for agreeing the schedule of charges and the basis on which charges are made.</i></p> <p><i>The school can decide whether to have an all-inclusive charge (includes utilities, staffing, administration, wear and tear, insurance, etc.) or one which separates some or all of the elements</i></p>
<p><b>14 Insurance</b></p> <ul style="list-style-type: none"> <li>• The third party is required to hold its own public liability insurance               <ul style="list-style-type: none"> <li>○ Covering a minimum of <b>[\$5m]</b></li> <li>○ Policy number and expiry date</li> <li>○ The school must file a copy of the certificate of insurance</li> </ul> </li> <li>• The third party is advised to hold its own property damage insurance</li> <li>• The school should verify the insurance arrangements with its own insurer</li> </ul>	

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<p><b>15 Communication</b></p> <ul style="list-style-type: none"> <li>• The school should provide the third party with relevant policies and instructions in writing at the start of the agreement               <ul style="list-style-type: none"> <li>○ Ensure the documentation is updated each time the agreement is renewed</li> </ul> </li> <li>• The school should facilitate a face-to-face induction meeting with the third party at the start of the agreement and subsequently each time the agreement is renewed.</li> <li>• The school should ensure there is always a good line of communication between the named contacts for the school and the third party.</li> <li>• The school should communicate the fact of the agreement to the school community using as much detail or not as is appropriate to make sure the community understands the arrangement and how it impacts on the school and its operation.</li> </ul>	<p><i>Note, it is good practice to require the third party to sign to say they have received and understood the relevant school policies and instructions.</i></p>
<p>16 Signed and dated by the nominated contact person acting on behalf of and with the authority of the third party</p> <p>Signed and dated as approved by the [by the Principal/ by the Principal (or as delegated)/ by the Principal acting on behalf of the School Board/ by the School Board]</p>	<p><i>Note, it is good practice to notify the third party if a decision is taken not to approve the application.</i></p>