

Part 4 – Terms and Conditions

Index

1.	No Interest or Right	11
2.	School's Obligation and Rights	11
	a. Allow Use	11
	b. School not liable	11
	c. No warranty by School	11
	d. Enter the Premises	11
	e. Acknowledgement	12
	f. School may rectify	12
3.	Licensee Obligations	12
	a. Use and Fee	12
	b. Obligations	12
	c. Supervision of Property	13
	d. Reporting	13
	e. Security Procedures	13
	f. Instructions by the School	13
	g. Promotional Rights and Obligations	14
	h. Government Policy	14
	i. Temporary Suspension	14
	j. School's Assets	14
	k. Use of Utilities, Equipment and Materials	14
	l. Licensee's Employees	14
	m. Compliance with laws and requirements	15
	n. No Alcohol	15
	o. Insurances	16
	p. Building Works	17
	q. General Conduct	18
4.	Indemnities and Exclusions	19
5.	No Assignment	19
6.	Default	20
	a. Events of Default	20
	b. School's right to terminate	20
	c. Indemnities	20
7.	Environmental Protection	20
	a. Contamination of the Property	20
	b. Licensee to minimise contamination	20
8.	Licensee's obligations on termination and holding over	21
	a. Use of Property	21
	b. Licensee to leave property required by School	21
	c. Removal of Licensee's Property	21
	d. Risk	21
	e. Condition of the Property	21
	f. Survive Termination	21
	g. Holding over	21

9.	Damage or Destruction	22
	a. School's right to terminate or reinstate	22
	b. Licensee's right to terminate	22
	c. No other liability	22
	d. No obligation to reinstate	22
	e. Licence Fee	23
	f. Dispute Resolution	23
	g. No obligation to reinstate	23
10.	Costs, expenses, duties and fees	23
	a. Costs and expenses	23
	b. Duties and fees	23
11.	Notices	24
	a. Notices generally	24
	b. Notices sent by email	24
12.	Miscellaneous	25
	a. Approvals and consents	25
	b. Remedies cumulative	25
	c. Accrued rights	25
	d. Payments	25
	e. School may act by agent	25
	f. Do all further acts	25
	g. Whole Agreement	25
	h. No waiver	26
	i. Variation	26
	j. Governing law	26
	k. <i>School Education Act 1999 (WA)</i> remains unaffected	26
	l. Dispute Resolution	26
	m. Relationship	26
13.	Trust	26
	a. Capacity	26
	b. Licensee's warranties	27
	c. Licensee's obligations	27
14.	Definitions and Interpretation	28
	a. Definitions	28
	b. Interpretation	31
*	Schedule 1 Plan	34+

The Parties agree as follows:

1. No Interest or Right

This Licence:

- (a) does not create an interest in the Land, Property or Equipment;
- (a) shall confer no right of exclusive occupation of the Property to the Licensee and the School may at any time and at all times and from time to time exercise all of its rights in respect of the Property including the rights to use and possess and enjoy the whole or any part of the Property save only in so far as such rights shall:
 - (i) prevent the operation of the Licence and rights with respect to the Property; and
 - (ii) be inconsistent with the express provisions of this Licence.
- (b) is granted subject at all times to the right of the School to utilise the Property for the purposes of the School.

2. School's Obligations and Rights

(a) Allow use

The School will allow the use of the Property and Related Services for the Permitted Use during the Authorised Times (as those terms are defined in Part 3) and for the Term, in accordance with this License, for the payment of the Licence Fee.

(b) School not liable

The School is not liable for any cost, expense, loss or other liability resulting from any accident, loss of life, injury, damage, malfunction or other event in, or affecting, the Property and Related Services unless caused by the negligence of the School or any employee of the School.

(c) No warranty by School

The School does not give any warranty of any kind that the Property and Related Services are suitable for any purposes for which the Licensee intends to use them. To the extent permitted by law, any warranty in relation to the Property and Related Services which is implied by law is excluded and does not apply to the Licence.

(d) Enter the Premises

The School may at any time:

- (i) inspect the state of repair and condition of the Property;
- (ii) maintain, repair or alter the Related Services;
- (iii) carry out works to the Property required by an Authority; and
- (iv) remove harmful substances,

without affecting the Licensee's obligations under the Licence.

(e) Acknowledgment

Whenever possible the School will, as a matter of courtesy, provide the Licensee with reasonable notice of the matters referred to in clause 2(d). However, the School has no obligation to give any notice of those matters as the Licensee has no exclusive right to possession of the Property.

(f) School may rectify

The School may do anything which should have been done by the Licensee under the Licence but which has not been done or has not been done properly. The Licensee must pay any costs incurred by the School in taking action under this clause within ten (10) Business Days after the School requests.

3. Licensee Obligations

(a) Use and Fee

The Licensee will:

- (i) use the Property and Related Services for the Permitted Use during the Authorised Times as those terms defined in Part 3, in accordance with this Licence and will pay the Licence Fee as set out in Part 3 – Item 7; and
- (ii) undertake the Management Responsibility set out at Part 3 – Item 8 of this Licence.

(b) Obligations

The Licensee must:

- (i) on demand pay for the cost of replacing any locks or keys which are required to be replaced because the Licensee has lost the keys;
- (ii) ensure that all services provided and activities conducted are lawful and safe and fully comply with all statutory acts, regulations and codes;
- (iii) obtain all statutory approvals, including but limited to public health and local government regulations, for the provision of agreed services and the conduct of agreed activities prior to using the Property and must ensure that all services and activities are uses that are permitted on the School site;
- (iv) not interfere in any way with the operation of the School, with records, materials or equipment of the School, with its staff or students and in particular not use any machinery or equipment on the Property unless expressly authorised to do so by the Principal;
- (v) not remove the Equipment or any Other Property or any part of it from the Land and ensure that the Property and any Other Property is left as found;
- (vi) leave the Property and Other Property, including all routes of access and exit in a clean and tidy condition at the end of each of the Authorised Times;
- (vii) vacate and lock up the Property as necessary at the end of each of the Authorised Times;

- (viii) not make any unauthorised alterations or additions to the Property or Other Property;
- (ix) on demand pay to the Minister ,the cost of any security alarm call out fees resulting from an act or omission of the Licensee or any of the Licensee's Visitors; and,
- (x) notify the Principal immediately in writing of any injury to any person occurring on the Property during the Authorised Times and provide written statements from witnesses and the injured person as the Principal may require.

(c) Supervision of Property

The Licensee shall ensure that at all times the Property is in use by the Licensee, a person authorised by the Licensee shall supervise use of the Property and the Licensee accepts responsibility for the behaviour of the Licensee and the Licensee's Visitors.

(d) Reporting

If anything happens or looks likely to happen which will or is likely to significantly affect the provision of services and the conduct of activities on the Property, the Licensee must promptly and in sufficient detail notify the School of such actual or likely happening.

(e) Security Procedures

- (i) The Licensee will comply with all aspects of the security procedures applicable to the Property which may include arming the security panels each time it leaves the Property;
- (ii) Where the Licensee is provided with keys and security codes for securing the Property, the Licensee will be required to reimburse the School for any alarm responses or associated costs that are generated through that failure;
- (iii) The Licensee is prohibited from duplicating or providing keys and security codes to another person without the express written permission of the Principal of the School; and
- (iv) The Licensee is required to return all keys to the School on termination or expiry of the Licence.

(f) Instructions by the School

The Licensee shall, when attending the Property:

- (i) comply with all reasonable directions and procedures relating to occupational health (including the smoke free work place policy) and safety and security in effect for the Property as notified by the School. This shall also include any relevant conduct policies applicable to staff at the School; and
- (ii) shall take all reasonable precautions to ensure as little disturbance as possible to the routine of other activities performed within the School.

(g) Promotional Rights and Obligations

The Licensee will ensure that no publication or promotional material referring to the School shall injure, bring into disrepute, ridicule or lessen the public image of the School, nor claim in any way that the School or the Department promotes or endorses the business of the Licensee .

(h) Government Policy

The Licensee is to comply with all policy requirements of the School, and any subsequent amendments or variations.

(i) Temporary Suspension

The Licensee acknowledges and agrees that in the case of an emergency (as reasonably determined by the School) the Licensee's rights under this Licence may be temporarily suspended during that emergency.

(j) School's Assets

The Licensee must treat and operate all of the Property and any Other Property in a professional manner and maintain the Equipment to the condition it was provided at the commencement date.

(k) Use of Utilities, Equipment and Materials

- (i) The Licensee shall not use any more electricity, water or gas than is reasonably necessary and shall ensure that all electric lights, water and gas taps and appliances are turned off immediately after use;
- (ii) The Licensee shall ensure that all of its equipment and materials used in the operation of its business, the provision of its service and/or the conduct of its activities, are fit for purpose and comply with relevant laws including, but not limited to, requirements relating to residual current devices (tagged to Australian Standards);
- (iii) The Licensee shall ensure that all detergents and disinfectants used by the Licensee in its operation have the appropriate pH factor compatible with the use for which they are intended;
- (iv) The Licensee shall ensure that all of its equipment used in its operation is safely stored away from access by unauthorised persons when not in use; and
- (v) The Licensee shall provide at its own cost and expense all labour, materials (including bin liners and other consumables), additional plant and equipment and everything necessary for the proper and complete operation of the Approved Purpose.

(l) Licensee's Employees

The Licensee in providing the Approved Purpose at the Property must:

- (i) strictly ensure that prior to entering the Property, all Personnel who will undertake "child-related work" (as that term is defined in Section 6 of the *Working with Children Criminal Record Checking Act 2004 (WA)*) have the appropriate assessment notice under that Act, at all times comply with the provisions of that Act and at all times maintain their authority under that Act to be engaged in 'child related work';
- (ii) provide adequate supervision and employ and maintain during the Term, a sufficient number of trained and efficient staff necessary for the due carrying out of the Approved Purpose;
- (iii) provide (in so far as the Licensee's employees are engaged in the provision of a service pursuant to this Licence), the remuneration and terms of employment of each employee for the duration of this Licence will be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry;
- (iv) if the Licensee enters into any contract with a third party in relation to the provision of a service by the Licensee pursuant to this Licence ("Sub contract"), the Licensee shall ensure that it is a term of the Sub contract that the remuneration and terms of employment of any employee employed by a third party for the performance of the Sub-contract will, for the duration of the Sub-contract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry;
- (v) ensure that all of its staff shall be regularly trained to appropriate levels in the specific requirements of their respective duties and that this training is to be maintained for the Term;
- (vi) make its staff familiar with all terms and conditions of this Licence which are relevant to them; and
- (vii) ensure its staff or clients do not smoke on or around the Land.

(m) Compliance with laws and requirements

- (i) The Licensee must comply with all requirements of any Authority and all laws in connection with the Property, the Licensee's Property and the Licensee's business and will at its expense obtain any approvals or permits required to use the Property for the Permitted Use;
- (ii) The Licensee must promptly notify the School if the Licensee is prosecuted for a breach of any Act or associated Regulations for the Approved Purpose; and
- (iii) The Licensee will effect and maintain throughout the Term all authorities and approvals required to provide the Approved Purpose on a School site and will, if required to do so by the School, provide copies of such to the School.

(n) No Alcohol

The Licensee will not allow any consumption of alcohol on the Property by its employees, agents, contractors or any third party unless it has prior written authorisation from the Principal and has in place any required licence or lawful authority to do so.

(o) Insurances

- (i) The Licensee must comprehensively insure against damage to any School Property negligently caused by the Licensee.
- (ii) The Licensee is not to have any exclusion in the affected Insurance that relates to dealing with children or other relevant business or service operations.
- (iii) The Licensee must provide a copy of the relevant insurance on the reasonable request of the School.
- (iv) Licensee must affect insurances:
 - a. The Licensee must affect, maintain and keep current during the Term and continuance of the Licence with an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia in the names of the Licensee and the School, for their respective rights and interests, all insurances which the Licensee is required to take out as referred to in Part 3, Item 9. The insurances in Part 3, Item 9 must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby); and
 - b. The existence of insurance cover as required under this clause shall not, in any way, limit the obligations or responsibilities of the Licensee under the Licence.
- (v) Licensee's obligations

In respect of those insurances the Licensee must:

- a. within five (5) working days after the Commencement Date and each time those insurance policies are renewed or varied, provide to the School certificates of currency or alternative evidence (in a form acceptable to the School) of the existence of those insurances; and
 - b. give notice to the School immediately if an event occurs which may give rise to a claim under any of the insurances or which could adversely affect any of them or if any insurance is cancelled.
- (vi) Restrictions on Licensee's activities

Unless the School consents, the Licensee must not:

- a. do or allow anything to be done which adversely affects any insurance taken out by the School in connection with the Property or which may increase the premium on that insurance;
- b. store or use poisonous, corrosive, inflammable, volatile or explosive substances on the Property except those normally used in the Licensee's business; or

- c. settle or compromise any claim under any policy of insurance relating to the Property.

(p) Building Works

- (i) The Licensee agrees that approval and authorisation must be sought and obtained from the Department of Education's Director, Facilities Program Delivery, for any proposed building works (including placement of transportable buildings) that the Licensee requires, in addition to the Property's facilities, which will become Property for use under this Licence.
- (ii) The Licensee agrees that any building works on the Property will be undertaken by, or under the direction of, the Department of Finance, Building Management and Works (BMW).
- (iii) The Licensee agrees that it will pay the reasonable costs of BMW, its agents or contractors for any building works arising from:
 - a. maintenance or repairs to the Property caused by the Licensee or the Licensee's clients;
 - b. any fit out, additions or alterations to the Property requested by the Licensee and consented to by the School:
 - i. the Licensee agrees to pay any costs to the School including architectural and/or engineering fees.
 - c. any building works arising from changes to the Property necessary to comply with any lawful requirement relating to the Licensee's business.

(iv) Maintenance or Repairs

The Licensee must keep the Property in good repair which includes maintaining its signs in, or attached to, the Property.

(v) Damage to the Property

The Licensee must not cause or allow damage to the Property.

(vi) Changes to the Property

The Licensee must not make any unauthorised change to the Property that will result in building works.

(vii) No interference with Services

The Licensee must not modify or interfere with any Related Services, including any drainage, water or power supply facilities servicing the Property or any equipment connected to those facilities.

(viii) Notice of damage

The Licensee must inform the School of any requirement for maintenance, repair and damage, fit out, addition, alteration or other change required to the Property or defective operation of any Services immediately the Licensee becomes aware of such requirement or operation.

(q) General Conduct

(i) Positive

The Licensee must:

- a. conduct the Licensee's business on the Property in a safe and proper manner;
- b. securely lock all exterior doors and windows in the Property when the Property is not occupied;
- c. immediately deliver to the School a copy of every notice received by the Licensee relating to the Property;
- d. immediately notify the School if the Licensee becomes aware of any threat to the Property and comply with the School's directions for the purpose of protecting property or any person on the Property;
- e. comply with fire drills and emergency procedures when requested by the School; and
- f. abide by and comply with any rules, that the School may make from time to time.

(ii) Negative

In connection with the Property, the Licensee must not, and must not to allow anyone else to:

- a. give any person a Security Interest in the Property;
- b. do anything which is offensive, illegal or a nuisance;
- c. interfere with, or obstruct access to, the Related Services;
- d. use facilities on or near the Property for any improper purpose;
- e. locate any signs, notices or advertisements or fix blinds or awnings on the Property or on the inside of the windows or doors of the Property without the School's consent;
- f. hold an auction, bankruptcy, fire or closing down sale;
- g. permit any other person to carry on business on the Property;
- h. use the Property as a residence;
- i. vacate or abandon the Property, except as required by the Licence;

- j. bring on to the Property any heavy machinery or other plant and equipment which is not reasonably necessary or proper for the Permitted Use by the Licensee of the Property. In no circumstances shall any such machinery plant or equipment be of such nature or size as to cause or be likely to cause any structural or other damage to the floors or walls or any other part of the Property. Any damage done to the Property in bringing any plant or equipment on the Property shall be made good by the Licensee, and in the event of the Licensee failing or refusing to make good damage the School may make good the damage and the Licensee shall pay to the School on demand the cost thereof; or
- k. not without the prior written consent of the School install any electrical equipment on the Property that overloads the cables switchboards or sub-boards through which electricity is conveyed to the Property PROVIDED THAT the School grants such consent. Alterations, which may be necessary to comply with the requirements of the School's insurance underwriters and/or any statute (State or Commonwealth) regulation or by-law relating thereto, shall be effected by the School at the expense of the Licensee and the entire cost to the School of such alteration shall be paid by the Licensee upon demand by the School and the School may require the Licensee to deposit with the School the estimated cost thereof before any such alterations are commenced.

4. Indemnities and Exclusions

- (a) The Parties indemnify and keep indemnified each other against any cost, expense, loss or other liability resulting from:
 - (i) any damage to the Property, Other Property, Services; or
 - (ii) the death of, or injury to, that person,
to the extent caused or contributed to by:
 - (iii) any breach of the Licence; or
 - (iv) the use or occupation of the Property by the Licensee or the Licensee's Visitors;
or
 - (v) any work carried out by or on behalf of the Licensee under the Licence; or
 - (vi) the Licensee's activities, operations, business or other use of the Property of any kind under this Licence; or
 - (vii) any act, negligence omission or default of the Licensee or the Licensee's Visitors; or
 - (viii) any danger created by the Licensee or the Licensee's Visitors.

5. No Assignment

The Licensee must not give any person any right or interest in the Licence or the Property or allow any person to use or occupy the Property or operate the Approved Purpose.

6. Default

(a) Events of Default

An Event of Default occurs if:

- (i) the Licensee fails to strictly adhere to the obligations of clause 3(l)(i) of Part 4.
- (ii) the Licensee is prosecuted for a breach of:
 - a. any applicable Act; and
 - b. any associated Regulations;
- (iii) the Licence Fee is at any time unpaid for ten (10) Business Days after becoming due, whether formally demanded or not;
- (iv) the Licensee breaches a term, condition or warranty of or under the Licence and then fails to remedy such breach within a reasonable time after being given notice so to remedy by the School;
- (v) a judgment, order or a Security Interest is enforced, or becomes enforceable, against the Licensee's Property;
- (vi) an Insolvency Event occurs in respect of the Licensee; or
- (vii) the Licensee commits three (3) or more separate breaches of this Licence in any one hundred and eighty (180) day period;

(b) School's right to terminate

If an Event of Default occurs, or a fundamental term of this Licence is or is found or held to be void or otherwise invalid, the School may terminate the Licence by notice in writing to the Licensee.

(c) Indemnities

- (i) The Licensee must indemnify the School against any cost, expense, Loss or other liability resulting from an Event of Default including legal costs and expenses relating to an Event of Default.
- (ii) This indemnity is not affected by the School accepting a repudiation of the Licence by the Licensee.

7. Environmental Protection

(a) Contamination of the Property

The Licensee must not cause or permit any Contamination of the Property or of the Environment as a result of anything brought on to, or done on, the Property by the Licensee or the Licensee's Visitors.

(b) Licensee to minimise Contamination

Without affecting:

- (i) the obligation of the Licensee in clause (7)(a); or
- (ii) limiting any right of, or any indemnity in favour of, the School,

if any Contamination occurs which is caused or contributed to by the Licensee, the Licensee must do everything necessary to minimise the effect of the Contamination and make good any damage caused by the Contamination.

8. Licensee's obligations on termination and holding over

(a) Use of Property

- (i) The Licensee's rights to use the Property cease on the Termination Date, and the Licensee shall not use the Property for any purpose, or occupy the Property after that date; and
- (ii) The Licensee must remove the Licensee's Property immediately on the termination of the Licence except that when the termination is before the end of the Term, the Licensee must remove the Licensee's Property within three (3) days after the termination.

(b) Licensee to leave property required by School

The obligation to remove the Licensee's property in clause (8)(a)(ii) does not apply to any buildings, improvements or other fixtures which the School requires, by notice to the Licensee, not to be removed.

(c) Removal of Licensee's Property

If the Licensee does not comply with clause (8)(a), the School may remove the Licensee's Property from the Property and either store it at the risk and cost of the Licensee or treat the Licensee's Property as abandoned and deal with it in any manner the School chooses.

(d) Risk

The Licensee's Property remains at the Licensee's risk at all times before and after the termination of the Licence, except for any property which the School requires not to be removed under clause (8)(b), which is at the School's risk after termination of the Licence.

(e) Condition of the Property

On termination of the Licence, the Licensee must leave the Property in good repair and condition in accordance with the obligations of the Licensee under the Licence.

(f) Survive Termination

The Licensee's obligations contained in this clause shall survive termination of the Licence.

(g) Holding over

If the Licensee continues to use the Property to a maximum of three (3) months beyond the Expiration Date with the express written consent of the School, the Licensee is a licensee from month to month of the Property:

- (i) the Licensee does so under this Licence as a monthly user of the Property at a monthly licence fee equal to a monthly proportion of:
 - a. the Licence Fee; and
 - b. any other moneys payable by the Licensee under this Licence,
- (ii) at the expiry of the Term;
- (iii) the monthly licence is determinable by one (1) month's written notice given by either party to the other; and
- (iv) the Licensee remains entitled and subject to the rights and obligations contained in this Licence.

9. Damage or destruction

(a) School's right to terminate or reinstate

If any part of the Property is damaged or destroyed so that the whole or a substantial part is unfit for use by the Licensee, the School is to give a notice to the Licensee within two (2) months after the damage or destruction which either:

- (i) terminates the Licence on a date that is not less than one (1) month after the date the Licensee receives the notice and not more than four (4) months after the damage or destruction occurred; or
- (ii) informs the Licensee of the School's intention to make the Property fit for use by the Licensee.

(b) Licensee's right to terminate

If the School gives a notice under clause (9)(a)(i) and does not make the Property fit for use by the Licensee within a reasonable time, having regard to the extent of the damage and the time required to obtain all necessary approvals and to carry out the necessary work:

- (i) the Licensee may give the School a notice of the Licensee's intention to terminate the Licence if the School does not make the Property fit for use by the Licensee with one (1) month after the date the School receives the notice; and
- (ii) if the School does not make the Property fit for use by the Licensee within that period the Licensee may terminate the Licence by a further notice to the School.

(c) No other liability

Neither the Licensee nor the School is liable to the other solely because of the termination of the Licence under this clause.

(d) No obligation to reinstate

Nothing in this clause imposes an obligation on the School to repair or reinstate the Property.

(e) Licence Fee

If any part of the Property is damaged or destroyed so that the whole or a substantial part is unfit for use by the Licensee, from the date the damage or destruction occurs until the earlier of the date of termination of the Licence or until the date on which the Property are made fit for use by the Licensee, the Licensee may reduce payments in respect of the Licence Fee by a percentage equal to the percentage loss of amenity in respect of the Property caused by the damage or destruction.

The extent of the loss of amenity is to be agreed between the School and the Licensee or, if agreement is not reached within one (1) month after the damage or destruction occurs, is determined under clause (9)(f).

(f) Dispute Resolution

A dispute arising under clause (9)(e) about the loss of amenity is to be determined by a qualified person nominated by the President of the Insurance Council of Australia Limited. Either the School or the Licensee may ask the president to nominate that person, who is to act as an expert and not an arbitrator.

(g) No obligation to reinstate

The Licensee's rights to terminate the Licence under clause (9)(b) or to a reduction of the Licence Fee under clause (9)(e) do not apply if insurance money otherwise payable under an insurance policy in connection with the Property is not paid by the insurer as a result of an act or omission by the Licensee or the Licensee's Visitors.

10. Costs, expenses, duties and fees

(a) Costs and expenses

The Licensee must pay or reimburse the School on demand for all the School's costs and expenses in relation to:

- (i) the instructions for and the negotiation, preparation and execution of the Licence;
- (ii) the exercise or enforcement by the School of any right under the Licence;
- (iii) obtaining or giving any consent or approval under the Licence, or a variation or surrender of the Licence; and
- (iv) any act or omission by the Licensee causing cost or expense to the School,

including in each case, the School's legal costs and consultants and agents fees expenses on a full indemnity basis.

(b) Duties and fees

The Licensee must pay or reimburse the School on demand for all duty, taxes and fees (including fines and penalties in respect of any of them except if the School caused the fine or penalty to be incurred) which may be payable in connection with the Licence.

11. Notices

(a) Notices generally

Each notice or other communication given under the Licence is to go to:

- (i) for the School, the Principal of the School;
- (ii) for the Licensee, the contact person nominated at Item 1, Part 3; and
- (iii) must be in writing;
- (iv) may be given by an authorised officer or solicitor of a Party; and
- (v) must be either:
 - a. hand delivered or sent by post;
 - b. sent by email to the address of the recipient; or
 - c. sent by facsimile; and
- (vi) notice is taken to be received:
 - a. in the case of hand delivery, on the date of delivery;
 - b. in the case of post, on the third Business Day after posting; and
 - c. in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the Party sending the email from the recipient;
 - d. in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted; and
 - e. if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

(b) Notices sent by email

With respect to a notice sent by email, the Parties agree that the following applies:

- (i) any text in the body of the email or the subject line will not form part of the notice; and
- (ii) an attachment to the email will only form part of the notice if it is in PDF format or such other format as may be agreed between the Parties from time to time,

and with respect to any notice sent by email under or in connection with the Licence, each Party must ensure that:

- (i) its firewall and/or email server (as applicable):
 - a. allows messages of up to 6MB to be received;
 - b. automatically sends a receipt notification to the sender upon receipt of a message; and

- (ii) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain that cannot or will not be delivered to the recipient.

12. Miscellaneous

(a) Approvals and consents

- (i) Unless otherwise stated, whenever the School's approval or consent is required under the Licence, the School may in its absolute discretion withhold it, or may give it conditionally or unconditionally. Each approval or consent must be in writing and be given prior to the happening of the event for which the approval or consent is required.
- (ii) The Licensee agrees that any failure by it to comply with or perform a condition imposed under clause (12)(a)(i) will constitute a breach of the Licence.

(b) Remedies cumulative

The rights, powers and remedies provided in the Licence are cumulative with, and not exclusive of, the rights, powers or remedies provided by law independently of the Licence.

(c) Accrued rights

The termination of the Licence does not affect the rights of the School in relation to a breach of the Licence by the Licensee before the termination.

(d) Payments

The Licensee must make payments under the Licence without set-off or counterclaim and without any deduction. All payments by the Licensee under the Licence are to be made to the School or any one else nominated by the School in a notice given to the Licensee. The School need not make demand for payment of any amount to be paid by the Licensee unless otherwise stated.

(e) School may act by agent

All acts and things which the School is required or empowered to do under the Licence may be done by the School or the solicitor agent contractor or employee of the School.

(f) Do all further acts

The parties must do everything reasonably necessary, including signing further documents, to give full effect to the Licence.

(g) Whole Agreement

The Licence supersedes all prior negotiations, understandings and agreements between the parties relating to the matters covered by the Licence and constitute the full and complete agreement between the parties relating to the matters covered by the Licence.

(h) No waiver

- (i) No right of any party under the Licence shall be deemed to be waived except where such a waiver is in writing signed by or on behalf of that party.
- (ii) A waiver by a party shall not prejudice the rights of that party in respect of any subsequent or other breach of the Licence by the other party.
- (iii) A failure by a party to enforce any provision of the Licence or any forbearance, delay or indulgence granted by a party to the other shall not be construed as a waiver of the first mentioned party's rights under the Licence.

(i) Variation

The Licence may be varied only by written agreement between the parties.

(j) Governing law

The Licence is governed by the laws of the State of Western Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

(k) School Education Act 1999 remains unaffected

Nothing in the Licence shall affect or be deemed to affect any right power authority or duty conferred or imposed upon the Minister under the *School Education Act 1999 (WA)*.

(l) Dispute Resolution

- (i) The Parties agree to use reasonable efforts to resolve by negotiation any problem that arises between them under the Licence. Neither Party will resort to legal proceedings, or terminate the Licence, until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.
- (ii) If a problem arises (including a breach or an alleged breach) under the Licence which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, a Party concerned about the problem may notify the other. Management representatives of each of the Parties will then endeavour in good faith to agree upon a resolution.

(m) Relationship

Nothing in the Licence may be construed to make a Party a partner, agent, employee or joint venturer of the other Party.

13. Trust

(a) Capacity

If the Licensee enters into the Licence as trustee of a trust, whether or not the School is aware of that fact, the Licensee does so both for itself and as trustee of the trust, and in the Licence, each reference to the Licensee has effect as a reference in each capacity.

(b) Licensee's warranties

The Licensee warrants to the School that:

- (i) the Licensee is the only trustee of the trust;
- (ii) no action has been taken or proposed to remove the Licensee as trustee of the trust;
- (iii) the copy of the trust deed and other documents relating to the trust produced to the School disclose all the terms of the trust;
- (iv) the Licensee has power under the trust deed to enter into the Licence and the Licensee has entered into the Licence for the benefit of the beneficiaries of the trust;
- (v) the Licensee has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under the Licence;
- (vi) the assets of the trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Licensee has a right to be indemnified out of those assets;
- (vii) the Licensee is not in default under the trust deed;
- (viii) no action has been taken or is proposed to terminate the trust;
- (ix) the Licensee has complied with the Licensee's obligations in connection with the trust; and
- (x) the School's rights under the Licence rank in priority to the interests of the beneficiaries of the trust.

(c) Licensee's obligations

The Licensee is to:

- (i) at the School's request, exercise the Licensee's right of indemnity from the assets of the trust and the beneficiaries of the trust in respect of obligations incurred by it under the Licence;
- (ii) comply with the Licensee's obligations as trustee of the trust;
- (iii) not, without the consent of the School, do anything which:
 - a. effects the retirement, removal or replacement of the Licensee as trustee of the trust;
 - b. could restrict the Licensee's right of indemnity from the assets of the trust in respect of obligations incurred by the Licensee under the Licence;
 - c. could restrict the ability of the licensee to comply with the Licensee's obligations under the Licence;
 - d. effects a variation of the trust deed, the termination of the trust or the resettlement of the trust.

14. Definitions and Interpretation

(a) Definitions

In the Licence:

Approved Purpose means the activities and services conducted by the Licensee specified in Item 2 of Part 3.

Authorised Times means the times specified in Item 5(b) of Part 3.

Authority means any governmental or other public body, local authority or other authority of any kind.

Body Corporate includes a "company" and a "corporation" as those expressions are defined in Section 9 of the *Corporations Act 2001 (Commonwealth)*.

Business Day means a day other than a Saturday, Sunday or public holiday in Perth Western Australia.

Commencement Date means the date the Licence commences specified at Item 6 of Part 3.

Contamination means anything which makes the Property or the Environment:

- (i) unsafe or unfit for humans;
- (ii) degraded in any way, including in its capacity to support plant life; or
- (iii) materially diminished in value; or
- (iv) is the state of being Contaminated as defined in the *Contaminated Sites Act 2003 (WA)*.

Environment has the meaning given to it in the *Environmental Protection Act 1986 (WA)* of the State.

Event of Default means any of the events specified in Part 4, clause (6)(a).

Expiration Date means the date the Licence expires specified in Item 6 of Part 3.

Independent Public School (IPS) means a school that, in collaboration with the School community, can self determine the strategic direction and make independent decisions on curriculum, student support, staff recruitment, financial management, governance and accountability.

Insolvency Event means the occurrence of any of the following events:

- (i) (informs creditors) a corporation informs its creditors generally that it is insolvent;
- (ii) (receiver) a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;

- (iii) (execution) a distress, attachment or other execution is levied or enforced upon or against any assets of a corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within ten (10) Business Days;
- (iv) (voluntary liquidation) a corporation enters into voluntary liquidation;
- (v) (application) an application is made for the administration, dissolution or winding up of a corporation which application is not stayed within ten (10) Business Days of being made;
- (vi) (winding up) an order is made for the administration, dissolution or winding up of a corporation;
- (vii) (resolution) a resolution is passed for the administration or winding up of a corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other Party;
- (viii) (arrangement or composition) a corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other Party;
- (ix) (statutory demand) a corporation fails to comply with, or fails to apply to have set aside, a statutory demand within ten (10) Business Days of the time for compliance, or:
 - a. corporation applies to have a statutory demand set aside within ten (10) Business Days of the time for compliance;
 - b. the application to set aside the statutory demand is unsuccessful; and
 - c. the corporation fails to comply with the statutory demand within five (5) Business Days of the order of the court dismissing the application;
- (x) (execution levied against it) a corporation has execution levied against it by creditors, debenture holders or trustees or under a floating charge or circulating security interest; or
- (xi) (solvency - corporation) a corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute);
- (xii) (insolvency - persons) a person becomes an insolvent under administration as defined in Section 9 of the *Corporations Act 2001 (Commonwealth)* or action is taken which could result in that event;
- (xiii) (death etc.) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; and
- (xiv) (analogous matters) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Insurable Event means fire, storm and tempest, flood, impact, malicious damage, loss of licence fee and any risk required to be insured against by a party under the Licence.

Land means the land specified in Item 3(a) of Part 3.

Licence means this licence relating to the use of the Property which incorporates the Terms and Conditions, as that licence or agreement is varied, supplemented, replaced or extended as permitted by that licence, and includes every deed varying that licence.

Licence Fee means the licence fee for the Property specified in Item 7 of Part 3.

Licensee means the person specified at Item 1 of Part 3.

Licensee's Property means all plant, equipment goods or other property belonging to the Licensee, or any person on the Property with the authority of the Licensee, brought onto the Property.

Licensee's Visitors means each of the Licensee's Personnel, employees, agents, contractors, service suppliers, sub-contractors, customers, clients and other visitors and any other person who at any time is on the Property with the consent or under the authority of the Licensee.

Loss includes any claim, liability, damages, costs or expenses (whether in the nature of economic loss or loss of profits or otherwise).

Management Responsibility means the arrangements to be put in place by the Licensee set out in Item 8 of Part 3.

Notice means includes a request, demand, consent, approval or other communication to, or by, a party to the Licence.

Officer, in relation to a body corporate, means an officer for the time being of that body corporate as defined in section 9 of the *Corporations Act 2001* (*Commonwealth*).

Parties means the School, the Licensee and party is a reference to any of them.

Payment Dates means the dates specified in Item 7 of Part 3.

Permitted Use means the use of the Property specified in Item 3 of Part 3

Personnel means any employee, contractor (at any tier) officer or agent of the Licensee that the Licensee (or any contractor of the Licensee) allows to enter the Property.

Plan means the plan of the Property attached to, and forming part of, the Licence as Schedule 1.

Premises means the premises the subject of the Licence (including additions) as described in Item 3 of Part 3 together with the School's Property in, or forming part of, those premises.

Principal means the principal or acting principal of the School.

Property means the Land, Premises and Equipment defined as Property at Item 3 of Part 3.

Related Services means the Services specified to be used by the Licensee in Item 4 of Part 3.

School means the school specified in Part 1 of the Deed of Licence.

School Days means all days on which students are required to attend the School or instruction in accordance with the provisions of the *School Education Act 1999 (WA)*.

School Holidays means gazetted school holidays for Perth Western Australia during which students are not required to attend the School for instruction.

School's Property means all the plant, equipment, goods or other property belonging to the School, on or brought onto the Property, including the Property as that term is defined and listed in Item 3 of Part 3.

Security Interest means every mortgage, charge, sub-demise, lien, trust or power, which is a security for the payment of money or the compliance with any other obligation.

Services means all services running through, or servicing, the Property including electricity, water, sewerage, gas and telecommunications and includes the Related Services set out at Item 4 of Part 3.

State means the State of Western Australia.

Term means the period between the Commencement Date and the Termination Date.

Termination Date means the later of;

- (i) the Expiration Date;
- (ii) fourteen (14) days after notice being given by the School to the Licensee terminating this Licence;

Valuer means a person who:

- (i) is a fellow or an associate, of not less than five (5) years standing, of the Australian Property Institute and is practising and registered under the *Land Valuers Licensing Act 1978 (WA)* at the time of appointment; and
- (ii) at least five (5) years experience in valuing the kind of properties licensed by the Licence.

(b) Interpretation

In the Licence unless the contrary intention appears:

- (i) the singular includes the plural and vice versa;
- (ii) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

- (iii) a reference to a gender includes other genders;
- (iv) a reference to a person includes an Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (v) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking responsibility by a novation agreement) and permitted assigns;
- (vi) if a Party consists of a consortium of two (2) or more persons whether by way of partnership or joint venture or otherwise, then:
 - a. an obligation imposed on a Party under the Licence binds each person who comprises that person jointly and severally;
 - b. each person who comprises a Party agrees to do all things necessary to enable the obligations imposed on that Party under the Licence to be undertaken; and
 - c. the act of one (1) person who comprises the a Party binds the other persons who comprise the that Party;
- (vii) an agreement, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;
- (viii) no rule of interpretation applies to the disadvantage of a Party on the basis that it put forward these Terms and Conditions;
- (ix) "includes" in any form is not a word of limitation;
- (x) the meaning of "or" will be that of the inclusive "or", meaning one, some or all of a number of possibilities;
- (xi) a reference to these Terms and Conditions or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of the relevant Party;
- (xii) a reference to a document published at an electronic address is to the document as published at that electronic address on the date of first public issue of the Licence;
- (xiii) a reference to a clause is a reference to a clause of these Terms and Conditions;
- (xiv) headings are included for convenience only and do not affect the interpretation of these Terms and Conditions;
- (xv) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (xvi) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (xvii) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;

- (xviii) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (xix) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (xx) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (xxi) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (xxii) a reference to a monetary amount means that amount in Australian currency;
- (xxiii) a reference to time means the time observed by the general community from time to time in Perth, Western Australia; and
- (xxiv) during any time when the Licence is a licence to which the *Commercial Tenancy (Retail Shops) Agreements Act 1985 (WA)* of the State applies:
 - a. the provisions of the Licence are subject to the provisions of that Act; and
 - b. any provision of the Licence giving a right, power or remedy to the School or imposing an obligation on the Licensee which is prohibited or made void or otherwise unenforceable by that Act does not apply to the extent only that the provision is so prohibited, made void or is otherwise unenforceable, but without prejudice to the other provisions of the Licence, which continue in full force and effect.