

2015

[Entity name]

AND

MINISTER FOR EDUCATION

LICENCE AGREEMENT FOR THE SHARED USE OF
FACILITIES FOR SPORTING AND RECREATIONAL PURPOSES
AT [PRIMARY SCHOOL]

Month/Date

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THIS AGREEMENT is made the day of 20

BETWEEN:

MINISTER FOR EDUCATION a body corporate pursuant to the provisions of the School Education Act 1999 of 151 Royal Street, East Perth in the State of Western Australia (the Minister)

AND

[] a local government and body corporate under the Local Government Act 1995 of [] in the said State (the Local Government).

RECITALS

- A. The Facilities are situated on the Land.
- B. The Local Government [is the registered proprietor] or [has care, control and management] of the Land.
- C. The Local Government has agreed to grant to the Minister a licence to use the Facilities on the terms and conditions contained in this Agreement.

OPERATIVE PART

IT IS HEREBY AGREED:

1. Definitions and Interpretation

In this Agreement unless the contrary intention appears:

Authority

means any entity, person or group of persons empowered by Statute or otherwise to perform and carry out public regulatory administrative or executive functions of Commonwealth State or local government

Business Day

means any day other than a Saturday, Sunday or public holiday in the State.

Commencement Date

means the date specified in item 5 of the Schedule.

CPI

means the consumer price index compiled by the Australian Bureau of Statistics for Perth (Capital Local Government) (all groups index numbers) or any substitute for that index accepted by the Government of the Commonwealth of Australia from time to time provided that if the index number base adopted by the Australian Statistician for the index number at any time is updated the index number is to be appropriately adjusted as from the same time. If at any time either or both the Consumer Price Index and the index number is discontinued or suspended or, in the reasonable opinion of the Local Government, substantially is altered there is to be substituted for the Consumer Price Index and the index number the alternative method of computing changes in the cost of living which is mutually agreed in writing between the Local Government and the Minister during the period of 10 Business Days after written notice given by the Local Government to the Minister or, failing that agreement, which in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants in Australia (WA Division) at the request of the Local Government or the Minister or both of them most closely reflects changes in the cost of living for the Perth Metropolitan Region (the costs of that expert being borne by the Local Government and the Minister in equal shares).

Department

means the Department of Education..

Facilities

means the facilities specified in item 2 of the Schedule.

Further Term

means the further term specified in item 6 of the Schedule.

GST

has the same meaning and usage as that contained in A New Tax System (Goods and Services Tax) Act 1999.

GST Act

means A New Tax System (Goods and Services Tax) Act 1999.

Input Tax Credit

has the meaning given in section 195-1 of the GST Act.

Land

means the land specified in item 1 of the Schedule.

Licence

means the licence referred to in Clause 2.

Local Government's Authorised Times of Use

means the times of use of the Facilities by the Local Government specified in item 7(b) of the Schedule.

Local Government's Visitors

means all officers, employees, agents, contractors, licensees, invitees or representatives of the Local Government.

Loss

means loss, damage, liability, lawsuit, action, writ, proceeding, cost or expense.

Major Maintenance

means any maintenance activity carried out on the Facilities set out in the table in item 9(d) of the Schedule;

Minister's Authorised Times of Use

means the times of use of the Facilities by the Minister specified in item 7(a) of the Schedule.

Party

depending on the context means the Local Government or the Minister and

Parties

means both of them.

Primary Payment

means any payment by the Minister to the Local Government under this Agreement.

Principal

means the Principal or acting Principal of the School.

Review Date

means each anniversary of the Commencement Date.

Routine Maintenance

means any maintenance activity carried out on the Premises set out in item 9(c) of the Schedule.

Schedule

means the schedule annexed to this Agreement.

School

means the School specified in item 3 of the Schedule.

School days

means all days on which students are required to attend the School for instruction in accordance with the provisions of the School Education Act 1999.

State

means the State of Western Australia and any government department, agency and instrumentality thereof.

Statute

includes all Statutes (State and Federal) for the time being enacted or modifying any Statutes and all regulations, bylaws and other statutory orders and instruments made under any Statute.

Taxable Supply

has the meaning given in section 195-1 of the GST Act.

Tax Invoice

has the meaning given in section 195-1 of the GST Act and in the A New Tax System (Goods and Services Tax) Regulations 1999.

Term

means the term specified in item 4 of the Schedule and where the context so permits includes any extended or renewed term.

1.2 In this Agreement unless a contrary intention appears:

- (a) references to a person include that person's legal personal representatives, assigns and successors;
- (b) an obligation on the part of two or more parties shall bind them jointly and severally and a right in favour of two or more parties shall be enforceable by them jointly and severally;
- (c) references to this Agreement include its schedules and annexures;
- (d) references to a person which has ceased to exist or has been reconstituted, amalgamated, reconstituted or merged or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (e) words importing any gender include the other genders;
- (f) headings shall be ignored in the construction of this Agreement;
- (g) 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;
- (h) where time is to be calculated from a day or event, such day or the day of such event shall be excluded;
- (i) words importing the singular include the plural and vice versa;
- (j) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
- (k) references to persons include corporations and vice versa;
- (l) references to time are to local time in Perth, Western Australia;
- (m) references to this Agreement or any other document include the document as varied, extended, renewed or replaced, and notwithstanding any change in the identity of the parties thereto;
- (n) references to a statute whether by name or otherwise includes the amendments to the statute for the time being in force and also any statute passed in substitution for it or in lieu of it and all subsidiary or subordinate legislation for the time being in force under it;
- (o) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- (p) reference to a clause means a clause of this Agreement;
- (q) all the provisions in the Schedule are incorporated in and form part of this Agreement.
- (r) no rules of construction apply to disadvantage a Party on the basis of that Party being responsible for the preparation of this Agreement or any part of it;
- (s) reference to \$ or Dollars is a reference to Australian dollars;
- (t) reference to the Minister using the Facilities means and includes use of the Facilities by the Minister or any of its employees agents contractors licensees invitees or students of the School. Grant of Licence

2. Grant of licence

The Local Government grants to the Minister a licence to use the Facilities, for School sporting and recreational use, during the Minister's Authorised Times of Use, for the Term or until such time as the Minister divests itself or is divested of its rights over or in the School (whichever occurs sooner). Nothing expressed or implied in this Agreement shall confer a right of exclusive occupation of the Facilities to the Minister and the Local Government may at any time and at all times and from time to time exercise all of its rights in respect of the Facilities except where such rights shall:

- (a) prevent the operation of the Licence and rights with respect to the Facilities granted pursuant to this Agreement; and
- (b) be inconsistent with the express provisions of this Agreement.

3. Facilities' Maintenance

3.1 The Local Government shall at all times during the Term in all things keep and maintain -

- (a) the Facilities well cleansed and drained and in good sanitary condition;
- (b) all buildings fences gates and other improvements now or hereafter comprising the Facilities in good tenable repair order and condition; and
- (c) all grassed areas on the Facilities so that a uniform coverage of grass is obtained.

3.2 Without limiting clause 3.1, the Local Government shall carry out mowing, fertilising, weed control and irrigation maintenance and renovations on the Facilities.

- 3.3 The Local Government will ensure that all its employees, agents, workmen and contractors contact the Principal prior to carrying out any maintenance to the Facilities during the Minister's Authorised Time of Use;
- 3.4 The Local Government will not carry out any pest or weed control treatment on the Facilities during the Minister's Authorised Times of Use (during School days). The Local Government will give the Principal at least a week's written notice of any proposed weed control treatment to be undertaken.
- 3.5 On expiration of a period of use of the Facilities by a Party or any of that Party's employees agents or invitees (whichever the case may be) that Party shall leave the Facilities in a clean sanitary and tidy condition free from litter waste and rubbish and ready for immediate use by the other Party and other persons duly permitted to use the Facilities.

4. Records and Audited Accounts

The Local Government shall keep true, accurate and up-to-date records of its receipts and expenditure in respect of the Facilities and shall allow the Minister to inspect and/or take copies of those records at any time and from time to time provided that reasonable notice is first given by the Minister on each occasion. The Local Government shall, at intervals of no greater than twelve (12) months during the currency of this Agreement, provide the Minister with properly audited accounts of its receipts and expenditure in respect of the Facilities.

5. Booking of Facilities

The Minister is not responsible for the supervision and management of bookings for groups using the Facilities outside the Minister's Authorised Times of Use.

6. Assignment

The Minister shall not without the prior written consent of the Local Government (which consent may be arbitrarily withheld) and the Minister for Lands [REQUIRED ONLY IF THE RELEVANT LAND IS CROWN LAND] assign, transfer, encumber or otherwise dispose of the Facilities or any part thereof or the rights, liberties or authorities granted to the Minister under this Agreement.

7. Waiver

- 7.1 No right of any Party under this Agreement shall be deemed to be waived except where such a waiver is in writing signed by or on behalf of that Party.
- 7.2 A waiver by a Party shall not prejudice the rights of that Party in respect of any subsequent or other breach of the Agreement by the other Party.
- 7.3 A failure by a Party to enforce any provision of this Agreement 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 this Agreement.

8. Variation

This Agreement may only be varied by agreement signed in writing by both Parties.

9. Option to Renew

This Agreement shall be extended for the Further Term (on the same terms and conditions as this Agreement with the exception of this clause 9) if:

- (a) prior to the expiration of the Term this Agreement has not been terminated; and
- (b) both Parties desire to extend this Agreement for the Further Term; and
- (c) the Minister gives to the Local Government written notice of its desire such notice being received by the Local Government not more than 6 or less than 3 months prior to the expiration of the Term; and
- (d) during the Term there had been no breach of any term of this Agreement by the Minister which was not rectified strictly in accordance with a notice of breach being given by the Local Government.

10. Termination

- 10.1 Notwithstanding anything expressed or implied in this Agreement to the contrary, either Party may, by giving 6 months' notice in writing to the other Party, terminate this Agreement for any reason whatsoever and upon the expiration of that 6 month period, this Agreement shall terminate but any rights of action or claims which accrued or arose to either Party prior to such termination are hereby preserved.
- 10.2 If the Minister breaches or fails to comply with any term of this Agreement; and after having been served with a written notice:
- (a) specifying the breach or failure; and
 - (b) requiring that breach or failure to be rectified within a reasonable period specified in the notice (being not less than 14 days),

fails or refuses to so rectify that breach or failure within that period, then the Local Government shall be entitled to terminate this Agreement and such termination shall take effect immediately upon the Minister being served with notice of termination.

11. Notices

11.1 Notices that may or must be sent under or in connection with this Agreement shall be in writing, signed by the Party or representative of the Party giving notice, and may be delivered by pre-paid post, by hand or by facsimile transmission to the other Party at the relevant address or facsimile number set out in item 8 of the Schedule.

11.2 Notices shall be deemed to be received:

- (a) (in the case of delivery by pre-paid post) two Business Days after deposit in the mail;
- (b) Immediately upon delivery by hand; or
- (c) immediately upon an apparently successful facsimile transmission being noted in document form by the sender's facsimile transmitter.

12. School Education Act 1999 remains unaffected

Nothing in this Agreement 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.

13. Not to obstruct or cause nuisance

The Minister shall not do or leave undone or allow or suffer to be done or left undone any act matter or thing whereby a nuisance or anything in the nature of or which may be deemed to be a nuisance by any Authority or within the meaning of any Statute (State or Federal) now or hereafter in force may exist arise or continue upon or in connection with the Facilities or any business carried on upon the same or the use thereof and shall forthwith abate any such nuisance or alleged nuisance and shall carry out and comply with all the provisions of every such Statute and of every requisition and order of any Authority in reference thereto.

14. Comply with Statutes

The Minister shall and shall ensure that its employees agents contractors licensees and invitees shall at all times duly and punctually comply with observe and carry out and conform with the provisions of any Statute now or hereafter in force and all requirements and orders of any Authority which effect the Facilities or the use thereof.

15. Report Damage etc

The Minister shall promptly report any theft of, damage to, deficiency in, destruction of, or other fault in relation to the Facilities to the Local Government upon the happening of the same and do all things and take all steps that are reasonable so as to minimise and mitigate any loss caused or occasioned thereby.

16. Local Government Responsible

The Local Government will be responsible for any Loss incurred or suffered by the Minister or any officer, employee, agent, contractor, licensee, student, invitee or representative of the Minister during the Minister's Authorised Times of Use of the Facilities as set out in this Agreement to the extent caused or contributed to by the Local Government not carrying out any necessary repairs to or maintenance of the Facilities.

17. Debts

If under this Agreement a Party is claiming monies owing as a debt from the other Party, the claiming Party will provide the other Party with an invoice and true copies of all documentation in support of the debt being claimed.

18. Signs

The Minister shall not affix or cause or permit to be affixed or exhibited anywhere in or on the Facilities any poster signboard neon sign or advertisement except as shall be first approved in writing by the Local Government.

19. Alcohol

Except as provided under the provisions of the School Education Act 1999 and the School Education Regulations 2000 and in accordance with the provisions of the Liquor Control Act 1988 and the Liquor Control Regulations 1989, the Local Government shall not permit the consumption of alcoholic beverages on the Facilities unless it has written authorisation from the Principal or an authorised officer of the Department.

20. Local Government to Promote Community Awareness

The Local Government shall, at its own cost and expense, be responsible for advertising the Facilities and otherwise promoting community awareness of and interest in the same from time to time.

21. Insurance

- 21.1 Each Party must at its own expense during the Term (and the Further Term if applicable) effect, maintain and keep current the following insurances with its self insurance fund or an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia to the reasonable satisfaction of the other party:
- (a) public liability insurance in an amount of not less than TEN MILLION DOLLARS (\$10,000,000.00) in respect of any one occurrence, unlimited in the aggregate or such amount as shall be determined at the reasonable discretion of the other Party from time to time to reflect prudent commercial practices;
 - (b) property insurance covering loss of or damage to any equipment that a Party provides for use on the Facilities for its full replacement value; and
 - (c) workers compensation insurance in accordance with the provisions of the Workers' Compensation and Injury Management Act 1981 including cover for common law liability for an amount of not less than FIFTY MILLION DOLLARS (\$50,000,000.00) for any one event in respect of that Party's workers.
- 21.2 As and when requested either Party must give to the other Party sufficient evidence of the existence of the insurances set out in clause 21.1 or provide certificates of currency in respect of those insurances.

22. Indemnity

- 22.1 Each Party shall indemnify and keep indemnified the other Party (including its officers, employees, agents, contractors, licensees or representatives) from and against all Loss incurred or suffered by or brought against any of those indemnified to the extent that the same was caused or contributed to by any tortious or other unlawful act or omission (including breach of a contractual term, condition or warranty) by the first mentioned Party or any of its officers, employees, agents, contractors, licensees, invitees or representatives.
- 22.2 In clause 22.1 Loss means loss, damage, liability, lawsuit, action, writ, claim, demand, proceeding, cost or expense arising from or in connection with:
- (a) any aspect of this Agreement (including the Licence and the Facilities); or
 - (b) any damage to the Facilities or other property of any person whosoever; or
 - (c) the death of, or injury or illness to, any person whosoever.
- 22.3 For the purposes of clause 22.1, neither the Local Government nor any of the Local Government's Visitors is, or shall be considered or deemed to be, a licensee or invitee of the Minister.

23. Costs

- 23.1 The costs of maintaining the Facilities shall be shared by the Parties as set out in item 9 of the Schedule.
- 23.2 Each Party shall pay its own legal costs in connection with the negotiation and preparation of this Agreement.
- 23.3 The Minister shall pay 100% of all costs charges and expenses for which the Local Government shall become liable in consequence of or in connection with any default by the Minister in performing or observing any covenants conditions or stipulations herein contained or implied and on the part of the Minister to be performed or observed except to the extent that the same was caused or contributed to by any tortious or other unlawful act or omission (including breach of a contractual term, condition or warranty) by the Local Government.

24. GST

- 24.1 The amount of all Primary Payments specified in this Agreement are exclusive of GST except where stated otherwise.
- 24.2 If GST is payable by the Local Government in respect of a Primary Payment or any part in connection with a Taxable Supply provided under this Agreement:
- (a) the Primary Payment is increased by an amount equal to the applicable GST; and
 - (b) the Minister must pay the amount of the increase in the same manner and on the same date as the Minister is required to pay the Primary Payment.
- 24.3 If the Primary Payment consists (wholly or partly) of the recovery by the Local Government of all or a portion of the Local Government's costs, the Primary Payment is to be reduced by the amount (or corresponding proportion) of the Input Tax Credits available to the Local Government in respect of these costs and then increased by any applicable GST payable under clause 24.2.
- 24.4 If a Primary Payment is to be increased to account for GST under clause 24.2 the Local Government must, at least one month before the date on which the increased Primary Payment is to be paid, issue a Tax Invoice to the Minister.

25. Dispute Resolution

- 25.1 If any dispute or difference arises between the Parties in connection with any aspect of this Agreement, the Parties will refer the matter to the Principal or an officer from the Facilities Program Delivery of the Department and a nominated representative of the Local Government for the negotiation who will have authority to settle the dispute on behalf of the Parties.

- 25.2 If the Principal or an officer from the Facilities Program Delivery of the Department and the nominated representative of the Local Government cannot settle the dispute within 28 days of the matter being referred to them then the dispute or difference shall be referred to and determined by arbitration under and in accordance with the provisions of the Commercial Arbitration Act 1985 and any party may be represented by a duly qualified legal practitioner or other representative.

26. Miscellaneous

- 26.1 Whenever the consent of the Minister is required under this Agreement:
- (a) that consent may be given or withheld by the Minister in the Minister's absolute discretion and may be given subject to such conditions as the Minister may determine;
 - (b) the Minister is not required to provide a reason or reasons for giving or refusing its consent; and
 - (c) the Local Government agrees that any failure by it to comply with or perform a condition imposed under clause 26(a)(i) will constitute a breach of a condition by the Local Government under this Agreement.
- 26.2 The Parties must do everything reasonably necessary, including signing further documents, to give full effect to this Agreement.
- 26.3 Nothing in this Agreement may be construed to make the Local Government a partner, agent, employee or joint venturer of the Minister.
- 26.4 The Local Government must not represent that the Local Government or any of its personnel are the employees, agents, partners or joint venturers of the Minister.
- 26.5 The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.
- 26.6 This Agreement supersedes all prior negotiations, understandings and agreements between the Parties relating to the matters covered by this Agreement and constitutes the full and complete agreement between the Parties relating to the matters covered by this Agreement.
- 26.7 The Parties agree that Part IF of the Civil Liability Act 2002 (WA) is excluded and does not apply to the Parties' liabilities under this Agreement.
- 26.8 This Agreement 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.

SCHEDULE

Item 1 (Clause 1.1) Land

[] and being the whole of the land in [Qualified] Certificate of [Crown Land] Title Volume [] Folio []

Item 2 (Clause 1.1) Facilities

[Description of Facilities]

Item 3 (Clause 1.1) School

[Name of School]

Item 4 (Clause 1.1) Term

[] years commencing on [] and expiring on []

Item 5 (Clause 1.1) Commencement Date

[Commencement Date]

Item 6 (Clause 1.1) Further Term

[] years commencing on [] and expiring on []

Item 7 (Clause 1.1) Times of Use by Minister

- (a) The Minister shall be entitled to use the Facilities between the hours of 8.00 a.m. and 4.00 p.m. on all School days and/or such other times as are first agreed to by the Parties in writing.
- (b) The Local Government shall be entitled to use the Facilities at all times other than the times specified in item 7(a) of the Schedule and/or such other times as are first agreed to by the Parties in writing.

Item 8 (Clause 14.1) Notices

Minister: Facilities Program Delivery,
Department of Education and Training
151 Royal Street
EAST PERTH WA 6004
FAX: 9264 5300

Local Government: Chief Executive Officer
Address

Item 9 (Clause 1.1) Costs Sharing of Maintenance

(a) Contribution

The Minister shall pay the sum of \$ [] (inclusive of GST) (Contribution) to the Local Government [specify regularity eg annually] in arrears commencing on the first anniversary of the Commencement Date within 30 days after receiving an invoice from the Local Government being the Minister's contribution to the costs of routine maintenance for the Facilities. The Contribution for routine maintenance has been calculated using the figures set out in Item 9(c) of the Schedule.

(b) Review of Contribution

The Contribution shall be reviewed on each Review Date using the following formula:

$$RC = CC \times CCPI$$

PCPI

Where:

RC = the adjusted Contribution payable from and including the relevant Review Date;

CC = the Contribution payable for the review period immediately preceding the Review Date in question;

CCPI = the CPI as last published by the Australian Statistician prior to the relevant Review Date;

PCPI = the CPI as last published by the Australian Statistician prior to latter of the Commencement Date or the previous Review Date.

(c) Routine Maintenance

It has been agreed between the Local Government and the Minister that the following cost sharing arrangements for maintaining the Facilities will apply:

Contribution calculation:

Mowing per annum = \$

Turf renovation/maintenance per annum including

verti-mowing, dethatching, fertilising,

broadleaf weed control and wetta soiling = \$

Therefore the total annual cost excluding GST of routine maintenance of the Facilities is \$_____

The total playing area of the Facilities is [] square metres and the Minister's portion of this total area is [] square metres.

The calculated cost of routine maintenance of the grassed area of the Facilities is [total annual cost ÷ total area] = \$_____ per square metre per annum.

The Minister's portion of the routine maintenance costs (being the Contribution) are \$_____ per annum.

(d) Major Maintenance

(i) Subject to paragraph (ii) below, the Minister and the Local Government shall share those costs incurred for any Major Maintenance in accordance with the table set out below. The Minister shall pay those costs within 30 days after receiving a tax invoice from the Local Government.

(ii) The Local Government will not carry out any Major Maintenance on the Facilities without first providing the Minister with details in writing of the scope and cost of the Major Maintenance required and obtaining the Minister's prior written approval to carry out same.

Activity	Minister	Local government
Major maintenance	%	%
Rectification of the grass dying	%	%
Major maintenance of the reticulation servicing the Facilities	%	%
Major maintenance and/or replacement of the bore located on the Local Government's Land/the Minister's Land [delete as appropriate]	%	%

All invoices to the Minister are to be addressed to:

Strategic Asset Planning
Department of Education and Training
151 Royal Street
EAST PERTH WA 6004

EXECUTED by the Parties.

THE COMMON SEAL of the)
was hereunto)
affixed in the presence of)

MAYOR

CHIEF EXECUTIVE OFFICER

SIGNED for and on behalf of the)
MINISTER FOR EDUCATION by)
.....)
A/Deputy Director General of the)
Department of Education and Training,)
the officer delegated this authority)
pursuant to sections 224 and 225)
of the School Education Act 1999 (WA))
in the presence of)

Witness signature

Witness Full Name (Please print)

Witness address (Please print)

Witness occupation (Please print)

APPROVED FOR THE PURPOSES OF SECTION 18 OF THE LAND ADMINISTRATION ACT 1997.

by Order of the Minister for Lands