

Hire and Licence Agreement

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Reference Schedule

Item 1 Parties

Owner Catholic Education Western Australia Limited
ACN 634 504 135
Address: 50 Ruislip Street
WEST LEEDERVILLE WA 6007

Attention: _____

Email: _____

Hirer **Name:** _____

ACN (If Applicable): _____

Address: _____

Attention: _____

Email: _____

Item 2 School: _____

Item 3 School Address _____

Item 4 Hire Area: _____

being an area of approximately _____ square metres

Item 5 Hiring Fee: \$ _____

Item 6 Hire Term: _____

Item 7 Commencement Date: _____

Item 8 End Date: _____

Item 9 Period of Use: _____

(I.e. how many hours per week; how many days per week and for how many hours)

Item 10 Permitted Use _____

(I.e. what activities will the Hirer be engaging in?)

Item 11 Deposit \$ _____

- Item 12 Terms of Payment of Hiring Fee:
- (a) in advance on the first day of each month during the Hire Term; or
 - (b) A one-off payment, due prior to the Commencement Date; or
 - (c) Other (please specify): _____

Delete that which does not apply.

Item 13 Rate of interest: That rate of interest that is 4% in excess of the interest rate quoted by the Owner's bank for the time being on unsecured commercial loans not exceeding \$100,000.

1 Definitions and interpretation

Definitions

1.1 In this document the following definitions apply:

Access Areas	means any part of the School which the Owner makes available for the purpose of accessing the Hire Area.
Business Day	means a day other than a Saturday, Sunday or public holiday in Western Australia.
Conditions of Use	means the conditions of use of the Hire Area and the Access Areas set out in Schedule 2.
Equipment	means the equipment described in Schedule 1.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Law	includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future and whether State, Federal, local or otherwise.
Reference Schedule	means the reference schedule at the beginning of this document.

Interpretation

1.2 In this document, unless the context otherwise requires:

- 1.2.1 Terms specified in the Reference Schedule are defined terms for the purposes of this document and have the meanings given to them in the Reference Schedule.
 - 1.2.2 Headings or subheadings are for convenience only and do not affect the interpretation of any provision of this document.
 - 1.2.3 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
 - 1.2.4 The singular includes the plural and vice versa.
 - 1.2.5 Words expressed in one gender include the other gender.
 - 1.2.6 A "person" includes an individual, partnership, firm, company, government, joint venture, association, authority, corporation or other body corporate.
 - 1.2.7 References to the parties, background, parts, clauses, schedules and annexures are references to the parties, background, parts, clauses, schedules and annexures to this document.
 - 1.2.8 The expression "this document" includes the agreement, arrangement, understanding or transaction recorded in this document.
 - 1.2.9 References to a party to this document include that party's executors, administrators, substitutes, successors and permitted assigns.
 - 1.2.10 A reference to a group of people is a reference to all of them collectively and to each of them individually.
 - 1.2.11 References to time are to time in Perth, Western Australia.
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- 1.2.12 If the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day.
- 1.2.13 A covenant or agreement made by, or for the benefit of, two or more persons binds, and is enforceable against, or may be exercised by (as the case may be), those persons jointly and each of them severally.
- 1.2.14 A reference to any statute or to any statutory provision includes any amendment, re-enactment or consolidation of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
- 1.2.15 “\$” or “dollars” is a reference to Australian currency.
- 1.2.16 A reference to a thing or an amount includes the whole or part of that thing or amount.
-

2 Grant of Licence and Condition Precedent

- 2.1 The Owner grants the Hirer a licence to use and occupy the Hire Area for the Permitted Use for the Periods of Use.
- 2.2 This document commences on the Commencement Date and ends on the End Date.
- 2.3 This document is subject to and conditional upon the Hirer providing the Owner with a copy of a valid Working with Children Check issued by the Department of Communities.
- 2.4 Where the Hirer is a corporation, the Hirer will procure that each of its employees accessing the Hire Area provide a valid Working with Children Check in accordance with clause 2.3.
- 2.5 This document is contractual only. It does not create a tenancy or give the Hirer any other interest in the Hire Area or the School.
- 2.6 The Hirer must not use the Hire Area for any purpose except for the Permitted Use.
-

3 Hiring Fee

- 3.1 The Hirer must pay the Hiring Fee in accordance with the Terms of Payment.
- 3.2 If the Hiring Fee is payable monthly and the licence does not begin on the first day of a month, the Hirer must pay the pro rata proportion of the Hiring Fee for the period at the beginning and end of the Hire Term that is less than a month.
-

4 Deposit

- 4.1 If Item 11 of the Reference Schedule provides for a Deposit, on or before the Commencement Date, the Hirer must deposit with the Owner the amount specified in Item 11 of the Reference Schedule.
- 4.2 The Owner may appropriate any part of the Deposit amount to recover the Owner's loss due to the Hirer's breach. The Hirer must promptly replace any part of the Deposit used.
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- 4.3 On or before the date which is 20 Business Days after the End Date and provided that the Hirer has complied with all the Hirer's obligations under this document, the Owner must return what is left of the Deposit to the Hirer unless it is needed to recover the Owner's loss recoverable under this document.
-

5 Equipment hire

- 5.1 The Owner agrees to hire the Equipment to the Hirer for the Hire Term.
-

6 Duties of Hirer

- 6.1 The Hirer may use the Hire Area and the Access Areas at any time within the Period of Use, using the means of access provided by the Owner from time to time.
- 6.2 The Hirer must comply with any directions given by the Owner in relation to the day to day use of the Hire Area and the Access Areas. Without limiting this clause 6.2, the Hirer must:
- 6.2.1 maintain the validity of the Working with Children Check referred to in clause 2.3 at all times throughout the period of this document;
 - 6.2.2 maintain safe work practices both in relation to the Hirer itself, any personnel it may use for the Permitted Use and any student recipient of services provided by the Hirer;
 - 6.2.3 abide by all workplace policies or procedures that apply within the Hire Area and the School respectively.
- 6.3 The Hirer must comply with the Conditions of Use in respect of the Hire Area and the Access Areas at all times during the Hire Term.
- 6.4 The Hirer must not do anything, or allow anything to be done, which might lead to:
- 6.4.1 an increase in the cost of insurance in respect of the School;
 - 6.4.2 the refusal or reduction of a claim under that insurance; or
 - 6.4.3 the cancellation or non-renewal of that insurance.
- 6.5 The Hirer must not do anything, or allow anything to be done, which might interfere with the enjoyment by others of the use of the School or the Access Areas. This includes each of the following:
- 6.5.1 causing an obstruction to getting into or out of the School or Access Areas; and
 - 6.5.2 causing a nuisance, obstruction, annoyance or inconvenience to anyone using the School or Access Areas.

Hirer's use of Equipment

- 6.6 During the Hire Term the Hirer must:
- 6.6.1 give immediate written notice to the Owner in the event of any loss, accident or damage to the Equipment or arising out of, or in connection with, the Hirer's possession or use of the Equipment;
-

- 6.6.2 ensure that the Equipment is used only for the purposes for which it is designed, and operated in a safe and responsible manner and in accordance with any operating instructions provided by the Owner;
 - 6.6.3 ensure that during the Hire Term, all Equipment is used only at the Hire Area;
 - 6.6.4 not, without the prior written consent of the Owner, part with the control or possession of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any security interest in respect of it; and
 - 6.6.5 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Owner in the Equipment.
- 6.7 The Hirer acknowledges that the Owner shall not be responsible for any loss of or damage to the Equipment during the period the Hirer has possession of the Equipment.
- 6.8 The Equipment at all times remains the property of the Owner, and, the Hirer has no right, title or interest in or to the Equipment (save the right to use of the Equipment during the Hire Term).
-

7 The Owner's rights

The Owner's right to make alterations etc.

- 7.1 The Owner is entitled at any time to carry out work of any kind to the School, even if it adversely affects the Hirer's use of the Hire Area.
 - 7.2 The Owner shall give written notice to the Hirer if such work may adversely affect the Hirer's use of the Hire Area under this document.
 - 7.3 While that work is being carried out, the Owner is not required to provide alternative space to the Hirer. the Owner will try to provide alternate space but is not obliged to do so.
 - 7.4 Except in cases where the Owner is able to provide an acceptable alternate space at the School, the Owner must refund the proportionate part of the Hiring Fee for the period during which the Hirer is unable to use the whole of the Hire Area as a result of the work.
-

8 Liability, indemnity and insurance

Exclusion of the Owner's liability

- 8.1 To the fullest extent permitted by Law, the Owner is not responsible in any way for any loss, injury or damage suffered within the Hire Area or the Access Areas or in relation to them by:

- 8.1.1 the Hirer; or

- 8.1.2 anyone visiting the Hire Area.

This includes loss or, or damage to, any property left in the Hire Area.

Hirer to indemnify the Owner

- 8.2 The Hirer indemnifies the Owner and its employees, agents, contractors and invitees, against:
- 8.2.1 any claim or proceeding that is made or commenced, and
 - 8.2.2 any liability, loss, damage or expense that any of them incurs or suffers, as a result of anything done or not done in respect of the Hire Area or the Access Areas or anything in them during the Hire Term by:
 - 8.2.3 the Hirer; or
 - 8.2.4 anyone visiting the Hire Area or
- of a breach of this document by the Hirer.

Hirer's insurance

- 8.3 The Hirer must arrange and maintain insurance, at its own cost, on usual terms with an insurer authorised under the *Insurance Act 1973* (Cth) against each of the following:
- 8.3.1 public liability, covering the liability for claims arising out of the use or occupation of the Hire Area and/or Equipment for a minimum amount of \$20 million for any one occurrence; and
 - 8.3.2 employer's liability in respect of the Hirer's employees (including workers' compensation insurance).
- 8.4 The insurance the Hirer must arrange must commence from the Commencement Date. The Hirer must maintain the insurance for the Hire Term and any additional period during which the Hirer uses the Hire Area.
- 8.5 The Hirer must not do or omit to do any act or thing or bring onto or keep anything in the Hire Area which might render its policies of insurance void or voidable.
- 8.6 The Hirer must provide a certificate of currency of its policies of insurance to the Owner
- 8.6.1 prior to the Commencement Date; and
 - 8.6.2 at any time during the Hire Term on request by the Owner.

9 Termination

Termination by the Owner

- 9.1 The Owner may, without prejudice to any other right or remedy which may be available to it, terminate this document by giving to the Hirer no less than 60 days' prior written notice of the Owner's intention to terminate this document.
- 9.2 the Owner may, without prejudice to any other right or remedy which may be available to it, terminate this document immediately by written notice to the Hirer if the Hirer:
- 9.2.1 defaults in any of its payment obligations under this document;
 - 9.2.2 or any of its personnel using the Hire Area fails to hold a valid Working with Children Check;
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- 9.2.3 or any of its personnel using the Hire Area engages in conduct that is inconsistent with the obligations prescribed to retain a valid Working with Children Check; or
- 9.2.4 commits any other material breach of this document which breach is not capable of remedy, or which breach (if capable of remedy) is not remedied within 5 Business Days after the service of written notice from the Owner requiring it to do so.

Termination by Hirer

- 9.3 The Hirer may, at any time, terminate this document by 60 days' prior written notice to the Owner.

Consequences of termination

- 9.4 Upon termination of this document, however caused:
 - 9.4.1 the Owner's consent to the Hirer's possession of the Equipment shall terminate and the Owner may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment;
 - 9.4.2 the Hirer must remove all of the Hirer's property in the Hire Area;
 - 9.4.3 the Hirer will pay for any damage it causes to the Hire Area or the School;
 - 9.4.4 the Hirer shall pay to the Owner on demand any costs and expenses incurred by the Owner in recovering the Equipment, repairing any damage caused to the Hire Area or the School by the Hirer, and/or in collecting any sums due under this document (including without limitation legal costs); and
 - 9.4.5 except as expressly reserved in this document, each of the parties' future rights and obligations under this document shall cease to have any further force or effect.
 - 9.5 Termination of this document shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.
-

10 Assignment and subcontracting

- 10.1 The Hirer must not:
 - 10.1.1 assign, transfer, mortgage, charge, or deal in any manner with this document or any of its rights and obligations under this document, or purport to do any of the same; or
 - 10.1.2 subcontract or delegate in any manner any or all of its obligations under this document to any third party or agent without the prior written consent of the other party.
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11 GST

General

- 11.1 Terms that are defined in the GST Act have the same meaning when used in this clause 11.
-

Amounts otherwise payable do not include GST

- 11.2 Except where express provision is made to the contrary, and subject to this clause, the Consideration payable by the Hirer is exclusive of GST and represents the Value of the Taxable Supply for which payment is to be made.

Liability to pay GST

- 11.3 If the Owner is liable by Law for GST on a Hiring Fee payment, the Hirer must pay to the Owner the amount of the GST.

Time for payment

- 11.4 The Hirer must pay to the Owner any amount in respect of GST that the Hirer is required to pay under this Lease:
- 11.4.1 at the same time; and
 - 11.4.2 in the same manner,
- as the Hirer is required to pay the Hiring Fee in respect of which the GST relates.

Tax Invoices

- 11.5 The Owner must issue to the Hirer Tax Invoices in respect of Hiring Fee payments as and when required by the GST Act.

Refunds

- 11.6 If the Owner refunds to the Hirer an amount under this document, the Owner must also refund to the Hirer at the same time any amount paid by the Hirer under clause 11.4 with respect to the refunded amount.

Exclusion of Input Tax Credit items

- 11.7 For the purposes of this clause 11, a Hiring Fee payment excludes any outgoing or other expense to the extent that the Owner is entitled to an Input Tax Credit for the outgoing or expense.

Default GST

- 11.8 Where an amount required to be paid by the Hirer under this clause 11 is not so paid when due, the Hirer must also pay to the Owner:
- 11.8.1 any Default GST payable by the Owner in relation to the particular Taxable Supply for which the amount was required to be paid; and
 - 11.8.2 interest at the rate specified in Item 13 of the Reference Schedule on the amount unpaid from the due date for payment until payment.
- 11.9 For the purposes of this clause, it shall not be a defence to a claim against the Hirer for payment to the Owner of Default GST that the Owner has failed to mitigate the Owner's damages by paying an amount of GST when it fell due under the GST Act.

12 Notices

Form and delivery

- 12.1 A notice, consent, information or request that must or may be given or made to a party under this document is only given or made if it is:
- 12.1.1 delivered or posted to that party at the address stated in this document; or
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12.1.2 emailed to that person at the email address stated in this document, or at such other address or email (as the case may be) that has been notified by that party to the other party in writing, from time to time.

Execution of emails

12.2 If notice is given by email, the sending party must ensure that it is either signed by means of an electronically produced signature of a person authorised by that party to send the email or states that it is being sent by a person authorised to send the email on behalf of that person.

Receipt and effect

12.3 A notice, consent, information or request is to be treated as given or made at the following time if it is:

12.3.1 delivered, when it is left at the relevant address.

12.3.2 sent by post, 3 Business Days after it is posted.

12.3.3 sent by email, as soon as it enters the recipient's information system.

12.4 If:

12.4.1 a notice, consent, information or request is delivered;

12.4.2 the email enters the recipient's information system,

after the normal business hours of the party to whom it is delivered or sent, it is to be treated as having been given or made at 9.00am the next Business Day.

13 General

Trustee

13.1 If a party acts as trustee of a trust, that party enters into this document in its own right and as trustee for the trust.

Variation

13.2 This document, including the schedules, can only be varied by the parties in writing, signed by all of the parties.

Waiver

13.3 The fact that a party fails to do, or delays in doing, something that party is entitled to do under this document does not amount to a waiver of that party's right to do it.

13.4 A waiver by a party is only effective if it is in writing.

13.5 A written waiver by a party is:

13.5.1 only effective in relation to the particular obligation or breach in respect of which it is given; and

13.5.2 is not to be taken as an implied waiver of:

(a) any other obligation or breach; or

(b) that obligation or breach in relation to any other occasion.

Entire agreement

- 13.6 This document contains everything that the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party (or a director, officer, agent or employee of that party), before this document was executed.

Severability

- 13.7 If:
- 13.7.1 a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way;
 - 13.7.2 any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected; and
 - 13.7.3 the removal of a clause or part of a clause under clause 13.7.2 materially alters the commercial allocation of benefit and risk (or management of risk) under this document, the parties agree to negotiate in good faith to amend or modify the terms of the document as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

Further cooperation

- 13.8 Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this document.

Relationship of the parties

- 13.9 This document does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the parties.
- 13.10 No party is liable for an act or omission of another party, except to the extent set out in this document.

No merger

- 13.11 The provisions of this document do not merge with any action performed or document executed by any party for the performance of this document.

Third party rights

- 13.12 A person who is not a party to this document does not have any rights under or in connection with it.

Exclusion of contrary legislation

- 13.13 To the full extent permitted by Law, any legislation that adversely affects a right, remedy or obligation of a party, under or relating to this document is excluded.

Execution of separate documents

- 13.14 This document is properly executed if each party executes this document or an identical document. In the former case, this document takes effect when the last party executes this document. In the latter case, this document takes effect when the last of the identical documents is executed.
- 13.15 Evidence of execution of this document by a party may be shown by fax, email or a PDF copy of this document.
-

Governing Law and jurisdiction

13.16 This document is governed by the Law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

Execution

Executed as an agreement

Date: _____

Owner

SIGNED SEALED AND DELIVERED)
by _____ on)
behalf of Catholic Education Western)
Australia Limited in the presence of:)

Signature of representative

Signature of witness

Print name of witness

Address of witness

Hirer [please sign the applicable execution clause]

Executed by _____)

_____)

_____)

(Hirer Company Name) _____)

ACN _____)

in accordance with section 127 of _____)

the *Corporations Act 2001* (Cth) by: _____)

Signature of Director

Signature of *Director/*Secretary

Print name of Director

Print name of *Director/*Secretary

**delete that which does not apply*

Date:

Signed by _____)

_____)

_____)

(Name of Hirer) _____)

in the presence of: _____)

(signature of Hirer)

Witness:

Signature: _____

Full Name: _____

Address: _____

Occupation: _____

Date:

Schedule 1

Equipment

[list hire equipment included or insert "Not Applicable"]

Schedule 2

Conditions of Use

- 1 To use the Hire Area and Equipment only on the dates and at the times specified in this document.
 - 2 Not to 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 to use any machinery or equipment other than the Equipment.
 - 3 Not to remove the Equipment or any part of it or any other property of the Owner or the School from the Hire Area and to ensure that the Equipment and any other property of the Owner or the School are left at the end of any Period of Use in the same state and condition as at the beginning of that Period of Use.
 - 4 Nothing is to be attached in any manner to the walls, floors, curtains or any part of any buildings at the School nor are signs or scenery etc. to be erected without the written consent of the Owner.
 - 5 It is the responsibility of the Hirer to obtain any necessary permits from the relevant authorities as required for the planned activities.
 - 6 If entertainment is to be provided by the Hirer:
 - 6.1 it must be in accordance with the values and standards of the School; and
 - 6.2 the Hirer must submit any entertainment programme for approval by the Owner in advance of the entertainment being provided.
 - 7 If kitchen facilities are to be used by the Hirer, at the end of each Period of Use:
 - 7.1 all appliances, cutlery, utensils and other equipment must be left in a clean and tidy condition;
 - 7.2 no food or drink may be left in the refrigerators or cupboards; and
 - 7.3 all bottles and rubbish must be removed from the premises.
 - 8 At the end of each Period of Use, the Hirer must ensure that:
 - 8.1 toilets are cleaned and swept;
 - 8.2 the Hire Area is swept and (if necessary) mopped;
 - 8.3 external doors to the Hire Area are locked; and
 - 8.4 all lights in the Hire Area must be turned off.
 - 9 Sales of any kind from the Hire Area are not permitted without prior approval.
 - 10 Noise (music etc.) must be contained within the requirements of the regulations of local authorities.
 - 11 This document permits the Hirer and its guests to access the Hire Area and the Access Areas only. The Hirer must not, and procure that its agents, invitees and assigns do not, access other areas of the School without the prior written consent of the Owner.
 - 12 The Hirer acknowledges that the School and its facilities are located in a residential area and must ensure that its agents, invitees and assigns do not engage in any activity that could be reasonably construed as:
 - 12.1 disturbing neighbours of the school;
 - 12.2 infringing on a neighbour's rights in respect of their property; or
-

- 12.3 damaging to the reputation of the School.
- 13 The Hirer must not permit the consumption of alcohol at the School by any person in connection with the Hirer's use of the Hire Area without first:
 - 13.1 obtaining the prior written consent of the Owner (which may be withheld in the Owner's absolute discretion);
 - 13.2 obtaining any necessary liquor permit or other authorisations required by the relevant authorities; and
 - 13.3 procuring that all of its agents, employees and/or volunteers hold the necessary qualifications to distribute or manage the distribution of alcohol.
- 14 The Hirer must procure that none of its agents, invitees and assigns smoke in the Hire Area, the Access Areas or elsewhere on the School grounds.
- 15 The Hirer must report any damage / malfunction related to:
 - 15.1 the Hire Area;
 - 15.2 the Equipment; or
 - 15.3 any other facility or equipment at the School,without delay. If required by the Owner, the Hirer must complete a form detailing the damage or malfunction.

Insert any other specialised Conditions of Use in the space above.