



COPYRIGHT AGENCY LIMITED

Education licence – non commercial

(for copying of works under Part VB of the *Copyright Act 1968*)

THIS AGREEMENT IS MADE ON	201__
PARTIES (name and, if applicable, ABN of the Licensee)	("the Company")
OF (Licensee's street address)	Postcode:
AND COPYRIGHT AGENCY LIMITED ABN 53 001 228 799 of Level 15, 233 Castlereagh Street, Sydney, New South Wales (CAL)	

BACKGROUND

The Institution has agreed to enter into this agreement for the purpose of making Licensed Copies under Part VB of the *Copyright Act 1968*.

AGREEMENTS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 Where commencing with a capital letter:

Act means the *Copyright Act 1968*;

Agreed Rate means the overdraft rate for overdrafts of \$100,000 or more charged by CAL's bankers from time to time plus 1% calculated on daily rests from the due date to the date of payment;

Course Materials means Works to be obtained by students enrolled at the Institution or any Related Institution for the purpose of a course at the Institution or Related Institution;

Data Collection means any method of collecting information about Licensed Copying used by CAL, including surveys of the kind used by CAL in Similar Level Institutions;

Data Collection Period means the period of a Data Collection in which the Institution participates;

Education Institution has the same meaning as in the Act;

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the *A New Tax System (Goods and Services Tax) Act 1999*, or otherwise, on a supply;

Licence Fees means the fees calculated in accordance with schedule 4 for hard copy reproductions;

Licensed Copies means copies made by or on behalf of the Institution or a Related Institution in reliance on the Remuneration Notice;

Location means each location at which the Institution or a Related Institution conducts courses of study, as specified;

(a) in the case of the Institution, in schedule 2; and

(b) in the case of each Related Institution, in schedule 3,

and as varied by clause 2.3;

Related Institutions means the institutions listed in schedule 3, as varied by clause 2.2;

Remuneration Notice means a notice given by or on behalf of the Institution to CAL in accordance with section 135ZU of the Act;

Similar Level Institutions means the institutions identified by the Institution in schedule 1;

Student Amount means the annual rate for Licensed Copying for each student at Similar Level Institutions, as determined by CAL having regard to surveys in Similar Level Institutions;

Student Enrolment means the total student enrolment of the Institution and the Related Institutions calculated in the manner notified by CAL to the Institution from time to time;

Work means a work in which copyright subsists under the Act; and

Year means a calendar year.

1.1.2 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2 Interpretation

1.2.1 Unless the context otherwise requires a word which denotes a person includes an individual, a body corporate and a government.

1.2.2 Headings must be ignored in the interpretation of this agreement.

1.2.3 A person includes the trustee, executor, administrator, successor in title and assign of that person. This clause must not be construed as permitting a party to assign any right under this agreement.

2. RELATED INSTITUTIONS

2.1 Capacity

The Institution:

- (a) enters into this agreement on its own behalf and as agent for the Related Institutions; and
- (b) warrants that it is authorised to enter into this agreement as agent for the Related Institutions.

2.2 Variation

The Institution may:

- (a) on notice to CAL, include any additional entity as a Related Institution; and
- (b) on 3 months notice to CAL, remove any entity as a Related Institution.

2.3 Locations

The Institution must, within 1 month, notify CAL of any change in the Locations at which the Institution or a Related Institution conducts courses of study.

3. REMUNERATION NOTICE

3.1 Acknowledgment

CAL acknowledges receipt of a Remuneration Notice specifying that any amount payable to CAL under this agreement is to be assessed on the basis of a sampling system.

3.2 Revocation

The Institution acknowledges that the Remuneration Notice will not be revoked during the term of this agreement.

4. LICENSED COPYING

4.1 Restrictions

The Institution and each Related Institution must:

- (a) ensure that Licensed Copies are not provided to any person other than:
 - (i) staff or students of the Institution or Related Institutions;
 - (ii) an Educational Institution which has entered into a licence with the copyright owner for Licensed Copying;
 - (iii) an Educational Institution in respect of which CAL advises a remuneration notice has been provided under section 135ZU of the Act; or
 - (iv) an Educational Institution which CAL advises has entered into a licence with CAL for Licensed Copying; and
- (b) direct all its employees, agents and contractors who make Licensed Copies under this agreement to comply with this clause 4.1.

4.2 Notices

The Institution and each Related Institution must ensure that all copying machines in its possession or under its control have on or near them a legible notice which sets out the Licensed Copying rights in Part VB of the Act.

4.3 Marking

Without limiting the obligations of the Institution and each Related Institution under the Act or otherwise, the Institution and each Related Institution must mark Licensed Copies in such manner as CAL may from time to time request.

5. UNAVAILABLE WORKS

The parties acknowledge that, for the purposes of this agreement, terms referred to in section 135ZL(2) of the Act have the following meanings:

- (a) “reasonable investigation” means inquiries of the Institution’s normal suppliers of Works;
- (b) “reasonable time” means:
 - (i) in the case of Course Materials which are textbooks, 6 months or such lesser time approved by CAL (such approval not to be unreasonably withheld); and
 - (ii) in the case of other Works, 30 days; and
- (c) “ordinary commercial price” means the lower of the recommended retail price of the Work and the price at which the Work is normally available to the Institution.

6. FEES

6.1 Payment

The Institution must, by 30 June in each Year:

- (a) pay CAL the Licence Fees for that Year; and
- (b) provide CAL with a notice specifying Student Enrolments used to calculate those Fees.

6.2 Interest

The Institution must pay CAL interest at the Agreed Rate on each amount outstanding under this agreement.

7. DATA COLLECTION

7.1 Participation

7.1.1 The Institution must, as requested by CAL and at the direction of CAL, participate in:

- (a) Data Collection; and
- (b) training in connection with Data Collection,

and otherwise comply with all Data Collection requirements notified by CAL to the Institution from time to time.

7.1.2 CAL acknowledges that the Institution is not required to participate in Data Collection for more than 3 months in any 3 year period after the date of this agreement.

7.2 Specific obligations

Without limiting clause 7.1.1, for each Data Collection Period the Institution must:

- (a) permit CAL access to all:
 - (i) premises of the Institution and each Related Institution or under their control;
 - (ii) Licensed Copying at the Institution and each Related Institution;

- (b) Keep and provide to CAL accurate, complete and legible records of all Licensed Copying at the Institution and each Related Institution; and
- (c) Ensure that all employees, agents and contractors of the Institution maintain the same Licensed Copying practices as used outside the Data Collection Period.

7.3 Acknowledgment

The Institution acknowledges that:

- (a) all records of Licensed Copying referred to in this clause 7 are the property of CAL and confidential to it; and
- (b) compliance with this clause 7 is a requirement of CAL’s sampling system for the purposes of section 135ZW(5) of the Act.

8. RECORDS AND INFORMATION

8.1 The Institution

The Institution and each Related Institution must:

- (a) keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to CAL under this agreement, and the Institution’s compliance with its obligations under this agreement, can be properly ascertained; and
- (b) provide CAL with such information as CAL may from time to time request in connection with this agreement.

8.2 CAL

8.2.1 CAL must keep accurate books of account and other records in sufficient detail to ensure that all amounts payable to CAL under this agreement can be properly ascertained.

8.3 Examination

8.3.1 CAL may at any time examine the accounting and other records of the Institution and each Related Institution to:

- (a) determine the correctness of any payment under this agreement;
- (b) in the case of a failure to provide information in accordance with clause 8.1(b), obtain the information requested under that clause; or
- (c) determine whether the Institution is complying with its obligations under this agreement,

and for this purpose is entitled to access to all premises of the Institution and each Related Institution or under their control.

8.3.2 Without limiting clause 8.3.1 or section 135ZY of the Act, the parties acknowledge

that the reference to “relevant records” in section 135ZY(1)(b) of the Act includes:

- (a) Licensed Copies made by or on behalf of the Institution or any Related Institution Part VB of the Act;
- (b) Notices referred to in clause 4.2; and
- (c) Markings made in accordance with clause 4.3.

8.3.3 The Institution must pay the cost of the examination if the examination:

- (a) establishes that:
 - (i) the amounts payable under this agreement based on information provided to CAL were understated by more than 5%, or
 - (ii) the Institution is not complying with its obligations under this agreement; or
- (b) is undertaken under clause 8.3.1(b).

9. CONFIDENTIALITY

9.1 Parties to maintain

Subject to clause 9.2, no party may during the term of this agreement or at any time after its termination (except in the proper course of performance of this agreement), disclose to any person without the previous consent in writing of the other party any confidential information of the other party.

9.2 Exclusions

9.2.1 CAL may use confidential information of the Institution and each Related Institution to determine monies payable to CAL under this agreement, and distributions to members of CAL and, for this purpose, disclose confidential information to CAL’s auditors.

9.2.2 The obligation of confidentiality set out in this clause 9 do not apply to confidential information which is:

- (a) required to be disclosed by law;
- (b) in the public domain other than by breach of an obligation of confidence; or
- (c) disclosed to the party’s legal advisers.

10. INFRINGEMENT

10.1 Notice

The Institution and each Related Institution must give CAL prompt notice of any claim or proceedings which comes to its notice for infringement of copyright arising from Licensed Copying under this agreement.

10.2 Proceedings

The Institution and each Related Institution must:

- (a) not compromise or settle any such claim or proceedings without the prior written consent of CAL; and
- (b) at the request and at the cost of CAL, permit CAL to have the conduct of any such claim or proceedings in the name of the Institution and each Related Institution.

11. WARRANTIES

11.1 Both parties

Each party warrants that it:

- (a) if it is a body corporate, it is duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) it has the power to enter into and perform its obligations under this agreement; and
- (c) it has taken all necessary corporate action to authorise the entry into and performance of this agreement.

11.2 The Institution

The Institution warrants that:

- (a) all information provided by it in this agreement or otherwise provided to CAL under this agreement is accurate and complete;
- (b) neither it nor any Related Institution is an institution that is conducted for the profit, direct or indirect, of any individual or individuals; and
- (c) it and each Related Institution is an Education Institution as defined in section 10 of the Act or has published a notice in the *Gazette* in accordance with section 10A(4).

12. INDEMNITIES

12.1 The Institution

The Institution indemnifies CAL against all liability incurred by CAL as a result of or arising out of any breach by the Institution or any Related Institution of this agreement.

12.2 CAL

CAL indemnifies the Institution against all liability incurred by the Institution or any Related Institution as a result of or arising out of any breach by CAL of this agreement.

13. TERM

This agreement continues in force until 31 December in each Year until terminated in accordance with clause 14.

14. TERMINATION

14.1 Notice

CAL or the Institution may, on 3 months notice to the other, terminate this agreement with effect on the next following 31 December.

14.2 Default

If:

- (a) a party (**Defaulting Party**) commits a breach of any obligation under this agreement which is not capable of remedy or continues to breach any obligation under this agreement (other than a breach which is not capable of remedy) for 30 days after receiving notice from the other party (**Innocent Party**) of that breach;
- (b) an application or order is made for the winding up or dissolution of the Defaulting Party;
- (c) a receiver or receiver and manager, official manager, trustee, provisional liquidator or similar officer is appointed for all or any part of the assets or undertaking of the Defaulting Party;
- (d) the Defaulting Party enters into, or resolves to enter into, an arrangement, composition or compromise with, or assignment for, the benefit of its creditors generally, or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise;
- (e) the Defaulting Party stops payment of or is unable to pay its debts within the meaning of the *Corporations Law*; or
- (f) the Defaulting Party ceases to carry on business,

the Innocent Party may, by notice to the Defaulting Party, terminate this agreement and recover from the Defaulting Party all losses, costs and expenses incurred by the Innocent Party.

15. MISCELLANEOUS

15.1 Notices

15.1.1 A notice under this agreement must be in writing and may be given to the addressee by:

- (a) delivering it to the address of the addressee;
- (b) sending it by pre-paid registered post to the address of the addressee; or
- (c) sending it by facsimile to the facsimile number of the addressee,

and the notice will be deemed to have been received by the addressee on receipt.

15.1.2 A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.

15.2 Amendment

This agreement may only be varied by the written agreement of the parties.

15.3 Assignment

The Institution may only assign a right under this agreement with the prior written consent of CAL.

15.4 Entire agreement

This agreement embodies the entire understanding and agreement between the parties as to its subject matter of this agreement.

15.5 Further assurance

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.

15.6 Governing law and jurisdiction

This agreement is governed by and must be construed in accordance with the laws of New South Wales and each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from them; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

16. GST

16.1 Payment

The parties acknowledge that the monies payable to CAL under this agreement do not include GST. To the extent that any supply for which such monies are payable is a taxable supply, the monies may be increased by amount determined by CAL, not exceeding the amount of the monies multiplied by the rate at which GST is imposed in respect of CAL.

16.2 Tax Invoice

CAL must issue a Tax Invoice to the Licensee receiving a supply to which this clause 16 applies within 7 days following payment of the GST inclusive consideration determined under this clause 16.



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Schedule 1

Similar level institution

Note: Tick the relevant box (more than one box may be ticked) to select the Education Institutions that offer courses of study at substantially the same level of education as that offered by the Institution and the Related Institutions.

- universities
- technical and further education institutions
- secondary schools
- primary schools
- preschool or kindergarten
- adult and community education provider



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Schedule 2

Location of institution

Contact name / position	
Street address	Postcode
Postal Address:	Postcode
Telephone:	Facsimile:
Email:	



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Schedule 4

Licence fees

1. The Student Amount is calculated as follows:
 - (a) CAL may, by 31 May in each Year, notify the Institution of the Student Amount for that Year for each Similar Level Institution; and
 - (b) If CAL does not do so, the Student Amount for the Similar Level Institution is that Amount last notified by CAL to the Institution.
2. The Student Enrolment for each Year is the Student Enrolment for the annual period as notified by CAL. CAL will notify the Institution of the annual period.
3. The Licence Fees for each Year are calculated as follows:
$$LF = SA \times SE$$

Where: LF is the Licence Fees for the Year;
SA is the Student Amount for the Year for the relevant Similar Level Institution; and
SE is the Student Enrolment for the annual period as notified by CAL for the relevant Similar Level Institution.
4. Where an entity is not a related Institution for the whole of a Year, the Institution may, in calculating the Student Enrolment of that Related Institution for the purposes of paragraph 3, make a pro rata calculation based on the number of days in that Year during which the entity was a Related Institution.
5. Notwithstanding the formula in paragraph 3, the minimum Licence Fee in each year is \$50.00.

EXECUTED AS AN AGREEMENT

Signed for and on behalf of

(print name of administrating body)

Signature of authorised person

In the presence of, signature of witness

Office held

Name of witness *(print)*

Name of authorised person *(print)*

Signed for and on behalf of **Copyright Agency Limited**

Signature of authorised person

In the presence of, signature of witness

Office held

Name of witness *(print)*

Name of authorised person *(print)*

FOR CAL OFFICE USE ONLY

ORGANISATION No.	DATE RECEIVED:
LICENCE No.:	COMMENCEMENT DATE: 1 JANUARY _____
OTHER LOCATIONS:	INITIALS:

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