

LICENSE AGREEMENT

1. LICENSE

- 1.1. On acceptance, **MGM Wireless Holdings Pty Ltd** ABN: 29 104 182 452 of 154 Fullarton Road, Rose Park, South Australia 5067, (the “Supplier”) will grant the School a non-exclusive, non-transferable limited license to use the Software and Services (the “System”) listed in the Schedule (the “Schedule”) and the right to use the Transmissions on the terms of this Agreement.

2. DURATION OF LICENSE

- 2.1. The License to Use the System will continue indefinitely provided that the School pays the Initial License Fee and the Annual License Fee in accordance with this Agreement.

3. PROPRIETARY INFORMATION

- 3.1. The Supplier warrants that it has the right to grant this License to the School.
- 3.2. The School acknowledges that the Supplier is authorized to license the System and the ideas and expressions contained in the system and all physical forms of it.
- 3.3. The School shall not modify the System or any part of it in any respect or permit or cause any person or organization to:
- 3.4. Copy or duplicate any physical form in which the System or any part of it may be stored onto any medium except one (1) copy for archival, security or other regular business purposes; or
- 3.5. Create or recreate, or attempt to create or recreate, the source programs, object programs or any other aspect of the System in whole or in part; or
- 3.6. Place any such information into the public domain.
- 3.7. The School shall limit access to the media containing the System and Associated Documentation to those of its employees, contractors and agents necessary to permit the School to use the System. The School will store such media in a secure place except when being used, and will exercise all other reasonable precautions to prevent unauthorised access, whether direct or indirect.
- 3.8. The School must take all reasonable steps to maintain the security and confidentiality of passwords required to access the System or any part of it and to prevent unauthorised use of the software, including, without limitation, not disclosing passwords to any persons other than authorised employees, and logging out of the System or any part of it or otherwise secure the computer from unauthorised use prior to leaving a computer on which the software is running unattended.
- 3.9. The School will indemnify and keep the Supplier and MGM indemnified against any loss or damage incurred by the Supplier as a result of improper or unauthorised use of the System by the School, its employees or agents.
- 3.10. The Supplier will take all reasonable precautions to prevent disclosure of any Confidential Information or data belonging to the School and made known to the Supplier by the School during the course of the installation or service or use of the System.
- 3.11. The School acknowledges that its use of the Software may be automatically monitored to obtain various non-financial and non-client-specific operational data, such as application usage statistics.

4. FITNESS FOR PURPOSE

- 4.1. The School acknowledges that the Supplier has not made any representation or promise which is not expressly set forth in the Schedule as to the fitness of the goods and services for any particular purpose or any other matter.
- 4.2. The School acknowledges and warrants that it has relied on its own skill and judgment or alternatively on the skill and judgment of professional advisers retained by it to provide advice or assistance as to the suitability of the System for the specific purpose.

5. SERVICES

- 5.1. The Supplier will provide the School the Services in accordance with a time line agreed by the School and the Supplier.

6. USE OF SYSTEM

- 6.1. The School warrants that it will only use the System in accordance with the Associated Documentation and other written instructions provided to the School by the Supplier.
- 6.2. The School acknowledges that the System operates as a communication tool; and is an aid to the School's operations; and that processes and procedures and communications to external systems, networks and platforms occur for the purpose of making Transmissions.
- 6.3. The School shall not do any act that may jeopardise the security or integrity of any part of the system, network or platform which is used to enable the System to function, regardless of who owns that system, network or platform.
- 6.4. The School shall not and shall not allow any other person to access or manipulate the Software in any way that would allow them to copy, alter or reverse engineer the System or any part of it.

7. PAYMENT

- 7.1. The School shall pay to the Supplier the Initial Licensee Fee and the Annual License Fee at the times and on the date/s set out in the Schedule.
- 7.2. The School will pay the Transmission Fees as set out in the Schedule.
- 7.3. Any goods and services tax, customs duties or other government charges, fees, taxes, levies or imposts that are payable by the School and known at the date of acceptance will be set out in the Schedule.
- 7.4. The Supplier reserves the right at any time to pass on any government charges, fees, duties, taxes, levies or imposts payable by it as a result of the supply of all or any part of the System or the Transmissions which may be imposed on it after the date of this Agreement.

8. DELIVERY

- 8.1. The Supplier will use its best endeavors to deliver and install the System on the School's hardware within the times set out in the Schedule. It is the Schools responsibility to ensure the School IT Administrator is in attendance during installation and all pre-requisite hardware, software and communication settings as provided by MGM Wireless have been made. The School warrants that all third party software including operating systems that interacts with the System is valid with proper lawful licensed.

9. LOCATION OF USE

- 9.1. The System will be used by, or on behalf of the School at the installation Site Address (es) specified on the Schedule.
- 9.2. Upon written consent of the Supplier, which shall not be unreasonably withheld, the School may move the System to another Site provided that the School shall not allow the System to be used thereafter at the original Site.
- 9.3. All costs and risks associated with moving the System or any data on it will be borne by the School.

10. NOTIFICATION OF UNAUTHORISED USE

- 10.1. The School will notify the Supplier immediately it becomes aware of any unauthorised possession, use or knowledge of any part or physical form on the System, or of any other Confidential Information made available to the School by anyone not authorised under this Agreement to have such possession, use or knowledge and will co-operate with the Supplier in every reasonable way to help the Supplier regain possession, and/or prevent further unauthorised use, and/or recover damages caused by such use.

11. ANNUAL LICENCE FEE

- 11.1. The School shall pay an Annual License Fee based upon student enrolments and accreditation.
- 11.2. Payment of the Annual License Fee shall entitle the School to receive:
- 11.3. Helpline Telephone Support during Business Hours;
- 11.4. Technical Updates that enable the System to continue to function as set out in the then current Associated Documentation.
- 11.5. The School acknowledges that failure to pay the Annual License Fee will result in the School being unable to use the System.
- 11.6. The Supplier may increase the Annual License Fee annually on not less than 30 days notice to the School. The Supplier warrants that the Annual License Fee will not increase by more than the percentage change in the Consumer Price Index, all groups, and weighted average as published by the Australian Bureau of Statistics for the immediately past June quarter.
- 11.7. The Supplier reserves the right to seek confirmation annually of the School's accreditation and enrolment numbers for the purpose of confirming that the Annual License Fee being charged is correct.

12. TRANSMISSIONS

- 12.1. Transmissions effected through the mobile phone network are via a VMT number allocated to the School by MGM for the sole purpose of using the System and making the transmissions. The VMT number is and remains the property of MGM.
- 12.2. The School acknowledges that:-
- 12.3. Permission is given to it to use the VMT number only for the purposes of making and receiving transmissions using the System;
- 12.4. The System allows or may allow Transmissions to be made to third persons using a SMS, e-mail or other electronic communications technology;
- 12.5. The content and destination of those Transmissions are the responsibility of the School;

- 12.6. Maintaining the accuracy of the School's Parent mobile phone data base and adherence to the Student late arrivals protocol is the sole responsibility of the School
- 12.7. Transmissions are effected by MGM; and
- 12.8. Payment for the Transmissions is made in accordance with the Schedule and the Supplier's then current rate schedule.
- 12.9. The System will not permit a Transmission to be made unless the School has sufficient pre-paid Transmission Fees credited to it to pay for that Transmission.
- 12.10. Transmissions shall not be used for or in connection with any illegal or fraudulent activity and are subject to obligations imposed by the Privacy Act (Commonwealth) 1988.
- 12.11. The School shall not use, nor permit any other person to use the Transmissions for any purpose whatsoever other than for the purpose of the School's operations.
- 12.12. The School shall comply with any instructions concerning access to and/or use of the Transmissions that may be given by Supplier or MGM from time to time.
- 12.13. The School shall not use or seek to use the Transmissions for publishing, reproducing or advertising any message, information, symbol or other communication which is offensive or abusive or of an indecent, obscene or menacing character or for the purpose of causing annoyance, inconvenience or anxiety to any person, or for any unlawful purpose.
- 12.14. The School acknowledges that:-
- 12.15. The URL and/or logo and/or tag line of MGM may be attached to a Transmission without the School's consent.
- 12.16. The Transmissions may be suspended without notice to protect against fraudulent, negligent or illegal use or to protect the integrity of the System.
- 12.17. The Transmissions may be suspended due to technical failure, modification or maintenance involving the Transmissions.
- 12.18. The School shall not be relieved of any obligation to accept or pay for Transmissions, by reason of any delay in delivery or performance.
- 12.19. The Supplier is not obliged to supply the Transmissions where the Transmissions are at any time deemed to fall within the ambit of clause 0 and/or 0 of this Agreement.
- 12.20. The School gives permission for MGM to use its name in its marketing and promotional activities.

13. WARRANTIES

- 13.1. Subject to clause 0, the Supplier warrants that the System (unaltered by or on behalf of the School) shall conform to the specifications and have the functionality set out in the Associated Documentation for three (3) months after delivery to the School provided that there has been no change in the software used by the School with which the Software interfaces.
- 13.2. Other than expressly set out in this Agreement, the Supplier makes no warranty in respect of software supplied by third persons and make no representations or warranties and accepts no liability in relation to the operation of the Software in an environment which does not conform with the specifications set out in the Associated Documentation.
- 13.3. Where the Supplier has the benefit of any warranty concerning software supplied by third persons, the Supplier agrees to assign the benefits of warranty (if any), if

- such assignment is lawful and subject to the School indemnifying the Supplier of any such liability which the Supplier may incur by reason of:
- 13.4. Assignment of the warranty and/or
 - 13.5. Any action or proceeding in respect thereof.
 - 13.6. Except as specifically set forth in Clause 0 or implied by the Trade Practices Act 1974 (Cth) or any other applicable state legislation (which provide for certain warranties as to merchantable quality, fitness for purpose and due skill and care of consumer goods and services), the Supplier make no representation of any kind with respect to the System including but not limited to, warranties of fitness for a particular purpose.
 - 13.7. The Supplier assumes no responsibility for the use of which the School, its employees or agents puts the System or result of such use. The School acknowledges and agrees that the System is not goods and services of a kind acquired for personal, domestic or household use or consumption and is not acquired as such under this Agreement.
 - 13.8. If any condition or warranty is implied in this Agreement pursuant to any Act of Parliament, the liability of the Supplier for breach of the condition shall be limited to any one or more of the following:
 - 13.9. If the Supplier' breach relates to goods at the Supplier's option:
 - 13.9.1. The replacement of the goods; or
 - 13.9.2. The repair of the goods; or
 - 13.9.3. The payment of the cost of having the goods repaired.
 - 13.10. If the breach relates to services at the Supplier' option:
 - 13.10.1. The supplying of the services again; or
 - 13.10.2. The payment of having the cost of the services supplied again.
 - 13.11. Neither MGM nor the Supplier shall be liable in any circumstances for any loss or damage resulting from the use of the System or the receipt or non-receipt of a Transmission by any person nor for economic loss or special or consequential damages arising for any reason.
 - 13.12. All warranty claims made by the School must be confirmed to the Supplier in writing. The Warranty is only valid so long as the School uses, operates and maintains the System properly and in accordance with this Agreement and the Associated Documentation and any damage is not caused by physical damage of any nature.
 - 13.13. Any corruption of the data within the System which is due to a System software failure will be repaired under warranty unless manual re-keying of data is needed. The School will be required to pay all charges for the re-entry of manual recreation of data. Any corruption of data due to operator error, faulty magnetic media, acts of God or other events outside the Supplier' control shall not be corrected under warranty.
 - 13.14. Any services to be provided by the Supplier will be provided in Business Hours and in the city of the Supplier' nearest service centre. Emergency service which is required outside Business Hours will be furnished to the School subject to availability of service personnel, at the Supplier' then current rates for such services.
 - 13.15. Where it is necessary for warranty service to be performed where the equipment is located more than fifty (50) kilometers from the Supplier' nearest service centre, the Supplier shall be entitled to charge the School for subsistence,

travelling and freight costs for personnel and/or equipment at its then current rates.

14. SCHOOL INDEMNITIES

- 14.1. The School acknowledges that neither MGM nor the Supplier exercises any control whatsoever over the content of the information passing through the Network and the School shall not hold the Supplier nor MGM responsible for any information viewed by the School, its employees, contractors, agents, the parent of a student or any third parties nor be responsible for or joined to any action against the Supplier or third party relating to the Transmissions by or via the Network.
- 14.2. The School acknowledges that the Internet is not an inherently secure system and undertakes responsibility for the protection of its information and data. The School accepts full responsibility for the security of the School's information and data.
- 14.3. The School acknowledges that the Internet may contain viruses (including other destructive programs) which may, if not eliminated, destroy parts or all of the data contained within its System. The School acknowledges that the System will not filter or check data to eliminate viruses, and the School agrees to provide its own mechanism for checking its system for viruses, and to hold the Supplier and MGM harmless from any damage caused by viruses obtained through the Transmissions.
- 14.4. The School hereby indemnifies and will indemnify both MGM and the Supplier against any loss or liability incurred by the Supplier as a consequence of the use of the System and the Transmissions by the School.

15. LIMITATION OF LIABILITY

- 15.1. Neither MGM nor the Supplier shall be responsible or liable for any loss, damage, claim or demand howsoever arising as a result of or consequent upon:-
- 15.2. Failure to deliver and install the System or perform Services or for any delay in delivery or installation or performance of Services; or
- 15.3. A Transmission not reaching its destination for any reason whatsoever or for any failure or delay in the sending or delivery of the Transmission to or from MGM; or
- 15.4. any circumstances outside either MGM's control or the Supplier' control, including without limiting the generality of the foregoing, fire, flood, explosion, strike, lock-out or other industrial act or dispute or the breakdown of or accident to plant, unavailability or shortage of materials, non delivery by Supplier and/or Supplier/manufacturers, failure of power supplies or communication facilities or act of God or any order or direction of any Commonwealth or State Government or government authority or instrumentality;

16. DEFAULT & TERMINATION

- 16.1. The Supplier may terminate this Agreement immediately by notice to the School if:-
 - 16.1.1. Any payments due from the School under this Agreement are greater than 7 days late (whether or not payment has been demanded); or
- 16.2. The School is in breach of any one or more of clauses 4, 50, 0, 0,0, or 0; or

- 16.2.1. the defaulting party commits a breach of any of the other terms of this Agreement and such breach is not remedied within 7 days notice from the non-defaulting party; or
- 16.3. The School loses its accreditation or any license required by it to carry on its usual activities.
- 16.4. The Supplier may terminate this Agreement immediately if:-
 - 16.4.1. the School is presumed insolvent within the meaning of any applicable Australian law, is placed into liquidation, has an administrator or a receiver and/or manager appointed or a mortgagee takes possession of any substantial asset(s) of the defaulting party or if any proceedings are issued or an event occurs intended to lead to any of those consequences or if any other action relating to insolvent debtors occurs in relation to the defaulting party or if the defaulting party ceases to carry on its existing business; or
 - 16.4.2. any final judgment is entered against the School for a sum of \$10,000 or more, and judgment is not satisfied by the defaulting party within 14 days of being entered or the defaulting party commits a criminal offence; or
 - 16.4.3. The System is disposed of by the School or is otherwise outside the effective control of the School; or
 - 16.4.4. If the School ceases, or threatens to cease to conduct the operations which it was conducting when the System was installed; or
 - 16.4.5. Being an individual, dies; or
 - 16.4.6. Being a partnership, is dissolved; or
 - 16.4.7. In any case commits an act of bankruptcy or makes or negotiates for any composition or arrangement with or assignment for the benefit of its creditors.
- 16.5. Termination of this Agreement by one party will not prejudice any other rights or remedies which that party has against the party in default.
- 16.6. This Agreement may be terminated forthwith by the Supplier upon written notice to the School if the School:
- 16.7. Upon expiry or early termination of this Agreement by either party for any reason the School shall
 - 16.7.1. return to the Supplier the original and all copies of the System which are in the possession of the School, the media and the Associated Documentation; and cease using the VMT number; and
 - 16.7.2. shall on request, certify by statutory declaration that all of the above have been returned.
- 16.8. In the event of non-compliance with Clause 0 the School shall grant to the Supplier a license to enter upon the Installation Site Address(es) and any other site at which copies of the System or the associated documentation may be situated and remove same. The School, its employees and agents shall provide the Supplier with such assistance as the Supplier may reasonably require repossessing any copies of the System and associated documentation pursuant to this Clause.

17. WAIVER

- 17.1. Any failure by the Supplier to insist upon strict performance of this Agreement shall not be deemed a waiver of any rights that the Supplier may have.

18. ASSIGNMENT

- 18.1. The School shall not assign or sub-lease any right or interest to the System or any other right or interest under this Agreement without prior written consent of the Supplier.
- 18.2. The School acknowledges that the Supplier may at any time assign the benefit of this Agreement (but not its rights) to any person without the consent of the School.

19. ENTIRE AGREEMENT

- 19.1. This Agreement supersedes all prior agreements, representations, arrangements and undertakings between the parties relating to the subject matter hereof. No addition or modification of any provisions to the Agreement shall be binding on the parties unless made in writing and signed by each of the parties.

20. INVALID PROVISIONS

- 20.1. In the event that any provisions herein shall be unenforceable, all other provisions shall remain in full force and effect.

21. PROPER LAW

- 21.1. These Terms and Conditions shall be governed by the laws of the State of South Australia and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia.
- 21.2. It is understood and acknowledged that the Supplier have the unequivocal right to obtain timely injunctive relief against the School to protect the proprietary rights of the Supplier in the System.

22. DEFINITIONS

- 22.1. *“Annual License Fee”* means the annual fee payable for the continued use of the System.
- 22.2. *“Associated Documentation”* means the documentation provided by the Supplier to the School from time to time which describes the functionality of the System, contains user instructions and such other matters as the School may, in the opinion of the Supplier require to operate the System.
- 22.3. *“Business Hours”* means the between the hours of 8.00 am and 4.00pm Monday to Friday other than a day gazetted as a public holiday in the State of South Australia;
- 22.4. *“Hardware”* means the hardware owned by the School from which the System is operated.
- 22.5. *“Initial License Fee”* means the fee payable for the supply of the System to the School as set out in the Schedule;
- 22.6. *“Installation Site”* means the site nominated by the School at which the System is installed or such other site as has been approved by the Supplier;
- 22.7. *“MGM”* means MGM Wireless Holdings Pty Ltd and its successors and assigns.
- 22.8. *“Network”* means the MGM SMS centre.

- 22.9. “Proprietary Information” means all the components of the System provided by to the School by the Supplier (regardless of who owns those components) including without limitation the source code and object code for the Software and the Associated Documentation, workbooks, workshop methodology, training and review materials and sales proposals.
- 22.10. “*Services*” means the services provided by the Supplier as set out in the Schedule.
- 22.11. “*Software*” means the “Message You” (TM) software
- 22.12. “*Supplier*” means **
- 22.13. “*Transmissions*” means the electronic communications which are generated by the System and sent to recipients designated by the School regardless of whether the communications are by SMS, e-mail or other forms of electronic communications.
- 22.14. “*Transmission Fees*” means the amount payable to MGM by the School to enable the sending of Transmissions as set out in the Schedule.
- 22.15. “*VMT Number*” means the virtual mobile phone number allocated to the School by MGM for the purpose of making and receiving the Transmissions.
- 22.16. Unless otherwise specified in the Schedule, the price is expressed in Australian Dollars.