

Payment Directions Deed

WA Schools PPP Project

The State of Western Australia

and

**The Minister for Works, a body corporate constituted under
Section 5 of the *Public Works Act 1902 (WA)*
(Minister for Works)**

and

**The Minister for Education, a body corporate constituted
under Section 214 of the *Schools Education Act 1999 (WA)*
(Minister for Education)**

and

**EduWest Project Co Pty Limited in its personal capacity and
as trustee of the EduWest Project Trust**

and

EduWest Finance Company Pty Ltd

and

National Australia Bank Limited

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Payment Directions Deed

Date

Parties

The State of Western Australia

**The Minister for Works, a body corporate constituted under
Section 5 of the Public Works Act 1902 (WA)**

(Minister for Works)

**The Minister for Education, a body corporate constituted under
Section 214 of the Schools Education Act 1999 (WA)**

(Minister for Education)

**EduWest Project Co Pty Limited in its personal capacity and as
trustee of the EduWest Project Trust**

ACN 608 027 434 of *[Not disclosed]*

(Project Trustee)

EduWest Finance Company Pty Ltd

ACN 608 038 320 of *[Not disclosed]*

(Borrower)

National Australia Bank Limited

ACN 004 044 937 of *[Not disclosed]*

(Senior Agent)

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- | | |
|----------|---|
| Recitals | <p>A. Under the Project Deed the Project Trustee has agreed to construct a number of schools.</p> <p>B. The Project Trustee has requested the D&C Subcontractor to construct each school in accordance with the terms and conditions of the D&C Subcontract.</p> <p>C. Under the Project Deed the State has agreed to license each school to the Project Trustee so that it can provide certain services to the State in respect of those schools.</p> <p>D. The Project Trustee has agreed to pay a licence fee to the State.</p> <p>E. The Senior Agent, as agent for the Financiers under the Syndicated Facility Agreement, is providing a loan to the Borrower to, among other things, finance the purchase of the State's rights to the licence fee for each school.</p> <p>F. Under the Receivables Purchase Deed the Borrower has agreed to purchase the State's rights to the aggregate of each licence fee for each school.</p> <p>G. This deed sets out directions as to the payment of amounts owing or to be lent under the above documents.</p> |
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This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

1. Definitions and interpretation clauses

1.1 Definitions

Unless the context otherwise requires, capitalised expressions that are not defined in this deed have the meaning given to them in the Project Deed, and:

- | | |
|----------------------------------|---|
| Additional Funding Amount | means an amount which is required for the Project Trustee to finance a Change Compensation Event. |
| Business Day | means a day on which banks are open for business in Perth and Sydney excluding a Saturday, Sunday or public holiday in either of those locations. |

CCE Amount	has the meaning given to that term in the Receivables Purchase Deed.
Construction Account	has the meaning given to that term in the Syndicated Facility Agreement.
Intercompany Loan Agreement A	means the loan agreement dated on or about the date of this deed between the Borrower as lender and the Project Trustee as borrower.
Intercompany Loan Agreement B	means the loan agreement dated on or about the date of this deed between the Project Trustee as lender and the Borrower as borrower.
Proceeds Account (Project SPV)	has the meaning given to that term in the Syndicated Facility Agreement.
Project Deed	means the document entitled "WA Schools PPP" Project Deed dated on or about the date of this deed between the State, the Minister for Works, the Minister for Education and the Project Trustee.
Receivables Purchase Deed	means the deed so entitled dated on or about the same date as this deed between the State, the Project Trustee and the Borrower.
RPP Drawdown Amount	means each amount drawn by the Borrower under the Syndicated Facility Agreement in accordance with the drawdown schedule referred to in the Syndicated Facility Agreement, but only to the extent that such amount is to be applied for the purposes of funding any Receivables Purchase Payments.
RPP Funding Amount	means: <ul style="list-style-type: none">(a) an amount repaid by the Project Trustee to the Borrower under Intercompany Loan Agreement A; or(b) an amount lent by the Project Trustee to the Borrower under Intercompany Loan Agreement B, in each case to fund a Receivables Purchase Payment.

Security Interest	includes any mortgage, pledge, hypothecation, lien or charge or anything analogous to any of the foregoing or any security interest or arrangement of any kind.
Syndicated Facility Agreement	means the agreement so entitled dated on or about the same date as this deed between, among others, the Senior Agent, Project Trustee, the Financiers, and the Security Trustee.

1.2 Interpretation

In this deed unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) a reference to a clause, party or schedule is a reference to a clause of, and a party and schedule to, this deed and a reference to this deed includes any clause and schedule;
- (e) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (f) a reference to a party to any document includes that party's successors and permitted assigns;
- (g) a reference to time is to Perth time;
- (h) in this deed a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (i) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (j) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind; and
- (k) a provision of this deed may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or the preparation or proposal of that provision.

1.3 Business Day

If anything under this deed is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

1.4 Document or agreement

In this deed, references to an 'agreement' include any Security Interest, undertaking, deed, agreement or arrangement whether or not in writing, and references to a 'document' include any agreement (as so defined), notice, instrument or document of any kind.

1.5 Trust Deed

Notwithstanding the terms of the Project Trust Deed, the Project Trustee agrees that after the date of this deed:

- (a) the Project Trustee shall not have or exercise (or purport to do the same) any power in relation to the Project Trust otherwise than as contemplated by, or incidental to, this deed;
- (b) the Project Trustee will ensure that the Project Trust Deed is not amended or revoked without the consent of the Borrower;
- (c) the Project Trustee will ensure that there will be no resettlement, setting aside or transfer to any other trust or person of any of the property of the Trust;
- (d) the Project Trustee will duly and punctually comply with its obligations under the Project Trust Deed;
- (e) the Project Trustee will ensure that no other person is appointed as trustee of the Trust without the consent of the Borrower; and
- (f) the Project Trustee will ensure that it is not removed or does not retire as trustee of the Trust without the consent of the Borrower.

1.6 Project Trustee Representations and Warranties

The Project Trustee (both in its own right and as trustee of the Project Trust) warrants and represents that:

- (a) **trust power:** it has power as trustee of the Project Trust to execute this deed;
- (b) **due performance:** in executing this deed and entering into the transactions referred to in this deed, it has properly performed its obligations to the Trust Beneficiaries;
- (c) **trust action taken:** all necessary action required by the Project Trust Deed to authorise the Project Trustee's unconditional execution and delivery of, and compliance with its obligations under, this deed has been taken;

- (d) **sole trustee:** the Project Trustee is the only trustee of the Project Trust;
- (e) **no removal action:** to the best of its knowledge and belief, no action has been taken to remove the Project Trustee as trustee of the Project Trust or to appoint an additional trustee of the Project Trust;
- (f) **right of indemnity:**
 - (i) the Project Trustee has a right to be fully indemnified out of the Trust Property;
 - (ii) the Project Trustee has not released or disposed of its equitable lien over the Trust Property which secures that indemnity;
 - (iii) the Project Trustee has not committed any breach of trust or done or omitted to do anything which has prejudiced or limited its rights of indemnity or equitable lien; and
 - (iv) the Trust Property is sufficient to satisfy that indemnity;
- (g) **no trust default:** the Project Trustee has not defaulted in the performance and observance of its obligations as trustee of the Project Trust in any material respect;
- (h) **no trust termination:** to the best of its knowledge and belief, no action has been taken to terminate the Project Trust;
- (i) **full trustee disclosure:** the Project Trustee has disclosed to the State full details of:
 - (i) the Project Trust and any other trust or fiduciary relationship affecting the Trust Property and, without limitation, has given to the State copies of any instruments creating or evidencing the Project Trust; and
 - (ii) its other trusteeships (if any);
- (j) **trust duly constituted:** the Project Trust is duly constituted and is not void, voidable or otherwise unenforceable; and
- (k) **Trust Beneficiaries' rights:** the rights of the Trust Beneficiaries in relation to, and their interest in, the Trust Property are subject to:
 - (i) the rights of the State in relation to, and its interest in, the Trust Property created by this document; and
 - (ii) any rights or interests in the Trust Property to which the State may from time to time be subrogated.

2. Payment Directions

2.1 Funding directions

The Borrower irrevocably directs:

- (a) the Senior Agent to pay each RPP Drawdown Amount;
- (b) (if there is no further RPP Drawdown Amount) the Project Trustee to pay each RPP Funding Amount under Intercompany Loan Agreement A; and
- (c) (if Intercompany Loan A has been repaid in full) the Project Trustee to pay each RPP Funding Amount under Intercompany Loan Agreement B,

to, or as directed by, the State in full and final satisfaction of the Borrower's obligation to pay the State the corresponding Receivables Purchase Payment.

2.2 Construction Payment direction

- (a) The State irrevocably directs the Senior Agent or the Project Trustee (as the case may be) to pay the amount referred to in clause 2.1 to, or as directed by, the Project Trustee in full and final satisfaction of the State's obligation to pay the corresponding Construction Payment to the Project Trustee.
- (b) Nothing in this clause affects the limitation in clause 22A.1(b) of the Project Deed on the obligation of the State to pay Construction Payments.

2.3 Delivery direction

The Project Trustee irrevocably directs the Senior Agent or the Borrower (as applicable) to pay, or the Project Trustee will pay, the amount referred to in clause 2.2 to the Construction Account.

2.4 CCE Amount direction

Where the Project Trustee is required to fund a Change Compensation Event and is to receive a CCE Amount:

- (a) the Borrower irrevocably directs:
 - (i) (to the extent the Change Compensation Event occurs prior to the Date of Commercial Acceptance and a drawdown is available under the Syndicated Facility Agreement) the Senior Agent to pay each Additional Funding Amount from the Syndicated Facility Agreement;
 - (ii) (to the extent that clause 2.4(a)(i) does not apply and there is an amount outstanding under Intercompany Loan Agreement A) the Project Trustee to pay each Additional Funding Amount under Intercompany Loan Agreement A; or

- (iii) (in any other case) the Project Trustee to pay each Additional Funding Amount under Intercompany Loan Agreement B,

to, or as directed by, the State in full and final satisfaction of the Borrower's obligation to pay the State the corresponding Receivables Purchase Price for the relevant Additional Receivables under the Receivables Purchase Deed.

- (b) the State irrevocably directs the Senior Agent or the Project Trustee (as the case may be) to pay each Additional Funding Amount to, or as directed by, the Project Trustee in full and final satisfaction of the State's obligation to pay the corresponding Construction Payment or Securitised Modification Payment (as the case may be) to the Project Trustee.
- (c) the Project Trustee irrevocably directs the Senior Agent (if applicable) to pay, or will pay, each Additional Funding Amount to:
 - (i) the Construction Account, in the case of each Additional Funding Amount in respect of a Change Compensation Event occurring prior to the Date of Commercial Acceptance; or
 - (ii) the Proceeds Account (Project SPV), in the case of each Additional Funding Amount in respect of a Change Compensation Event occurring on or after the Date of Commercial Acceptance.
- (d) Nothing in this clause 2 affects the limitation in clause 22A.2(b) of the Project Deed on the obligation of the State to pay Securitised Modification Payments.

3. Acknowledgements regarding payments

3.1 Amounts due under funding facilities

The Borrower acknowledges and agrees that each payment of a:

- (a) RPP Drawdown Amount made by the Senior Agent in accordance with the direction in clause 2.1(a) will satisfy, to the equivalent extent, the Financiers' obligation to lend that amount to the Borrower under the Syndicated Facility Agreement;
- (b) RPP Funding Amount made by the Project Trustee in accordance with the direction in clause 2.1(b) will satisfy, to the equivalent extent, the Project Trustee's obligation to repay that amount to the Borrower under Intercompany Loan Agreement A; and
- (c) RPP Funding Amount made by the Project Trustee in accordance with the direction in clause 2.1(c) will satisfy, to the equivalent extent, the Project Trustee's obligation to lend that amount to the Borrower under Intercompany Loan Agreement B.

3.2 Receivables Purchase Payment

The State acknowledges and agrees that each payment made in accordance with the direction in clause 2.2 will satisfy, to the equivalent extent, the Borrower's obligation to pay each relevant Receivables Purchase Payment to the State under the Receivables Purchase Deed.

3.3 Construction Payment

- (a) The Project Trustee acknowledges and agrees that each payment in accordance with the directions in clause 2.2 and clause 2.3 will satisfy, to the equivalent extent, the State's obligation to pay Construction Payments to the Project Trustee under clause 22A.1 of the Project Deed.
- (b) Nothing in this clause affects the limitation in clause 22A.1(b) of the Project Deed on the obligation of the State to pay the Construction Payment.

3.4 CCE Amount arrangements

- (a) The Borrower acknowledges and agrees that any payment made in accordance with the direction in:
 - (i) clause 2.4(a)(i) will satisfy, to the equivalent extent, the Financiers' obligation to lend that amount to the Borrower under the Syndicated Facility Agreement;
 - (ii) clause 2.4(a)(ii) will satisfy, to the equivalent extent, the Project Trustee's obligation to repay that amount to the Borrower under Intercompany Loan Agreement A; and
 - (iii) clause 2.4(a)(iii) will satisfy, to the equivalent extent, the Project Trustee's obligation to lend that amount to the Borrower under Intercompany Loan Agreement B.
- (b) The State acknowledges and agrees that each payment in accordance with the direction in clause 2.4(b) satisfies in full the Borrower's obligation to pay the corresponding Receivables Purchase Price for the relevant Additional Receivables under the Receivables Purchase Deed.
- (c) The Project Trustee acknowledges and agrees that each payment in accordance with the direction in clause 2.4(c) satisfies in full the State's obligation to pay the corresponding Construction Payment or Securitised Modification Payment (as the case may be) to the Project Trustee under clause 22A.1 or 22A.2 of the Project Deed.

3.5 Amounts are GST-exclusive

The parties acknowledge that the directions in clauses 2.2 and 2.4 in relation to the Construction Payments and the Securitised Modification Payments do not include the GST component of those payments. The State acknowledges that the GST payable on

the Construction Payments and Securitised Modification Payments is separately payable to the Project Trustee in accordance with clause 54.1(h) of the Project Deed.

3.6 Payments of certain amounts prior to Date of Commercial Acceptance

- (a) The State directs the Project Trustee to pay all amounts payable by the Project Trustee to the State under clause 24.1 of the Project Deed to the Borrower or as it directs.
- (b) The Borrower irrevocably directs the Project Trustee to pay all amounts referred to in clause 3.6(a) to the Construction Account.
- (c) The State acknowledges and agrees that each payment in accordance with the direction in clause 3.6(b) satisfies in full the Project Trustee's obligation to pay a corresponding amount under clause 24.1 of the Project Deed.

4. Notices

4.1 Notice requirements

Any notice, demand, approval, consent or other communication under this deed (**Notice**) must be in writing and must be delivered:

- (a) personally;
- (b) by facsimile; or
- (c) by prepaid registered post,

to the address of the recipient set out in clause 4.3 (**Nominated Contact Details**) or to such other address as the recipient may have notified the sender.

4.2 When Notices considered given and received

A Notice given in accordance with clause 4.1 takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, two Business Days after the date of posting (or five Business Days after the date of posting if posted to or from outside Australia);
or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the Notice, unless within four business hours (being a period of time between 9.00 am and 5.00 pm on a Business Day) after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the Business Day after that delivery, receipt or transmission.

4.3 Nominated Contact Details

For the purposes of this clause 4, the Nominated Contact Details of the parties are as follows:

- (a) State's Representative

[Not disclosed]

- (b) EduWest Project Co Pty Ltd in its personal capacity and as trustee of the EduWest Project Trust

[Not disclosed]

- (c) EduWest Finance Company Pty Ltd

[Not disclosed]

- (d) National Australia Bank Limited

[Not disclosed]

5. Capacity of the Project Trustee

A liability of the Project Trustee arising under or in connection with this deed (whether that liability arises under a specific provision of this deed, for breach of contract or otherwise), is a liability that can be enforced against the Project Trustee both in its own right and in its capacity as trustee of the Project Trust, unless the liability relates only to an asset which the Project Trustee holds in its personal capacity and not as trustee, in which case the liability can only be enforced against the Project Trustee in its personal capacity.

6. General

6.1 Costs and expenses

Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this deed.

6.2 Stamp duty

- (a) The Project Trustee as between the parties is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by the

other party) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it.

- (b) If a party other than the Project Trustee pays any stamp duty (including any fine or penalty) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it, the Project Trustee must pay that amount to the paying party on demand.

6.3 Waiver

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
- (b) A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- (c) A waiver given by a party in accordance with paragraph (a) above:
 - (i) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and
 - (ii) does not preclude that party from enforcing or exercising any other right, remedy or power under this deed nor is it to be construed as a waiver of any other obligation or breach.

6.4 Severance

If a provision in this deed is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this deed for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this deed.

6.5 Governing law and jurisdiction

- (a) This deed is governed by and is to be construed under the laws in force in Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

6.6 Further assurances

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to this deed and the transactions contemplated by it.

6.7 No reliance

No party has relied on any statement by any other party which has not been expressly included in this deed.

6.8 Entire agreement

This deed states all of the express terms agreed by the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

6.9 Counterparts

- (a) This deed may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.
- (b) A party that has executed a counterpart of this deed may exchange that counterpart with another party by faxing it to the other party or the other party's legal representative.

6.10 Relationship of parties

- (a) The parties are not and are not to be taken to be in a partnership, joint venture, employment or fiduciary relationship.
- (b) Nothing in this deed gives a party authority to bind any other party in any way.

6.11 Exercise of rights

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

6.12 Remedies cumulative

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this deed.

Signing page

Executed as a deed:

State

Executed by THE HONOURABLE DR MIKE NAHAN MLA Treasurer for the time being, on behalf of the State of Western Australia, and as delegate of the Minister for Works pursuant to section 5A of the *Public Works Act 1902* (WA), in the presence of

Signature of Witness

The Hon. Dr Mike Nahan MLA

Witness name

Witness address

Witness occupation

THE COMMON SEAL of the MINISTER FOR
EDUCATION was hereunto affixed in the presence
of THE HON PETER CHARLES COLLIER MLC
Minister for Education for the time being,
in the presence of:

Signature of Witness

Hon Peter Charles Collier MLC

Witness name

Witness address

Witness occupation

Project Trustee

Signed, sealed and delivered for and on)
behalf of **EduWest Project Co Pty**)
Limited (ACN 608 027 434) in its)
personal capacity and as trustee for the)
EduWest Project Trust by its attorneys)
pursuant to power of attorneys dated)
who each states that no notice of)
revocation of the power of attorney has)
been received in the presence of:

.....
Witness

.....
Name of Witness (print)

.....
Witness

.....
Name of Witness (print)

.....
Attorney

.....
Name of Attorney (print)

.....
Attorney

.....
Name of Attorney (print)

The Borrower

Signed, sealed and delivered for and on)
behalf of **EduWest Finance Company**)
Pty Ltd (ACN 608 038 320) by its)
attorneys pursuant to power of attorney)
dated _____ who)
each state that no notice of revocation of)
the power of attorney has been received)
in the presence of:)

.....
Witness

.....
Name of Witness (print)

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Witness

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Name of Witness (print)

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Attorney

.....
Name of Attorney (print)

.....
Attorney

.....
Name of Attorney (print)

Senior Agent

Signed, sealed and delivered for and on)
behalf of **National Australia Bank**)
Limited (ABN 12 004 044 937) by its)
attorney [*Not disclosed*] pursuant to)
power of attorney dated 1 March 2007)
who states that no notice of revocation of)
the power of attorney has been received)
in the presence of:)

.....
Witness

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Name of Witness (print)

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Attorney

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Name of Attorney (print)