

**NATIONAL WATER POLO LEAGUE  
CLUB LICENCE AGREEMENT**

**AGREEMENT** dated 2015 (the “**Agreement**”)

**BETWEEN** **Water Polo Australia Limited** ABN 86 159 573 403 whose registered office is situated at Level 2, Building B, 6 Figtree Drive Sydney Olympic Park NSW 2127 (“**WPA**”)

**AND** **[NAME]** **[ABN]** whose registered office is situated at **[ADDRESS]** (the “**Club**”)

**RECITALS**

- A. WPA is the Australian national governing body for the sport of water polo.
- B. In accordance with WPA’s objects set out in WPA’s constitution, WPA is the controlling body and administrator of the NWPL Competitions.
- C. The Club is a member of a State Member.
- D. The Club wishes to participate in the NWPL Competitions listed in **Schedule 2**.
- E. WPA has agreed to appoint the Club as a licensee so as to permit the Club to participate in the NWPL Competitions listed in **Schedule 2**.
- F. This Agreement is entered into by the Parties in respect of the NWPL Competitions listed in **Schedule 2**.

**AGREEMENT**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

**Agreement** means this National Water Polo League Club Licence Agreement and includes all schedules, annexures, appendices and documents incorporated by reference.

**Broadcasting Rights** means any exploitation of any audio or visual media, including but not limited to:

- (a) electronic, wireless or optical communication, whether in existence or not at the time of this Agreement, whether broadcast or not, whether incorporated into the broadcast signal or not, to a device or combination of devices capable of receiving and displaying television programs, including datacasting,
- (b) free-to-air television and radio broadcasting and subscription television and radio broadcasting,
- (c) in-flight, ship at sea and other forms of transport rights;

- (d) digital terrestrial television, cable and satellite audio visual broadcasting;
- (e) electronic, wireless or optical communication whether in existence or not at the time of this Agreement, using protocols whether in existence or not at the time of this Agreement including internet protocol television, streaming, the hypertext transfer protocol (HTTP), secure hypertext transfer protocol (HTTPS), file transfer protocol (FTP), the wireless application protocol (WAP) and short message service (SMS) over cellular GSM and CDMA networks (and other wireless or cellular networks as may be implemented).

**Broadcaster** means any holder of Broadcasting Rights.

**Business** means the business conducted by WPA of owning and operating the NWPL Competitions.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales and where a time limit is set in this Agreement and performance is due on a day that is not a business day; the time for performance is the next Business Day.

**Business Plan** means a Club's business plan covering the next period of 12 months commencing on 1 November, which sets out in relation to its participation in the NWPL Competition and the development of the game of water polo:

- (a) the Club's plans for financing capital expenditure and activities of the Club over the period covered by the Business Plan;
- (b) an itemised budget specifying an estimate of income to be received and the expenses to be incurred by the Club in implementing that Business Plan; and
- (c) the Club's plans for financing development of the game of water polo.

**Club Sponsor** means a sponsor of the Club.

**Club Water Polo Property** means (only in the case of a Club which is a higher education provider for the purposes of the *Higher Education Support Act 2003* (Cth)) the property described in **Appendix A**.

**Commencement Date** means the commencement date specified in **Schedule 1**.

**Confidential Information** of a Party means the following, whether or not recorded (unless excluded under clause 19.3):

- (a) all financial, accounting and marketing information, files and data (and copies and extracts made of or from those things), ideas, concepts and know-how relating to:
  - (i) that Party (or any Related Body Corporate);
  - (ii) the Business;
  - (iii) the System; or
  - (iv) WPA,

including, but not limited to information in relation to the business activities, finance, Marketing Rights, Licence Property, Sponsorship and Naming Rights, and know-how of that Party or WPA (as relevant);

- (b) that part of all notes and other records prepared by a Party (or any Related Body Corporate) based on or incorporating information referred to in clause (a); and
- (c) all copies of information and those parts of the notes and other records referred to in clauses (a) and (b).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Expiry Date** means the expiry date specified in **Schedule 1**.

**FINA** means Fédération Internationale de Natation, the international governing body for the sports of swimming, open water swimming, diving, water polo, synchronised swimming and masters swimming

**Final Series** means the play-off series between the top number of Teams in the NWPL Competitions as determined by WPA.

**Financial Year** means each period of 12 months commencing on 1 July and ending on 30 June, or such other period as WPA determines.

**Home Venue** means the venue / complex / pool of a Club that is the playing base of that Club.

**Insolvency Event** means in relation to a Party:

- (a) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertaking of the Party;
- (b) the Party suspends payments of its debts generally;
- (c) the Party is or becomes unable to pay its debts when they are due or is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth);
- (d) the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them; or
- (e) an application or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to the Party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the Party otherwise than for the purpose of an amalgamation or reconstruction.

**Licence** means a licence to participate in a NWPL Competition on the terms and conditions contained in this Agreement.

**Licence Property** means:

- (a) all intellectual property created by, owned or licensed by WPA; and
- (b) all intellectual property created by, owned or licensed by or to the Club;

whether existing at the date of this Agreement or created or developed during the Term, relating to the names, identity, logos, designs, symbols, colours and trade marks of the Club and its Team.

**Mark** means:

- (a) any trade mark or service mark in Australia;
- (b) any trade mark or service mark contained in any application for registration of that trade mark or service mark in Australia;
- (c) any trade name;
- (d) any mark, sign, logo or emblem; and/or
- (e) any commercial or creative get up,

of any nature or description owned by WPA and used in the Business.

**Marketing Rights** means all rights to exploit the Property and Player Property by any means, including merchandising in any medium, and concession income for the Final Series.

**Naming Rights** means the naming rights to the NWPL Competition.

**NWPL Competition** means each of the men's and women's national water polo competitions operated and managed by WPA, and comprises:

- (a) a Regular Competition; and
- (b) a Final Series;

This Agreement applies in respect of the NWPL Competitions listed in **Schedule 2** to this Agreement.

**Parties** means the parties to this Agreement and **Party** means either WPA or the Club.

**Player** means a water polo player who has:

- (a) entered into a Playing Contract which is current; and
- (b) been registered by WPA pursuant to the Rules.

**Player Property** means the name, photograph, likeness, image, reputation and identity of a Player.

**Playing Area** means the entire area enclosed by the spectator fence, or such other line of demarcation, which prevents the encroachment of spectators, including without limitation the Pool Area.

**Playing Contract** means a contract between a WPA Club and a Player or any other agreement to play water polo for or on behalf of a Club.

**Pool Area** means the entire pool area being used for a match, including the marked off area designating the area of play, exclusion boxes, goal areas, dead-ball areas, areas reserved for coaches and other non-playing people associated with a Team, referees' areas and officials' areas.

**Property** means the WPA Property and the Licence Property.

**Regular Competition** means the weekly games in the NWPL Competitions during any one WPA Season but does not include the Final Series or any other WPA-approved match.

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act.

**Representative Match** means any:

- (a) representative water polo match involving water polo teams representing different States and Territories of Australia;
- (b) representative water polo match involving water polo teams representing Australia;
- (c) international water polo match involving water polo teams representing Australia; and
- (d) other match determined by WPA to be a representative match.

**Rules** means the rules governing the operation of the System and the NWPL Competitions made and amended by WPA from time to time, including any schedules to those rules. The Rules are more fully described and referred to at **Schedule 4** to this Agreement.

**Rules of the Game** means the laws of the game of water polo as determined by FINA.

**Sponsorship and Naming Rights** means all rights to exploit the Property and the Player Property by the grant of sponsorship and naming rights.

**State Member** means an organisation which is a member of WPA and which is recognised by WPA as the organisation responsible for the administration of the sport of water polo within the whole of a particular Australian State or Territory.

**System** means the system for water polo competitions including, without limitation, any aspect of the System such as the NWPL Competitions and the WPA Property, and methods of operation and control.

**Team** means a team of Players competing in any NWPL Competitions for a WPA Club.

**Team Apparel** means apparel worn by Players in NWPL Competitions matches, which is approved by WPA in advance of the NWPL Competition.

**Term** means the period from the Commencement Date until the Expiry Date, or earlier termination of this Agreement in accordance with clause 18.

**WPA Club** means any company, incorporated association or body corporate (or combination thereof) that enters into an agreement with WPA substantially in the form of this Agreement by which it is granted a Licence.

**WPA Property** means all intellectual property and other rights arising in connection with the System, including:

- (a) the names "Water Polo Australia" or "National Water Polo League" and any other business, trade, or brand name used or associated with WPA, WPA or the NWPL Competitions, phrases, identity, logos, design, symbols and trade marks owned or licensed by or to WPA;

- (b) any software or automation system developed by, or on behalf of WPA for the NWPL Competitions and WPA together with any developments, variations, alterations or amendments thereto;
- (c) the Marks and any application for registration of such Marks;
- (d) any patent which WPA or WPA is or has been entitled to use under license or otherwise in relation to the Business and any application for registration of such patent;
- (e) any copyright owned by or to which WPA or WPA is or has been entitled to use under license or otherwise in relation to the Business including without limitation any written material, plan, design, logo, insignia, manual or other works;
- (f) designs (whether or not registered or protected by copyright) which WPA or WPA is or has been entitled to use under license or otherwise in relation to the Business; and
- (g) trade secrets, know how, Confidential Information and all other property commonly identified as intellectual property of which WPA or WPA are entitled to use or have used in relation to the Business and the NWPL Competitions;

but excluding the Licence Property, whether existing at the date of this Agreement or created or developed during the Term.

**WPA Sponsor** means a sponsor of WPA or the NWPL Competitions.

## 1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph or schedule is a reference to a clause or paragraph of or schedule to this Agreement and a reference to this Agreement includes any schedules;
- (e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to A\$, \$A, dollar or \$ is a reference to Australian currency;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in Sydney, Australia;
- (h) a reference to a Party includes its executors, administrators, successors and permitted assigns;

- (i) words and expressions importing natural persons include any individual, body corporate, unincorporated body, government, government department, agency and any municipal, local, statutory or other authority and any combination or association of individuals, bodies corporate, unincorporated bodies, governments, government departments, agencies and municipal, local, statutory or other authorities (in each case whether or not having a separate legal identity); and
- (j) words and expressions defined in the Corporations Law as at the date of this Agreement have the meanings given to them in the Corporations Law at that date.

## **2. LICENCE**

WPA grants the Club a Licence for the Term.

## **3. GENERAL STRUCTURE OF THE SYSTEM**

### **3.1 NWPL Competitions**

The NWPL Competitions will be elite grade, national water polo competitions.

### **3.2 Specific NWPL Competitions**

WPA conducts separate men's and women's NWPL Competitions. This Agreement applies in respect of the NWPL Competition(s) referred to in **Schedule 2** only.

### **3.3 Rights to the System**

Subject to the grants of rights to the Club under this Agreement and to the Club's rights under this Agreement in relation to any Licence Property created by, owned or licensed by or to the Club, the Club acknowledges and agrees that:

- (a) the Club has no rights in relation to the System, and WPA retains those rights; and
- (b) the NWPL Competition is conducted by WPA

## **4. EXPLOITATION OF RIGHTS**

The Club acknowledges and agrees that WPA has the right to exploit all intellectual property rights in relation to the System (including, without limitation, Broadcasting Rights, Marketing Rights and Sponsorship and Naming Rights).

## **5. MUTUAL ACKNOWLEDGEMENTS**

### **5.1 Acknowledgment by Club**

The Club acknowledges and agrees WPA reserves the right to do whatever it considers necessary or desirable to develop and maintain sustainable, vigorous and successful NWPL Competitions.

## 5.2 Acknowledgment by WPA

WPA acknowledges and agrees that it is not entitled to compel or direct the Club to change its identity, logo, name or branding (together “**Club Identity**”) except in circumstances where, acting reasonably, WPA forms the view that:

- (a) The Club Identity is (or a component of it is) similar to the identity, logo, name or branding of another participant in the NWPL Competitions to the extent that a reasonable person would be confused as to the fact that the Club and the other participant are two separate licensee participants in the NWPL Competitions; or
- (b) The Club Identity, or the use of the Club Identity by the Club, does or is likely to cause the Club or WPA to breach any Australian law; or
- (c) The Club Identity, or the use of the Club Identity by the Club, is likely to incite vilification on the basis of race, religion or ethnicity.

## 6. OTHER COMPETITIONS

### 6.1 Participation in other competitions

The Club must make the Players in its Teams available for selection and participation in all Representative Matches.

## 7. ORGANISATION AND PROMOTION OF THE WPA COMPETITION

### 7.1 WPA and Clubs’ joint responsibility

WPA and the Clubs shall cooperate in respect of the organisation, promotion and marketing of the NWPL Competitions.

### 7.2 Schedule of matches

WPA will advise the Club of the schedule of matches (being the weeks in which matches in the NWPL Competitions will be played, and the clubs participating in those matches) in a timely manner in advance of the matches concerned.

## 8. RIGHTS OF THE CLUB

The Club will have the following rights during the Term:

- (a) **(Team)** the right to operate a Team in the NWPL Competitions listed in **Schedule 2**;
- (b) **(use of property)** the right to use the Property and Player Property in accordance with clause 15;
- (c) **(income from games)** the right, subject to the rights of WPA set out in **Schedule 3** (which rights the Club must make available free of charge to WPA and which WPA may either use itself or license to WPA Sponsors), to gate receipts, hospitality receipts, venue advertising income and venue food and beverage concession income in relation to NWPL Competitions games played on the Club’s Home Venue pursuant to this Agreement (but in all instances subject to the Club’s arrangements in relation to the Home Venue and the Club’s occupation and use of it);



- (d) **(prize money)** the right to compete for and (where appropriate) receive prize money (if any), the amount of which will be notified to Clubs in accordance with the Rules.

## **9. OBLIGATIONS OF THE CLUB**

### **9.1 Best team**

The Club must participate in the NWPL Competitions to which this Agreement applies, and must do so with its best Team in each instance, which must (subject to clause 12.4) include as many of the best eligible players as possible.

### **9.2 Competitive team**

The Club must ensure that each Team selected for each NWPL Competition is of elite grade standard. The Club must use its best endeavours to ensure that each of its Teams competing in the NWPL Competitions is competitive with the teams of other WPA Clubs playing in the NWPL Competitions.

### **9.3 Participation in Competition**

The Club must ensure that its Teams participate in the NWPL Competitions in accordance with the schedule of matches determined by WPA.

### **9.4 Costs and Expenses**

- (a) The Club shall be responsible for (or, subject to agreement between WPA and the Club, for the payment to WPA so that WPA may pay) the payment of all travel, accommodation and similar costs associated with its, its Teams' and its Players' participation in the NWPL Competitions.
- (b) Subject to the requirements of clause 11, the Clubs shall be responsible for all operational costs incurred in connection with its Teams participating in the NWPL Competitions.

### **9.5 Financial Capacity**

During the Term the Club must, within 21 days' after receiving a request from WPA, provide WPA with evidence satisfactory to WPA, which demonstrates that the Club has the capacity to meet its obligations arising under this Agreement and in connection with the Club's participation in the NWPL Competitions.

### **9.6 Business Plan**

- (a) The Club must by 31 October each year provide WPA with:
  - (i) a copy of its current Business Plan; and
  - (ii) a one year projected cash flow statement.
- (b) During the Term, the Club must provide WPA with regular updates on the Club's performance against its then current Business Plan if required to do so by WPA.
- (c) The Club must conduct its business in accordance with its Business Plan and any other Rules, regulations, by-laws and policies set by WPA. A Club does

not breach this obligation if the breach arises from, or is a result of, an event or circumstance beyond the reasonable control of the Club.

- (d) The Club must, in the course of exercising its rights and fulfilling its obligations arising under and in connection with this Agreement, do so in a manner which is aligned with the strategic plan of the State Member which is domiciled in the same State or Territory as the Club.

#### 9.7 **Solvency**

- (a) The Club will at all times ensure that it is able to pay all the Club's debts, as and when they become due and payable, including the Club's obligations under clause 11.

#### 9.8 **Compliance with Rules**

- (a) The Club acknowledges the importance of, and agrees that it is bound by, the Rules for the successful implementation of the System, and must:
  - (i) comply with the Rules and with any lawful determinations made by any tribunal established by or in accordance with the Rules; and
  - (ii) ensure that its Players, officers and employees agree to and do comply, at all times during the course of carrying out that persons duties or functions, with the Rules and with any lawful determinations made by any tribunal established by or in accordance with the Rules.
  - (iii) ensure that its Players, officers and Teams comply with the Rules of the Game when competing in NWPL Competitions.

#### 9.9 **Status of Rules**

- (a) The Rules form part of this Agreement as if set out in the body of this Agreement.
- (b) The Rules may be varied, withdrawn or replaced by WPA from time to time in its absolute discretion.
- (c) In the event of any inconsistency between the Rules and any other provision of this Agreement, the other provisions of this Agreement prevail to the extent of any inconsistency.

#### 9.10 **Insurance**

The Club must obtain, cause to be obtained and maintain during the Term valid, adequate and effective:

- (a) insurance cover which is at least equivalent to that provided under the New South Wales Government sporting insurance scheme known as "The Sporting Injuries Insurance Scheme" in respect of each of its Players, or the equivalent scheme (if any) in operation in the Australian state or territory in which the Club is domiciled; and
- (b) public liability insurance in respect of the Club's facilities including its Home Venue or any other pool, pool complex or training venue used by the Club; however

- (c) WPA may give notice to the Club that the Club does not need to comply with clause 9.10 in the event that WPA has obtained insurance which covers participants in the NWPL to the extent that cover under clause 9.10(a) is required.

## **10. TEAM**

### **10.1 Club to procure coaching and support staff**

The Club must procure the services of an experienced support staff, including coaches and all ancillary facilities for its Teams, to enable them to participate at the highest possible level in the NWPL Competitions.

## **11. OPERATING COSTS OF COMPETITIONS**

- (a) The Parties agree and acknowledge that a principle of the operation of the Business is that the Clubs participating in the NWPL Competitions are responsible in equal shares for the operating costs and expenses of the Business, including without limitation the organisation and conducting of the NWPL Competitions.
- (b) WPA will invoice Clubs in equal shares in respect of the payment of the operating costs and expenses of the Business. The Club is required under this Agreement to pay that invoiced amount PROVIDED THAT such amount is an amount which is included in the operational budget for the NWPL Competitions already approved by a majority of the NWPL and WPA. Clubs shall not be responsible for amounts not approved in the approved operational budget.
- (c) Further to clauses (a) and (b), each WPA Club is required to contribute to a fund managed by WPA for the purposes of meeting the costs of Broadcasting NWPL Competition matches in a format agreed between WPA and the WPA Clubs, PROVIDED THAT WPA must give each WPA Club not less than 12 months' notice of its intention to require that each WPA Club make such a contribution as required by this clause 11(c).

## **12. PLAYERS**

### **12.1 Playing Contract**

The Club must ensure that each of its Players is party to a Playing Contract in a form approved by WPA. The Club will lodge with WPA copies of all Playing Contracts entered into between it and its Players.

### **12.2 Player registration**

The Club acknowledges that:

- (a) a player that is not both currently registered with WPA in accordance with the Rules, and a member of WPA in an eligible class, is not eligible to be selected for, or to play or attempt to play, in its NWPL Competition Teams;
- (b) the decision whether to register a player, or to cancel or suspend the registration of a player, is a decision for WPA to be made in its absolute discretion in accordance with the Rules.

- (c) any decision to expel, suspend, censure, fine or otherwise sanction a member of WPA shall be made in accordance with the relevant provisions of WPA's constitution.
- (d) No Player may play in a Team for a Club in a NWPL Competition match unless that Player has first attained the age of 16 years in the case of any men's NWPL Competition, and 15 years in the case of any women's NWPL Competition.

### 12.3 **Player consents**

The Club must ensure that it has obtained from each Player all authorities which it needs to comply with its obligations under the Rules to provide information to WPA concerning that Player.

### 12.4 **Talent equalisation**

The Club acknowledges that WPA wishes the teams that participate in the NWPL Competitions to be as evenly matched as possible and the Club agrees to comply with the terms of any player talent equalisation measures that WPA in its absolute discretion from time to time implements. At the Commencement Date these equalisation measures may include, without limitation:

- (a) Players being limited to contracting no greater than 22 Players to play in each of its Teams;
- (b) Teams selected to represent Clubs in each match played in each NWPL Competition being selected subject to and in compliance with a player points system, which allocates a specific number of points to each Player based on their playing history and achievements; and which limits the aggregate number of player points accumulated by Players playing for a Team in a match; and
- (c) A deadline during each season, after which Players cannot be signed by a Club to play in any Team for that Club for the remainder of that season (including Regular Competition and Finals Series matches).

## 13. **VENUE**

### 13.1 **Adequate venues**

The Club must use its best endeavours to:

- (a) maintain and have the use during the Term of a Home Venue approved by WPA, such approval not to be unreasonably withheld provided that it will be reasonable for WPA to withhold its approval of the use of that Home Venue if that use would undermine WPA's scheduling and broadcasting commitments and the Club must in these circumstances comply with any direction of WPA to use an alternative venue as its Home Venue;
- (b) obtain and maintain rights to use suitable and adequate Home Venue and training facilities during the Term;
- (c) ensure that its Home Venue has facilities suitable for the conduct of the NWPL Competitions, including night lights if it is the case that night matches will be played at the Home Venue;
- (d) Comply with the Home Venue requirements set out at **Schedule 3**.

### 13.2 Access

Only in the event that a Broadcaster is granted Broadcasting Rights, the Club must use its best endeavours to:

- (a) allow any Broadcaster nominated by WPA access to the Home Venue and broadcasting facilities and equipment, for the broadcast of matches, at no charge to WPA or any Broadcaster of those matches;
- (b) ensure that, other than a Broadcaster nominated by WPA, no other Broadcaster is allowed access to the Home Venue on the day on which a match is being played at the Home Venue;
- (c) not grant or assign, or purport to grant or assign, any intellectual property rights in relation to the Broadcasting Rights to the owner or operator of any venue at which the Club plays water polo matches nor acknowledge that the owner or operator has any such rights;
- (d) co-operate with any Broadcaster of matches nominated by WPA at the Club's Home Venue to facilitate the broadcast of a match; and
- (e) provide WPA with the venue rights specified in **Schedule 3** at the Home Venue of its Team.

### 13.3 Signage and Media

- (a) The Parties recognise that the Club's rights in respect of the use of a Home Venue (including the Playing Area and Pool Area) may be non-exclusive, or otherwise structured on the basis that the Club has limited venue-access rights regarding the control of the erection of signage and other marketing material at the Home Venue. Subject to the Club's rights in relation to being able to control the erection of signage and other marketing material at the Home Venue, the Club must use its reasonable endeavours to not erect or agree to the erection or display of signage in and around the Playing Area if
  - (i) to do so contravenes the provisions of this Agreement;
  - (ii) the signage refers to a person that competes with an official WPA Sponsor;
  - (iii) the signage refers to a product or service that competes with a product or service supplied by an official WPA Sponsor; or
  - (iv) to do so would or might, in the opinion of WPA, be contrary to the best interests of one or more of the NWPL Competitions, the Club, WPA or the game of water polo.
- (b) The Club shall ensure that it provides WPA with reasonable opportunity to place and erect signage at the Home Venue promoting WPA, the WPA's Sponsors and the Australian Sports Commission.
- (c) The Club must ensure that each of its Teams has a designated media officer attached to the Team, who is responsible for the handling and co-ordination of all external media requests made of the Club, Teams and Players.

## 14. USE OF PROPERTY AND PLAYER PROPERTY BY WPA

### 14.1 WPA Property

The Club acknowledges that WPA may licence, restrict, authorise and otherwise control the use of the WPA Property by clubs participating in the NWPL Competitions.

### 14.2 Licence to WPA

#### ***“Clubs” other than “higher education providers”***

Subject to clauses 14.2(c) and (d) in cases where the Club is, and is recognised under the *Higher Education Support Act 2003* (Cth), as a “higher education provider” in any class, the Club:

- (a) for an annual fee of \$10, grants WPA an irrevocable, unrestricted, world wide, royalty-free, non-exclusive licence for the Term and any extension thereof, and on a non-exclusive basis in perpetuity thereafter, to use, and license the use of, the Licence Property and all Player Property only in connection with the NWPL Competitions and not otherwise, provided that after the expiry of the Term and any extensions thereof, it is a term of the licence that WPA may only use the Licence Property and the Player Property for:
  - (i) special marketing initiatives (such as commemorative merchandise) relating to the NWPL Competitions; and
  - (ii) any other purpose that the Club in its absolute discretion approves in writing.
- (b) acknowledges that the Club must not use or permit the use of those rights licensed in accordance with clause (a) (or any rights derived from them) in connection with any water polo competition directly competitive with the NWPL Competitions.

#### ***“Clubs” that are higher education providers***

In cases where the Club is, and is recognised under the *Higher Education Support Act 2003* (Cth), as a “higher education provider” in any class, the Club:

- (c) for an annual fee of \$10, grants WPA an irrevocable, unrestricted, worldwide, royalty-free, non-exclusive licence for the Term and any extension thereof, and on a non-exclusive basis in perpetuity thereafter, to use, and license the use of, the Club Water Polo Property and all Player Property only in connection with the NWPL Competitions and not otherwise, provided that after the expiry of the Term and any extensions thereof, it is a term of the licence that WPA may only use the Licence Property and the Player Property for:
  - (i) special marketing initiatives (such as commemorative merchandise) relating to the NWPL Competitions; and
  - (ii) any other purpose that the Club in its absolute discretion approves in writing.
- (d) acknowledges that the Club must not use or permit the use of those rights licensed in accordance with clause (c) (or any rights derived from them) in connection with any water polo competition directly competitive with the NWPL Competitions.

### 14.3 Player Property

- (a) The Club must procure that each Player:
  - (i) grants the Club a licence for the Term to use, and license the use of, his Player Property and to sub-license those rights to WPA; and
  - (ii) agrees that the grant of the licence referred to in clause (i) is a condition of his Playing Contract.
- (b) The Parties acknowledge and agree that a Player must not endorse products or services that conflict with the Club's sponsors, or a WPA Sponsor without the prior written approval of the Club (in the case of the Club's sponsor) or WPA (in the case of a WPA Sponsor).

## 15. USE OF PROPERTY AND PLAYER PROPERTY BY THE CLUB

### 15.1 General Obligations

The Club must not use the Property or Player Property except as permitted under this clause 15 or the Rules.

### 15.2 Use of Property

- (a) **Licence Property:** (for an annual fee of \$10 in the case of Licence Property other than Licence Property referred to in sub-clause (b) of the definition of "Licence Property") the Club will have the non-exclusive right to use the Licence Property in connection with its participation in the System, but must only do so in accordance with:
  - (i) clauses 15.2(d), (e) and (f);
  - (ii) the approval by WPA of the form of use of the Licence Property and any variation to it;
  - (iii) WPA's requirements to avoid clashes with WPA Sponsors and the sponsors of the NWPL Competitions; and
  - (iv) WPA's requirements to avoid clashes with Broadcasters of the NWPL Competitions.

HOWEVER for the avoidance of doubt, nothing in this clause 15.2(a) or otherwise set out in this Agreement is intended by the Parties to (nor does it) restrict or prevent the Club from freely using and exploiting its intellectual property (and its rights in its intellectual property) created by it, owned by it or licensed to it (other than the WPA Property and the Licence Property not owned by the Club or licensed to it under this Agreement.
- (b) **WPA Property:** for an annual fee of \$10, the Club will have the non-exclusive right to use the WPA Property in connection with its participation in the System, but must only do so in accordance with:
  - (i) clauses 15.2(d), (e) and (f); and
  - (ii) the approval of WPA in relation to each item of WPA Property which the Club proposes to use.
- (c) **Player Property:** for an annual fee of \$10, the Club will have the non-exclusive right to use the Player Property in connection with its participation in the System, but must only do so in accordance with clauses 15.2(d) and (e).

- (d) **Restrictions:** during the Term the Club will restrict its use of the WPA Property to:
- (i) advertising and promotion of the Club or its NWPL Competition Teams by themselves or together with a Club Sponsor or WPA Sponsor;
  - (ii) the stationery of the Club;
  - (iii) matches approved by WPA and tickets relating to those matches; and
  - (iv) any other use approved by WPA.
- (e) **Further Restrictions:** During the Term the Club must not, without the prior written consent of WPA:
- (i) alter, or allow to be altered, the Licence Property, WPA Property or Player Property to the extent that such alteration would involve an alteration of one or more of the names, phrases, identity, logos, designs, symbols, colours and trade marks of the Club or its Team; or
  - (ii) use, or allow to be used, in connection with the NWPL Competitions, any names, phrases, identity, logos, designs, symbols, colours and trade marks in connection with the Club or its Team other than those which comprise Licence Property, WPA Property or Player Property.
- (f) **Future Licence Property:** The Club licences to WPA any Licence Property (including, without limitation, any Club logo, trademark, names or designs) not existing at the date of this Agreement but created or developed by or on behalf of the Club after the date of this Agreement during the Term for use in, or application by, its Team in the NWPL Competitions on the same terms as set out in clause 14.2.

## 16. MARKETING BY WPA

### 16.1 Exploitation

The Club acknowledges that, in exploiting the Marketing Rights, WPA will undertake (either directly or indirectly through licensees) the production, distribution and marketing of merchandise and other marketing activities in connection with the NWPL Competition.

### 16.2 WPA distributions

- (a) Subject to clause 16.3, to the extent that revenue has been generated by WPA exercising its rights derived under clause 16.1 (as reasonably determined by WPA) by the sale of merchandise:
- (i) which incorporates Player Property of one Player only, but no other Property, WPA will pay that Player 50% of such revenue;
  - (ii) which incorporates Property which relates predominantly to one WPA Club or its Team, WPA will pay that WPA Club 50% of such revenue; and
  - (iii) which is not otherwise distributed under sub-clauses (a) and (b), WPA will distribute such revenue equally among those WPA Clubs who are participants in the NWPL Competitions at the same time that the relevant revenue is derived.



- (b) The Club acknowledges that the marketing distributions it receives pursuant to Clause 16.2 are royalty payments and the revenue prior to distribution by WPA is not being held in trust for either Players or WPA Clubs.

### 16.3 **WPA Property**

Clause 16.2 does not apply to the exploitation of Marketing Rights by the sole use of WPA Property.

### 16.4 **Club Sponsor**

The Club may appoint any person as a Club Sponsor provided that:

- (a) the sponsor does not provide goods or services in the same product category as a proposed exclusive WPA Sponsor or exclusive official supplier to WPA; or
- (b) to do so would not, in the opinion of WPA, be or be likely to be contrary to the best interests of one or more of the NWPL Competitions, the Club, WPA or the game of water polo.

### 16.5 **WPA Marketing Strategy**

The Club agrees that, in connection with the NWPL Competition but not otherwise, it will not pursue any marketing strategy that in the opinion of WPA is inconsistent with any marketing strategy of WPA and that it will comply with all reasonable directions given by WPA to assist in the implementation of any WPA marketing strategy.

## 17. **TEAM APPAREL**

The Club must ensure that each of its Players wears only Team Apparel in all matches played in NWPL Competitions.

## 18. **TERMINATION**

### 18.1 **Insolvency**

This Agreement may be terminated by a Party by notice in writing to the other Party if an Insolvency Event has occurred in relation to the other Party.

### 18.2 **Breach of any provision of this Agreement**

If a Party (“**Defaulting Party**”) commits a material breach, or commits persistent breaches, of any of its obligations under this Agreement (other than clause 9.6), the other Party (“**Notifying Party**”) may:

- (a) give the Defaulting Party 30 days written notice of the Notifying Party’s intention to terminate this Agreement, unless the breach is remedied to the satisfaction of the Notifying Party; and
- (b) if the Defaulting Party does not within that 30 day period remedy the breach to the satisfaction of the Notifying Party, terminate this Agreement with effect from the expiry of that 30 day period.

### 18.3 **Effect of termination**

Termination of this Agreement will only affect the rights and obligations of the Parties on and from the date of termination. All rights and obligations arising prior to that date will be preserved as will liability in respect of them.

#### 18.4 **No payment for goodwill**

No WPA Club has, or will develop, any goodwill in, or in relation to, the NWPL Competitions and on expiry or termination of this Agreement no WPA Club will be entitled to any payment in respect of, or for compensation for loss of, goodwill.

### 19. **CONFIDENTIAL INFORMATION**

#### 19.1 **Confidential information**

Each Party (“**Recipient**”) agrees in relation to Confidential Information of the other Party (“**Owner**”) to keep that Confidential Information confidential and to disclose it only to officers, employees, advisers and consultants of the Recipient and of Recipient’s Related Bodies Corporate who:

- (a) have a need to know (and only to the extent that each has a need to know);
- (b) are aware that the Confidential Information must be kept confidential; and
- (c) have been directed by the disclosing Party to keep confidential the Confidential Information.

#### 19.2 **Protecting confidential information**

Each Recipient must, at its own expense in relation to Confidential Information of the other Party:

- (a) ensure, at all times, that each person to whom it discloses that Confidential Information under clause 19.1 complies with the directions under clause 19.1(c);
- (b) notify the Owner immediately if it becomes aware of a suspected or actual breach of confidentiality;
- (c) immediately take all steps to prevent or stop any suspected or actual breach; and
- (d) comply with any direction issued by the Owner from time to time regarding enforcement of confidentiality requirements (including, without limitation, starting, conducting and settling enforcement proceedings).

#### 19.3 **Exclusions**

The obligations of confidentiality under this Agreement do not extend to information that (whether before or after this Agreement is executed):

- (a) is disclosed to a Recipient under this Agreement, but at the time of disclosure is rightfully known to or in the possession or control of the Recipient and not subject to an obligation of confidentiality on the Recipient;
- (b) is public knowledge (otherwise than as a result of a breach of this Agreement); or
- (c) is required by law to be disclosed and the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure and to limit, as far as reasonably possible, the extent of the disclosure.

#### 19.4 Obligations of confidentiality

Each Party must:

- (a) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised by this Agreement;
- (b) keep Confidential Information under its control;
- (c) immediately notify the Owner of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information of that Owner of which the notifying Party is aware; and
- (d) notwithstanding termination of this Agreement:
  - (i) continue to keep confidential all Confidential Information of the other Party; and
  - (ii) at each Owners option, return to that Owner or destroy and certify the destruction of that Owners Confidential Information.

#### 19.5 Assistance

Each Party must provide assistance, reasonably requested by an Owner (and at the Owner's cost), in relation to any proceedings that the Owner may take against any person for unauthorised use, copying or disclosure of Confidential Information of the Owner.

### 20. PRIVACY

The Club represents and warrants to WPA that:

- (a) it complies, and will continue to comply, with the Australian Privacy Principles as prescribed by the *Privacy Act 1998* (Cth) (the "**Privacy Act**") from time to time; and
- (b) if it is provided with any "personal information" (as defined in the Privacy Act) by WPA:
  - (i) it will only use that information for the purpose for which it was disclosed to it;
  - (ii) it will not disclose that information to any third party unless WPA has provided its consent in writing to the disclosure; and
  - (iii) in dealing with the information, it will comply with the Australian Privacy Principles.

### 21. MUTUAL REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party that:

- (a) (**Incorporation**) it is a company duly incorporated and validly existing under the laws of the country of its incorporation; an incorporated association registered under the relevant legislation in each Australian State and Territory which is enacted for the purposes of governing incorporated associations; or a body corporate established by legislation in force in the Party's State or Territory of domicile

- (b) **(Corporate Power)** it has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
- (c) **(Corporate Action)** it has taken all necessary corporate action to authorise the entry into and performance of this Agreement;
- (d) **(Binding Obligation)** this Agreement is valid and binding upon it;
- (e) **(No Contravention)** the execution and performance by it of this Agreement will not violate in any respect any provision of:
  - (i) its constituent documents (including, without limitation, its constitution or memorandum and articles of association, any shareholders agreement and any joint venture agreement); or
  - (ii) any other document, agreement or other arrangement binding upon it or its assets.

## 22. CLUB REPRESENTATIONS AND WARRANTIES

The Club represents and warrants to WPA that:

- (a) **(Playing Contract)** the Club is, and will continue to be, the only party to Playing Contracts other than the Player.
- (b) **(Intellectual Property)** the Club will not, unless otherwise authorised by this Agreement or without the prior written consent of WPA, grant to any person (including, without limitation, Related Bodies Corporate of the Club) any intellectual property rights, whether existing at the commencement of this Agreement or created or developed during the Term, relating to the names, identity, logos, designs, symbols, colours and trade marks of the Club and its Team.

## 23. WAIVER

### 23.1 No waiver

The failure, delay or omission by a Party to exercise any power or right conferred upon that Party by this Agreement will not operate as a waiver of that power or right, nor will any single exercise of any such power or right preclude any other or future exercise of the power, or the exercise of any other power or right under this Agreement.

### 23.2 Waiver must be in writing

A waiver of any provision of this Agreement, or consent to any departure by a Party from any provision of this Agreement, must be in writing and signed by or on behalf of all Parties and is effective only to the extent for which it is given.

## 24. VARIATION

This Agreement may only be varied or amended by agreement in writing signed for or on behalf of both the Parties, except that the Rules may be varied by WPA from time to time.

**25. NO CIRCUMVENTION**

25.1 The Club must not seek to circumvent or permit circumvention of the operation of this Agreement or impair the value of, or permit the impairment of, the value of any right granted under this Agreement by any legal or natural person, which is directly controlled or otherwise influenced by the Club, doing anything which the Club has agreed not to do pursuant to, or which is inconsistent with the terms of this Agreement, or failing to do anything which the Club has agreed to do pursuant to this Agreement.

25.2 The WPA must not seek to circumvent or permit circumvention of the operation of this Agreement or impair the value of, or permit the impairment of, the value of any right granted under this Agreement by any legal or natural person, which is directly controlled or otherwise influenced by the WPA, doing anything which the WPA has agreed not to do pursuant to, or which is inconsistent with the terms of this Agreement, or failing to do anything which the WPA has agreed to do pursuant to this Agreement.

**26. ASSIGNMENT**

A Party must not assign, declare itself a trustee of, create any encumbrance in respect of or dispose of, any of its rights and interests under this Agreement except with the prior written consent of the other Party.

**27. CHOICE OF JURISDICTION AND LAW**

This Agreement will be governed by and construed in accordance with the law from time to time in force in New South Wales, and the Parties submit to the non-exclusive jurisdiction of the courts of that State.

**28. NOTICES**

**28.1 Communication**

Any notice, request, consent or communication (“**Communication**”) to be given by a Party under this Agreement must be in writing addressed as follows:

**If to WPA:** Water Polo Australia Limited  
Level 2  
Building B  
6 Figtree Drive  
SYDNEY OLYMPIC PARK NSW 2127

Attention: The Chief Executive Officer

Facsimile: +61 2 9763 0382

**If to the Club:** [address]  
[address]  
[address]  
[address]

Attention: [title]

Facsimile: [insert]

or to such other address for a Party as may be notified in writing by that Party.

- 28.2 Each Communication must be delivered by hand or pre-paid post, or sent by facsimile. A Communication will be deemed to be received:
- (a) if hand delivered, on the next Business Day;
  - (b) if posted, on the second Business Day after posting; and
  - (c) if sent by facsimile, on receipt of a transmission report confirming successful transmission.

## 29. COSTS

Each Party must bear its own legal and other costs and expenses of and incidental to the preparation and execution of this Agreement.

## 30. GST

### 30.1 Interpretation

Words or expressions used in this clause 9 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

### 30.2 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as GST inclusive, does not include an amount on account of GST.

### 30.3 Gross up of consideration

Despite any other provision in this Agreement, if a party ("**Supplier**") makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as GST inclusive):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause ("**GST exclusive consideration**") is increased by, and the recipient of the supply ("**Recipient**") must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 30.4 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

**30.5 Tax invoices**

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.

**31. EXCLUSION OF IMPLIED RELATIONSHIPS**

Nothing expressed or implied in this Agreement will constitute or be construed to constitute a Party as a partner, joint venturer, agent, employee or representative of another Party or place a Party in a fiduciary relationship with another Party.

**32. SEVERABILITY**

Part or all of any clause of this Agreement that is illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

**33. DISCRETION ON CONSENT OR APPROVAL**

In any case where, under or pursuant to this Agreement, the doing or execution of any act, matter or thing by a Party is dependent upon the consent or approval of the other Party, such consent or approval may be given conditionally or unconditionally or may be withheld by the other Party in its absolute discretion, unless this Agreement otherwise expressly provides.

**34. FURTHER ACTION**

Each Party must do or cause to be done or refrain from doing all such acts or things necessary to give effect to this Agreement.

**35. NON-MERGER**

None of the terms or conditions of this Agreement, or any act, matter or thing done under or by virtue of this Agreement or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding, will operate as a merger of any of the rights and remedies of the Parties under this Agreement, and those rights and remedies will at all times continue in force.

**36. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and all such counterparts when executed and taken together will constitute this Agreement.

**37. ENTIRE AGREEMENT**

This Agreement comprises the entire agreement between the Parties in relation to its subject matter and no earlier agreement, whether oral or in writing, in relation to any matter dealt with in this Agreement will have any effect from the date of this Agreement.

**38. MULTIPLE ENTITY CLUBS**

If the Club is comprised of more than one entity:

- (a) any obligation that is imposed on the Club under this Agreement, including under the WPA Rules, is a joint and several obligation;

- (b) performance by WPA to one entity of an obligation that is imposed on WPA under this Agreement is deemed to be performance to each entity;
- (c) any act or conduct of one entity is deemed to be an act of each other entity that comprises the Club, including any act that may amount to a release or waiver, or constitute an estoppel or acquiescence, in favour of WPA; and
- (d) a breach of this Agreement by one entity is deemed to be a breach of this Agreement by each entity; and
- (e) any breach of the Rules by one entity is deemed to be a breach of the Rules by each entity.



**EXECUTED** as an agreement.

**EXECUTED** as an agreement by )  
**WATER POLO AUSTRALIA** )  
**LIMITED ABN 86 159 573 403** in )  
accordance with Section 127 of the )  
*Corporations Act 2001* (Cth): )

\_\_\_\_\_  
Director  
Print Name:

\_\_\_\_\_  
Director/Secretary  
Print Name:

**EXECUTED** as an agreement by )  
[club] **ABN [number]** in accordance )  
with Section 127 of the *Corporations* )  
*Act 2001* (Cth): )

\_\_\_\_\_  
Director  
Print Name:

\_\_\_\_\_  
Director/Secretary  
Print Name:

## **SCHEDULE 1 - TERM**

Commencement Date: 1 November 2015

Expiry Date: 30 June 2020

## SCHEDULE 2 – NWPL Competitions

### NWPL Competitions in respect of which this Agreement operates:

National Water Polo League (men's)

National Water Polo League (women's)

[delete as applicable]

### **SCHEDULE 3 - WPA VENUE RIGHTS**

1. WPA is entitled to the following venue rights:
  - (a) two signs positioned at pool deck or as near as possible;
  - (b) one sign positioned behind each goal;
  - (c) access to the Club's Home Venue facilities to video record any match;
  - (d) at least 3 minutes of prime scheduled run sheet time with at least 90 seconds of this to be during half time of the WPA match.

2. In the above clause:

prime scheduled run sheet time means the time commencing at the end of the match immediately preceding the WPA match and ending at the conclusion of the WPA match.

### **VENUE AND PRESENTATION OF GAMES**

#### **Pools:**

Venues must be as a minimum of FINA standard – i.e. 30 metres in length for men and 25 metres in length for women with a field width of 20 metres and depth a minimum of 1.8metres for the entire length of the pool with a preferred depth of 2. 2 metres.

Referee access and free movement must be provided on both sides of the pool – no obstruction is allowed on either side of the pool.

Pools must be sufficiently equipped to allow the clubs to meet their match presentation obligations.

Pools must have adequate drug testing facilities available for ASADA or other anti-doping control officers to utilise.

#### **Presentation of Games:**

The presentation of games is critical to the image we wish to display to the public. As a minimum all home pools must have without exception the following. The host club must use its reasonable endeavours to ensure that:

1. Access to a filming area/platform for live streaming and television coverage. Access to relevant power in such areas is also mandatory.
2. Electronic timing equipment must be used for all matches. Subject to any other requirements of FINA, the minimum standard is two (2) game play clocks and a main clock with appropriate sound devices to indicate the end of quarters and the expiration of the 30-second attack period. The equipment must be operational and must be able to be viewed by each team (players in the water and bench). Where sunlight hinders the clear view of the timing system, the host club is responsible to take appropriate measures to ensure all players; coaches and referees can view the timing equipment.
3. A public address system to announce the teams, play the national anthem and provide scores throughout the match.
4. Appropriate spectator seating and refreshment facilities.

5. Changing facilities for players and referees.
6. Security for referees and visiting teams.
7. Free entry to visiting teams, delegates, referees and league officials.
8. Qualified and experienced timekeepers, scorers, scoreboard operator, twitter operator and venue announcer.
9. A central table at the half way mark that is to be used for the officials including table staff, delegate, announcer and twitter operator.
10. A scoreboard must be used in all matches. A scoreboard must indicate the team score, period of play and major fouls for each player. It is critical that a board or similar is provided that clearly indicates as a minimum the major fouls for each player as well as the score – this is “bare minimum”. Failure to provide this facility will result in the club being subject to fines. The scoreboard should indicate the following: Score for each team, Name and number of each player, Major fouls for each player, Goals for each player and Timeouts
11. Markers for the goal line (white), 2 metre (red), 5 metre (yellow), half way (white) on BOTH sides of the field of play.
12. A minimum of 5 (five) Official Water Polo for men’s matches and 5 (five) Official Water Polo Balls for women’s matches. The competition balls must be in good condition.
13. Exclusion boxes or areas clearly marked.
14. Team benches at each end of the field of play opposite the table and behind the goal line. Where matches are held during the day the benches must have covering from the sun.
15. Three fully operational air horns to be used for signalling timeouts at ALL matches. Each team and the table/secretary/timekeeper will be provided with one air horn.
16. Appropriate flags for the table – red, white, blue and yellow.
17. Goal judge seats and ball storage facility.
18. Appropriate signage for both NWPL sponsors and club sponsors. Where necessary this will be temporary signage.
19. For every game teams must be presented to the crowd in the normal manner. This of course is subject to weather conditions which will be determined by the match delegate.

## **SCHEDULE 4 - RULES**

The rules of the NWPL Competitions will be published by WPA in the NWPL Operations Manual and Supplements, or the Australian Club Championships Operations Manual, as applicable.

[list all rules and policies which apply, including the anti-doping policy, member protection policy and other WPA documents]

## Appendix A

[to be used only if the Club is a higher education provider]