

Licence Agreement

Gosford District Tennis Association Incorporated

International Football School Limited (A.C.N. 155 134 160)

Details

Date 2014

Parties

Name	Gosford District Tennis Association Incorporated
Short form name	Association
Address	c/o- Vaughan Park Tennis Complex, 10 Racecourse Road, West Gosford, New South Wales 2250
Name	International Football School Limited (A.C.N. 155 134 160)
Short form name	you, your
Address	"Building" 27 The Avenue, Mount Penang Parklands, Kariong, NSW 2250

Background

- A. The Association has a lease of the Tennis court and associated facilities known as "Vaughan Park Tennis Centre" situated at Racecourse Road, West Gosford (the "**Tennis Complex**") as shown in the attached plan (**Schedule B**).
- B. The Association owns the domain name "www.tenniscentre.net.au" (the "**Domain Name**").
- C. The Association owns the website content at the Domain Name (the "**Website**").
- D. The Association relevantly owns the registered business name "Gosford Tennis Centre" (the "**Business Name**").
- E. The Association owns the telephone numbers "(02) 4325 2961", "(02) 4325 2981", and "(02) 4325 2921" and the facsimile number "(02) 4325 2922" (the "**Contact Numbers**").
- F. The Association has agreed to grant to You a licence to:
 - (i) manage and control the Tennis Complex on the terms specified in this agreement;
 - (ii) use the Domain Name and the Website on the terms specified in this agreement;
 - (iii) use and trade under the Business Name on the terms specified in this agreement.
- G. The Association has agreed to transfer to You the Contact Numbers on the terms specified in this agreement.

It is hereby agreed as follows:

Licence Agreement

1. Term

1.1 The Association grants and You accept a licence to:

- 1.1.1 enter and use the Tennis Complex (except for that part of the Complex known as the "Association Office" as marked in the attached plan);
- 1.1.2 use the Domain Name and the Website; and
- 1.1.3 use and trade under the Business Name (in accordance with clause 1.2),

for the term commencing on 25 September 2014 and terminating on 30 December 2016 (the "**Term**") in accordance with the terms of this agreement.

1.2 It is an essential term of this License that You must only operate the Tennis Complex under the title "Gosford Tennis Centre" and no other title. You may use the slogan "Home of the international tennis school" in conjunction with "Gosford Tennis Centre" in Your marketing and promotional material.

1.3 You may, during the Term, make use of the Contact Numbers and arrange through Your telephone provider for those Contact Numbers to be ported to You (You are responsible for all costs and expenses associated with the porting and use of the Contact Numbers). Upon the earlier of the termination or expiration of this License, You must sign, date and deliver any document that is necessary or incidental to the Association porting the Contact Numbers back to the Association or its nominee.

2. Not used

3. Licence Fee and Administration Charge

3.1 You must pay to the Association an annual licence fee of \$72,727.27 plus GST (the "**Licence Fee**").

3.2 The Licence Fee is payable by monthly instalments in advance each of which will be one twelfth (1/12th) of the annual fee (with time being of the essence). The first payment is due on the commencement date of this license. Subsequent payments must be paid to the Association by You on or before the first day of each month.

3.3 You must pay to the Association an annual administration charge of \$35,000 plus GST (the "**Administration Charge**"). The Administration Charge is payable by monthly instalments in advance each of which will be one twelfth (1/12th) of the annual charge (with time being of the essence). The first payment is due on the commencement date of this license. Subsequent payments must be paid to the Association by You on or before the first day of each month. The Association may but in its absolute discretion and without being bound to do so, apply of any part of the Administrative Charge towards any current and proposed capital expenditure and/or maintenance costs and charges.

3.4 All payments must be made directly into the account specified by the Association or in such other manner as it directs in writing.

3.5 Interest accrues daily on any unpaid amount of any amount which is due and payable by You (including on unpaid interest) from and including the due date (or, for an amount payable by reimbursement or indemnity, any earlier date the amount was incurred), up to but excluding the date of actual payment at the interest rate of the 'Cash Rate' (from time to time) plus a margin of 3% p.a. For the purposes of this clause, 'Cash Rate' means the 'Cash Rate Target' as published

by the Reserve Bank of Australia from time to time. Further details of the Reserve Bank of Australia's Cash Rate are available at: <http://www.rba.gov.au>.

4. State and condition of land, building and equipment

You acknowledge and agree that You have had adequate opportunity to:

- 4.1.1 conduct due diligence investigations into; and
- 4.1.2 raised queries with the Association about the, land, buildings and all plant and equipment associated or connected with the Tennis Complex and have used that the opportunity to the extent You considered necessary.

5. Your rights

- 5.1 During the terms of the licence You may carry out the following activities:
 - 5.1.1 hire out the courts at the Tennis Complex for the playing of the game of tennis;
 - 5.1.2 coach tennis on the courts at the Tennis Complex at all times except when the Tennis Complex is required for use by the Association. If the Association is using the Tennis Complex, they must make up to 4 courts available for You as required for coaching;
 - 5.1.3 operate catering, entertainment and sporting facilities at the Tennis Complex;
 - 5.1.4 operate the pro shop at the Tennis Complex;
 - 5.1.5 secure sponsorship for signage, tournaments, competitions or facility provision or upgrades;
 - 5.1.6 advertise and promote the Domain Name and the Contact Numbers in marketing materials;
 - 5.1.7 use and modify the Website;
 - 5.1.8 advertise and promote the above activities under the Business Name, provided that none of these activities detract from the key objectives of the promotion and growth of the game of tennis in the Gosford City Council area.
- 5.2 You will be entitled to retain all revenue from the above activities subject to the terms of this Licence.

6. You Promise:

You promise:

- 6.1 To promote the growth of the participation of residents of the Gosford City Council area in playing the game of tennis.
- 6.2 To use the Tennis Complex only for the purposes of playing and coaching tennis and the associated purposes set out in Clause 5 and for no other purposes.
- 6.3 To have a coach with a minimum of Tennis Australia Certified Club Professional Qualification available for coaching at the Tennis Complex during all normal coaching hours. You agree to use Your best endeavours to procure at Your cost and expense, during the term of this agreement, the services of Mr. Greg Brownlow as the "Head Coach and Operations Manager" of the Tennis Complex.
- 6.4 To maintain the existing surfaces of the courts in a serviceable condition, subject to wear and tear, and to keep the entire Tennis Complex including amenities clean and tidy at all times.
- 6.5 Subject to clause 6.10, to carry out all necessary repairs and maintenance required to keep the Tennis Complex and all fixtures contained therein in good repair and appearance including, but

not limited to, the fencing, gates, plumbing and electrical items, courts, gardens, outdoor furniture and shade covers.

- 6.6 To promptly repair, subject to insurance claims, any damage caused to the Tennis Complex.
- 6.7 To keep all equipment provided to You by the Association in sound condition and working order.
- 6.8 To keep all access gates and door to the Tennis Complex locked at all times when there is no officer or employee present and to provide a copy of all access keys and codes (including any updates to same) to the Tennis Complex to the Association.
- 6.9 To pay for all expenses incurred in running the Tennis Complex in accordance with this clause 6 including the costs for services such as gas, water consumption and electricity.
- 6.10 You are not required to pay for any 'major capital work', unless it is reasonably necessary or required as a result of or in connection with Your negligent act or omission, a breach by You of this License or as otherwise provided for in this Licence. For the purposes of clause 6.10:
 - 6.10.1 the Association agrees with You that it will make available an amount limited to the amount of the License Fee actually received from You during the Term, for the purposes of paying for or contributing towards the cost of 'major capital work' at the Tennis Complex that is approved in writing by the Association in its absolute discretion. The Association may in exercising its absolute discretion under this clause take into consideration Your feedback, suggestions and comments but it is not bound to do so. Any approval given by the Association will be limited to the approved scope of work and pre-agreed costs for the relevant 'major capital item' based on the approved quotation for those works and will not extend to cover for any cost over-run or other cost increase, including in respect of (without limitation) any cost increase arising from any variation to the scope of work, unless they have also been approved in writing by the Association. If during the Term the cost of any particular 'major capital work' (or any cost over-run or other cost increase, including in respect of (without limitation) any cost increase arising from any variation to the scope of work) that is approved by the Association exceeds the amount of the License Fee actually received by the Association at the relevant time, You may for the cost of the approved 'major capital work' or part thereof that cannot be paid from the relevant funds at the relevant time. If and to the extent that You have actually paid for any approved 'major capital work' or part thereof (being the **Shortfall Amount**) as permitted above, then You may set-off the amount of the License Fee or part thereof that is payable to the Association against the amount of the Shortfall Amount. If a set-off is to be claimed then as a pre-condition to the set-off You must give the Association not less than 14 days written notice of the intended set-off and at the same time supply a copy of the tax invoice in relation to the works and submit adequate proof that You have in fact paid the Shortfall Amount in respect of the approved 'major capital work' in relation to that tax invoice. You cannot apply a set-off unless and until the above set-off pre-conditions are satisfied in full and in accordance with these terms.
 - 6.10.2 A proposal in regards to 'major capital work' must be supported by at least 3 independent quotations addressed to You, and prepared by an appropriately licensed and qualified tradesperson, which sets out in sufficient detail the following minimum information:
 - 6.10.2.1 the proposed scope of work;
 - 6.10.2.2 an estimate of the time such works will take to complete (either by setting a completion date based on a proposed start time or based on a number of working days (as appropriate)); and

- 6.10.2.3 an cost estimate showing a breakdown between labour and material cost components, with sufficient detail and specifications in regards to both elements.
- 6.10.3 For the purposes of this clause, 'major capital work':
 - 6.10.3.1 includes but is not limited to the replacement or substantial renovation or upgrade of the court surfaces, fencing, lighting (apart from replacement of light globes), building and any major ground works required in the Tennis Complex.
 - 6.10.3.2 a single item of work or repair that is less than \$3000 is not a 'major capital work' regardless of its nature (the cost of such works being Your responsibility in any event).
 - 6.10.3.3 any single item of work that exceeds \$3000 is taken to be a 'major capital work' regardless of its nature and may if the Association approves be dealt with under this clause 6.10.
- 6.11 Not to permit anything to be done upon the Tennis Complex which may be a nuisance or annoyance to the Association or occupiers of any neighbouring premises.
- 6.12 Not to act against or in conflict with the interests of the Association. Further and in addition, You must work cooperatively and in good faith with the Association to ensure the renewal by the Association of the lease of the Tennis Complex from the Gosford Recreation Reserve Trusts.
- 6.13 To keep the Association, Gosford Recreation Reserve Trusts (R85959 and R79582) and the Minister administering the Crown Lands Act 1989 indemnified against any claims or liability for damage, loss or injury which may occur to: -
 - (a) You;
 - (b) Any use of the Tennis Complex;
 - (c) Any property of Yours or user of the Tennis Complex.
- 6.14 Subject to clause 6.15, to collect Association membership fees, team registration fees, and squad training fees (or any other fees payable to the Association) as advised on behalf of the Association in relation to the Tennis Complex and to deposit those fees into the bank account nominated by the Association in writing.
- 6.15 For so long as You are not in default of any of Your obligations under this License the Association assigns (in equity only) to You its rights to receive the Association membership fees, team registration fees, and squad training fees (or any other fees payable to the Association in respect of the Tennis Complex), less the 'Retained Membership Fees', until the earlier of the expiration of the Term or the termination of this License (the **Assignment Term**). You are not entitled to issue any notice of assignment in respect of the assignment contemplated by this clause 6.15 and upon the expiration of the Assignment Term, You have no further right or entitlement to receive any amounts contemplated by the assignment. For the purposes of this clause 6.15, 'Retained Membership Fees' means the amount of \$1.00 from every Association membership fee (including in relation to any renewal fees in relation to any Association membership) received during the Term.
- 6.16 Not to do anything which would breach the Association's lease of the Tennis Complex from the Gosford Recreation Reserve Trusts (R85959 and R79582) (the "**Lease**") a copy of which has been provided to You.
- 6.17 To build and maintain a strong working relationship with Tennis NSW and Tennis Australia and promote the use of the Tennis Complex by those organisations for Regional, State and National Events and Player Development Programmes.

- 6.18 To comply with all workplace and occupational safety laws in relation to or in connection with the operation of the Tennis Complex and to ensure that all laws (whether statutory or otherwise) that relate to working with children are fully complied with. This includes ensuring that appropriate background checks are procured in relation to all individuals who have any dealing with any children. You must periodically make available to the Association all such documentation and records relating to Your obligation and compliance under this clause.
- 6.19 In relation to the operation of the Tennis Complex, at Your cost and expense, to:
- 6.19.1 conduct all tennis tournaments in accordance with Tennis Australia regulations;
 - 6.19.2 maintain and build on the current tennis tournament calendar;
 - 6.19.3 implement a tennis 'hot shots' program consistent with Tennis Australia requirements;
 - 6.19.4 implement 'Cardio Tennis' consistent with Tennis Australia requirements;
 - 6.19.5 implement disability and indigenous local community tennis programs;
 - 6.19.6 provide tennis coaching and classes at all levels of experience;
 - 6.19.7 organise and conduct social tennis and competition tennis camps and events;
 - 6.19.8 conduct 'Asian Tennis League' matches and 'International Tennis School' open doubles events;
 - 6.19.9 provide food and refreshments at the café facility consistent with Tennis Australia tournament requirements;
 - 6.19.10 undertake reasonable marketing initiatives and reasonable endeavours in regards to the Tennis Complex with the aim of increasing use of the Tennis Complex and membership of the Association, having regard to the nature of the Tennis Complex and the size of the Association;
 - 6.19.11 provide tennis 'pro-shop' services and facilities including racquet restringing services;
 - 6.19.12 maintain access and good condition of the main BBQ area for priority use at the discretion of the Association for its members. You and Your customers may also use the BBQ area however, priority must be given to the Association and its members;
- 6.20 To NOT place or affix any signage or fence screens which partly or fully obscure the entrance or exit to the Tennis Complex or which create a potential risk of damage to fences in or around the Tennis Complex from high winds.
- 6.21 To apply 100% of any profits made or received from the operation of the Tennis Complex back into the Tennis Complex as You see fit.
- 6.22 In connection with Your obligations under this license, You must ensure that the Association is provided a copy of the following in relation to the operation of the Tennis Complex:
- 6.17.1 Your balance sheet (also known as the statement of financial position);
 - 6.17.2 Your income and expenditure statement (also known as the profit and loss statement or statement of financial performance);
 - 6.17.3 Your statement of cash flows (also known as the statement of receipts and payments), within 90 days of the end of each financial year during the Term.
- 6.23 On the execution of this License Agreement, You must provide the Association with a copy of Your business plan and You must supply the Association with copies of any subsequent business plans, including any amendments, variations or restatements of the business plan, in each case within 14 days of the date of such amendment, variation or restatement. For the purposes of this clause, Your business plan shall include (as a minimum):
- 6.23.1 proposed business activities;
 - 6.23.2 marketing plans;
 - 6.23.3 sales targets;

- 6.23.4 expected revenue and expenditure;
- 6.23.5 current and proposed capital expenditure and maintenance costs and charges;
- 6.23.6 staff requirements,

For the relevant financial year.

- 6.24 To arrange for Your nominated representative to meet with a nominated representative of the Association at least once in every quarter (Jan – Mar, Apr – June, Jul – Oct, Nov – Dec) for the purposes of discussing the following items:
 - 6.24.1 current and proposed capital expenditure and maintenance costs and charges;
 - 6.24.2 the overall position of the Tennis Complex;
 - 6.24.3 Your business plan including any previously notified changes to Your business plan;
 - 6.24.4 Your ongoing compliance with this License.

7. The Association promises

The Association promises:

- 7.1 Provided You comply with the terms of this Licence Agreement, it will not interfere with Your reasonable use and enjoyment of the Tennis Complex during the term of this licence.
- 7.2 It will provide You with the equipment and materials listed in Schedule “A” which will remain the property of the Association at all times.
- 7.3 It will during the Term pay the fees associated with maintaining its affiliation to Tennis NSW.

8. The Association’s rights

- 8.1 The Association reserves the following rights:
 - 8.1.1 To conduct regular Association competitions as determined in accordance with You. The number of courts required for each competition will depend upon the number of competitors involved. The Court Hiring Fees to be charged during these competitions will be varied as the Association and You agree. If an amount cannot be agreed upon then the fees charged during the competition must not be greater than those fees charged in the previous years competition increased by the CPI figure used at the previous Review Date.
 - 8.1.2 To use the Tennis Complex including the Public Address system for the purpose of running fundraisers, meetings, social days or other similar events (the Association may, in its discretion, consider Your requests to conduct such fundraisers, meetings, social days or other similar events for the Association) . In order to exercise this right the Association must provide You with one month’s notice of the dates on which the Tennis Complex is required and must pay You an agreed Court Hiring Fee. Failing agreement between the Association and You in relation to the applicable Court Hiring Fees, the Court Hiring Fee will be \$200 per day per complex (north/south). These fees will be payable by the Association at the completion of the relevant competition.
 - 8.1.3 To obtain access to courts as required during daylight hours for the purpose of grading players. This use of the court will be free of charge but 24 hours notice must be provided to You by the Association.
 - 8.1.4 To use the club house, barbecue area and barbecue facilities for functions free of charge. The Association must provide You with one month’s notice of the date of each function to exercise this right.

- 8.1.5 The barbecue area and barbecue facilities must be available on request to Association members. There will be a fee payable by members as agreed between You and the Association for their use of this area.
- 8.1.6 The Association is to have exclusive use of the Association Office and the Association Storage Room. These rooms can be used by the Association at any time. There will be no fee payable to You by the Association for the use of these rooms. The Association will compensate You for any additional electricity incurred because of the use at a rate of \$5.00 per week plus GST.

9. Licence only

You have a right of non-exclusive occupation of the Tennis Complex on the terms specified in this license and have no other proprietary interest in the premises on which the Tennis Complex is situated. The legal right to possession and control over the premises remains vested in the Association throughout the term of this licence.

10. Intellectual property rights

- 10.1 The Association owns all rights in the Domain Name, the Website, the Business Name and the Contact Numbers (together, the “**Intellectual Property**”).
- 10.2 The Association owns all rights in any modifications, enhancements or improvements made to the Intellectual Property (the “**Improvements**”). If any Improvements were made by or on behalf of You, You:
 - 10.2.1 assign to the Association all Your rights, title and interest in the Improvements;
 - 10.2.2 must do all things reasonably requested by the Association to enable the Association to assure further the rights, title and interest assigned under clause 10.2.1.
- 10.3 The assignment under clause 10.2 is deemed to take effect from the date of creation of the Improvements.
- 10.4 On request by the Association from time to time, You must provide to the Association a copy of the Improvements assigned under clause 10.2.1, in the state in which they exist at that time.
- 10.5 You must not register or record or attempt to register or record any patents, trade marks or other intellectual property rights derived from the Intellectual Property or the Improvements, or aid or abet anyone else in doing so, without the prior written consent of the Association.
- 10.6 You must promptly notify the Association (providing reasonable particulars) of any use by any third part of the Intellectual Property or the Improvements of which You become aware which is or may constitute an infringement of the Association’s rights in the Intellectual Property and the Improvements.
- 10.7 You shall not obtain or accumulate any goodwill in the Intellectual Property or the Improvements. All such goodwill will remain the exclusive property of the Association.

11. Assignment

- 11.1 You acknowledge that the licence granted is a personal licence only and that any rights conferred under the licence will not be assignable by You.

12. Termination

- 12.1 This licence will continue until the earlier of expiration of the Term or the earlier termination in accordance with this license.

- 12.2 The Association may terminate this licence by giving You 14 days written notice at any time in any of the following circumstances:
- 11.2.1 Failure by You to pay the licence fee within 30 days of a due date (time being of the essence); or
 - 11.2.2 Breach by You of any covenant contained in this agreement, which if capable of remedy remains unremedied for 7 days after we give You notice of the breach; or
 - 11.2.3 Three (3) failures (whether or not they are in succession) by You to pay the license fee by the due date, resulting in the issue to You a default notice in respect of each failure to pay.
- 12.3 The Association may immediately terminate this licence by giving written notice at any time in any of the following circumstances:
- 11.3.1 Your insolvency, bankruptcy or legal incapacity; or
 - 11.3.2 If You are a natural person, Your death.
- 12.4 This licence will automatically terminate (without compensation being payable to either party) in the event of termination of the Lease between the Association and the Gosford Recreation Reserve Trusts (R85959 and R79582).
- 12.5 Upon termination of the licence You must immediately vacate the Tennis Complex and remove all Your property. You must return all equipment provided to You by the Association (set out in Schedule "A") in good order and condition subject to fair wear and tear. Any property not removed within 7 days will become the property of the Association and can be disposed of at its discretion. Any costs incurred by the Association in disposal of that property will be paid for by You.

13. Not used

14. Insurance

- 14.1 You must keep current a public liability policy with cover for not less than twenty million dollars (\$20,000,000) for a single event. This policy must be in the joint names of You, the Association, Gosford Recreation Reserve Trusts (R85959 and R79582) and the Minister Administering the Crown Lands Act 1989.
- 14.2 You must maintain insurance against theft and damage for all equipment provided to You by the Association. This equipment must be insured on a replacement basis. This policy must be in the joint names of You and the Association.
- 14.3 You must effect insurance at Your own expense against claims for workers compensation in regard to persons employed by You.
- 14.4 You must produce any policy of insurance required under this agreement to the Association for inspection upon request.

15. Alteration and Additions

- 15.1 You must not erect or alter any permanent structure on the Tennis Complex without first obtaining the written consent of the Association. That consent can be granted or withheld in the absolute discretion of the Association.
- 15.2 If any alterations or additions are effected by You then, if so requested by the Association, on termination of this licence You must restore the premises to the condition they were in prior to the commencement of this licence and make good any damage caused.

16. Damage

- 16.1 You are responsible for all damage caused to the Tennis Complex by You, Your staff, agents and customers.
- 16.2 If such damage is not repaired by You, the Association may repair the damage at Your expense.
- 16.3 All costs of repair incurred by the Association must be reimbursed by You within 30 days of You being provided with an itemised account.
- 16.4 You must insure against the risk of damage referred to in this clause and on demand, produce to the Association evidence of that insurance cover.

17. Bond

- 17.1 You must pay to the Association a bond of \$500.00.
- 17.2 The bond will be dealt with as follows:
 - 16.1.1 the Association can use part or all of it to pay money due to the Association because of a breach of this licence by You.
 - 16.1.2 if the bond is used for that purpose then You will reinstate the bond to the amount referred to in clause 17.1 within five (5) days of being asked to do so by the Association; and
 - 16.1.3 if You comply with this licence then the bond will be refunded to You at the end of the term or when You vacate the premises, which happens last.

18. Indemnity

The Association will not be responsible for, and You indemnify the Association from, and against all claims, demands, writs, summons, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature that the Association may suffer or incur in connection with the loss of life, personal injury and/or damage to any person or property arising from the use of the Tennis Complex.

19. Appointment of Attorney

- 19.1 For valuable consideration receipt of which is acknowledged by You, You irrevocably appoint the Association as Your attorney to do anything which You must do under clause 1.3 on Your behalf and in Your or the attorney's name or which is necessary or incidental to give effect to clause 1.3.
- 19.2 You agree to ratify anything done by Your attorney under this power of attorney. An attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

20. Miscellaneous

- 20.1 Any notice may be served on either party by personal delivery or by sending it to the address shown in this agreement by prepaid security post or certified post.
- 20.2 Reference to "person" includes a corporation.
- 20.3 If You comprise more than one person then each is jointly and severally liable.
- 20.4 Words expressed in one gender include the others.
- 20.5 You agree that You, Your employees and Your family are not eligible to be elected as members of the Association's Committee.
- 20.6 A reference to We, Us or Our means the Association.

Schedule A – Equipment and materials list

Schedule B – Plan

Signing page

EXECUTED as an agreement.

**SIGNED BY INTERNATIONAL FOOTBALL
SCHOOL LIMITED (A.C.N. 155 134 160)
PURSUANT TO SECTION 127 OF THE
CORPORATIONS ACT 2001 (CTH) :**

By:

Print Name & Title (Director / Secretary)

By:

Print Name & Title (Director / Secretary)

**SIGNED BY the GOSFORD DISTRICT TENNIS
ASSOCIATION INCORPORATED:**

By:

Print Name & Title

Witness:

Print name (witness)

By:

(affix association seal here)

Print Name & Title