

Tuck Shop at WIS

Windhoek International School

Scheppmann Street, Pioneerspark, Ext. 1, Private Bag 16007 Windhoek

Herein represented by Ethan Van Drunen in his capacity as Educational Director and warranting to be duly authorized thereto
(hereinafter referred to as "the School")

And

Name:

Address:

Phone number:

Herein represented by:

(hereinafter referred to as "the Service Provider")

1. RECITALS

- 1.1. The School wishes to appoint the Service Provider to operate the Tuck Shop by selling healthy and good value food products to the WIS community.
- 1.2. The Service Provider wishes to operate the Tuck Shop by selling food products to the WIS community and reciprocally accepts the appointment on the terms and conditions as contained in this Agreement.

2. INTERPRETATION

- 2.1. The clause headings in this Agreement have been inserted for reference purpose only and shall not be taken into consideration in the interpretation of this Agreement.
- 2.2. When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday or public holiday in the Republic of Namibia, in which case the last day shall be the next succeeding business day.

- 2.3. Words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*.
- 2.4. References to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons
- 2.5. The rule of interpretation that a contract shall be interpreted against the party responsible for the drafting or preparation of this agreement, shall not apply to this Agreement.

3. APPOINTMENT OF THE SERVICE PROVIDER

- 3.1. The School hereby appoints the Service Provider to operate the Tuck Shop and Cafe by selling food products to the WIS community (the "School") and the Service Provider hereby accepts the appointment to conduct the School on the terms and conditions contained in this Agreement read with the tender schedule annexed hereto.

4. COMMENCEMENT AND DURATION

- 4.1. This Agreement shall commence on **01 September 2024** (the "Commencement Date") and will endure until this agreement is cancelled or terminated by either Party in terms of this Agreement.

5. REVIEW

- 5.1. The parties will review the terms and conditions applicable to this agreement 2 (two) months from the Commencement Date, and thereafter on a regular basis.
- 5.2. Amendments to the terms and conditions herein will be made in writing by mutual agreement between the parties.

6. OBLIGATIONS OF THE PARTIES

- 6.1. The School:

- 6.1.1. shall permit the Service Provider to utilise all capitalized equipment, and such equipment shall remain the property of the School. Equipment may be utilised by the Service Provider in accordance with the purposes and terms outlined within this agreement.
- 6.1.2. shall provide seating, decoration, and ambiance to make the Tuck Shop a salubrious and attractive environment for gathering.
- 6.1.3. shall pay for the electricity and water costs, with any negligent use of resources resulting in a review of this MoA.
- 6.1.4. shall provide the Service Provider with a copy of all its rules, regulations, and policies applicable to the Service Provider; and
- 6.1.5. shall not directly handle cash or financial transactions on the Service Provider's behalf.
- 6.1.6. shall notify the Service Provider of school calendar and school closures, though the school is not in any circumstance liable nor responsible for unsold stock or loss of revenue resulting from such cancellations.
- 6.1.7. Shall make the tuck shop / cafe accessible to parents, students, teachers, and approved guests of the school; though the tuck shop/cafe is not open to the general public.
- 6.2. The Service Provider:
 - 6.2.1. shall ensure that it at all times for the duration of this Agreement has all the required permits, licenses, certificates, approvals and consents which may be required by law to conduct its operations in the sale of food products from the Tuck Shop.
 - 6.2.2. shall be permitted to make improvements and facility upgrades in consultation with the school;
 - 6.2.3. shall inform the school when a new staff member is hired, in order for the school to provide orientation and child protection/safeguarding/bullying prevention training;

- 6.2.4. shall display a detailed menu of items and/or meals to be sold, including selling price per item;
- 6.2.5. shall make a note of allergens and accommodations for dietary requirements of a diverse student population;
- 6.2.6. shall appoint a manager responsible for cleanliness of the area and food hygiene;
- 6.2.7 shall avail the Tuck Shop to the WIS community (including parents, teachers, students, and approved guests) on all school days between the hours of 07:00 and 15:00pm, or as otherwise agreed upon between the Service Provider and the School, based on customer demand and subject to the following restriction: the Service Provider shall only make the Tuck Shop available to all students during the following time periods, to Grade 11/12 students during their independent study periods, to the wider WIS community at any point during open hours (typically 07:00 until 15:00 on weekdays), and for catering and teacher/parent functions/workshops/training days, etc.

Period	Time Open	Time Close
BEFORE SCHOOL	07:00	07:20
FIRST BREAK		
SECONDARY SCHOOL	09:40	10:00
PRIMARY SCHOOL	09:30	09:45
SECOND BREAK		
SECONDARY SCHOOL	12:05	12:40
PRIMARY SCHOOL	11:55	12:25
AFTER SCHOOL	13:40	15:00
SPECIAL EVENTS	Offered in conjunction with the school event coordinator.	

6.2.8 shall ensure that all items sold from the Tuck Shop are nutritional and healthy. And shall refrain from offering prohibited items for sale.

6.2.9 shall partner with the school in devising thematic offerings and celebrations in keeping with holidays and the school's calendar of events.

6.2.10 shall strive to minimize the use of plastic and styrofoam in line with the school's policies, shall strive to promote recycling and reduction of waste wherever possible, and shall maintain a tidy and litter-free environment.

6.2.11 shall maintain a high standard of hygiene and ensure that all surfaces, appliances, and equipment are cleaned regularly and sanitized in accordance with the law or regulation applicable to the operations of the Service Provider.

6.2.12 shall ensure that all employees, representatives, agents, and/or contractors of the Service Provider who will be handling or preparing any items sold at the Tuck Shop maintain high standards of personal hygiene.

6.2.13 shall ensure that all employees, representatives, agents, and/or contractors of the Service Provider are provided with sufficient personal protective equipment, identifiable clothing, and cleaning materials and equipment to ensure a hygienic work environment and safe preparation and sale of products from the Tuck Shop.

6.2.14 shall devise and operate a lunch plan system which facilitates a speedy and efficient delivery of lunches (for example, provision of a pre-ordered lunch plan or means of delivering already-prepared meals to a large number of customers within a short space of time during the First Break and Second Break time periods).

6.2.15 shall maintain and keep in a good order and working condition the Tuck Shop, including the interior and exterior, and all fixtures, doors, windows, appurtenances, equipment, fixtures, and fittings contained therein, with the Service Provider repairing or replacing at their cost any capitalised items or equipment if damaged due to negligence or misuse.

6.2.16 shall ensure that all employees, representatives, agents, and/or contractors of the Service Provider adheres to the School's rules, campus safety policies, inclusion policies, and child protection requirements at all times. The school must be provided with a list of all who serve in the tuckshop and shall share criteria for their screening.

6.2.17 shall maintain accurate and verifiable records of all sales from the Tuck Shop.

6.2.18 shall take out and maintain sufficient public liability insurance acceptable to the School, unless agreed otherwise between the Parties;

6.2.19 shall optionally provide services during occasional evenings and weekends where events have brought many customers onto campus, when requested and communicated by the School in advance;

6.2.20 shall optionally install additional equipment and furnishings as approved by the School, with this additional material remaining the property of the Service Provider;

6.2.21 shall on the termination of this Agreement return the Tuck Shop and all fixtures, doors, windows, appurtenances, equipment, fixtures, and fittings contained therein in good order, condition and repair, fair wear and tear excepted.

6.2.22 shall individually price items for sale (incl VAT).

6.2.23 shall submit tax clearance and letters of good standing upon request.

6.3. Joint Obligations

6.3.1. The Parties shall prior to the Commencement Date jointly agree on and compile and advertise a list of the products that may be sold and the products which may not be sold by the Service Provider. The Parties shall review the list of permitted products and prohibited products at the request of either of the Parties from time to time.

6.3.2. The Parties shall ensure that sufficient signage, notifications, and indemnifications are placed in, on, and around the Tuck Shop warning, informing and/or alerting the WIS community, customers, or potential customers:

that food products sold at the Tuck Shop may contain allergens including, but not limited to cereals containing gluten, crustaceans, eggs, fish, milk, peanuts, soybeans, and tree nuts.

that the purchase, use and/or consumption of any and all products acquired from the Tuck Shop is at the customer's own risk and that the neither the School nor Service Provider will be held liable for any damages, personal injury, illness, death, or loss howsoever arising whether directly or indirectly from the customer's purchase, use and/or consumption of any and all products acquired from the Tuck Shop.

that a notice be posted to the effect that it is the responsibility of the individual consumer to notify the Service Provider of any allergies or health-related concerns. Neither the School nor the Service Provider are able to provide dietary advice, and neither the School nor the Service Provider can be held liable for any diabetic or allergic complications resulting from the individual consumer's use of the Service Provider's facilities and services.

- 6.3.3. The Parties shall endeavor to work collaboratively to make the Tuck Shop/Cafe and surrounding areas a happy and friendly atmosphere where the community's cultural diversity may be celebrated through both daily operations and one-time events.
- 6.3.4. The Service Provider will timeously inform the School of promotions (if any), specials, changes, or alterations in the menu, pre-ordered and *a la carte* offerings to be made available at the Tuck Shop. The School will in turn share weekly advertisements to the WIS community to promote weekly promotions (if any), specials, changes or alterations in the menu, pre-ordered and *a la carte* offerings to be made available at the Tuck Shop/Cafe.
- 6.3.5. The Parties shall endeavor to raise awareness of healthy eating and wise use of scarce resources, as befitting the provision of a tuckshop/cafe located within an international school campus.

7. SERVICE PROVISION & PAYMENT OF COMMISSION

- 7.1. The Parties record that no weekly, monthly, or annual rental shall be payable for the use of Tuck Shop; however, the Service Provider shall pay to the School a commission from gross sales generated by the Service Provider through the operation of the Tuck Shop.

- 7.2. The Service Provider shall pay a monthly commission to the School's WIS Parent Network chart of accounts, calculated at 5% (five percent) of the gross sales generated from the operation of the Tuck Shop (the "Commission").

8. BREACH

- 8.1. Should either Party ("Defaulting Party") commit a breach of any of the provisions of this Agreement, then the other Party ("Aggrieved Party") shall be entitled to give the Defaulting Party 10 (ten) days' written notice, or such longer period as may be reasonably required in the circumstances, to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to:

- 8.1.1. cancel this Agreement against the Defaulting Party; or
- 8.1.2. to claim immediate payment and/or specific performance by the Defaulting Party of all the Defaulting Party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the Aggrieved Party's rights to claim damages.

9. TERMINATION

- 9.1. Either party may at any time terminate this agreement on 60 (sixty) calendar days' written notice to the other party, for any reason whatsoever.
- 9.2. The termination notice period may be reduced subject to both parties' agreeing to the reduced notice period.

10. LIMITATION OF LIABILITY AND INDEMNITY

10.1. Limitation of the School's liability:

- 10.1.1. The School shall not be liable to the Service Provider for any losses or damages of whatsoever nature (including, for the avoidance of doubt, any direct or indirect losses or damages, or consequential losses, losses of profit or punitive damages, whether related to the Business or not), which the Service Provider may sustain as a consequence of any defect coming into existence in or on or around the Tuck Shop or any fixtures, doors, windows, appurtenances, equipment, fixtures and fittings contained therein during

the duration of this Agreement, unless such losses or damages were caused owing to the fault of the School.

- 10.1.2. The Service Provider hereby indemnifies and holds the School harmless against any and all claims contemplated in this 10.1.2 to the fullest extent allowed by law and shall have no claim of any nature whatsoever against the School (whether for damages or for remission of Commission or otherwise) for:

any failure of or interruption in any amenities and services (including, but not limited to the supply of water and electricity) provided by the School, any statutory authority or other service provider to the Tuck Shop or the school premises notwithstanding the cause of such failure or interruption unless the cause of such failure or interruption is owing to the fault of the School.

for any accident, injury, loss or damage caused to the Service Provider, the Service Provider's agents, affiliates, directors, employees, contractors, representatives, visitors or guests, in connection with such persons using any portion of the Tuck Shop or the school premises, irrespective of whether or not the cause of such accident, injury, loss or damage arises from the negligence of the School or the School's agents, affiliates, directors, employees, contractors, representatives, save in the case of the gross negligence or willful default on the part of the School or the School's agents, affiliates, directors, employees, contractors, representatives.

10.2. The Service Provider's further indemnities:

- 10.2.1. The Service Provider hereby specifically indemnifies and holds the School harmless against:

liability in respect of any damages, personal injury, illness, death, loss, destruction, damage to, loss of or theft of any property to any agents, affiliates, directors, employees, contractors, representatives of the School, and officers of each of them or any third party, person or customer of the Service Provider caused by any act or omission by the Service Provider or the Service Provider's agents, affiliates, directors, employees, contractors, representatives, visitors or guests;

- any legal costs, on an attorney and client scale, or any other expenses reasonably incurred in connection with claims or actions arising out of any of the foregoing, whenever the damage, injury or death referred to in 10.2.1.1 above, is due to or arises out of or in connection with this Agreement, the occupancy, use of the Tuck Shop, or conduct of the Business by the Service Provider; provided that the Service Provider shall incur no liability for such legal costs in the circumstances where the damage, injury or death arises from the gross negligence or the willful misconduct of the School and its agents, affiliates, directors, employees, contractors or representatives.
- 10.3. The School shall notify the Service Provider forthwith upon receipt of information of the occurrence of any damage or consequential damage or the receipt of any claim or demand for or against which the Service Provider is *prima facie* liable to indemnify the School in terms of this Agreement, and shall in respect of such claim or demand abide by the directions of the Service Provider as to whether and on what terms it shall be settled, compromised or contested; it being agreed that whatever action may be taken by the School pursuant to such directions of the Service Provider shall be at the Service Provider's risk and expense.
- 10.4. Limitation of the Service Provider's liability:
- 10.4.1. In no event shall the Service Provider be liable for unforeseeable, indirect, incidental or special damages, resulting from any act or omission by the School in respect of the obligations of the School in terms of this Agreement.
- 10.4.2. The Service Provider shall not be liable for loss, damage, or injury caused to third parties by any default attributable to the School or its agents, affiliates, directors, employees, contractors or representatives during the period of this Agreement.

11. DISPUTES

- 11.1. Should any dispute arise which relate in any way to any matter affecting the interests of the Parties in terms of this Agreement that cannot be resolved amicably by negotiation between the authorized representatives of Parties within 10 (ten) Business Days of the referral of the dispute, then either Party shall be entitled to refer such dispute to a mediation process for final determination.

- 11.2. Except where otherwise specifically provided for, any dispute at any time between the Parties or any failure by them to reach agreement regarding any matter arising out of or in connection with this Agreement or its interpretation or effect or arising in any way out of the termination or failure of any of them, shall be submitted to a mediation process led by a litigation lawyer as set out herein.
- 11.3. The Parties shall appoint a mediator by agreement between the Parties, failing which, the Parties shall petition the President of the Law Society of Namibia for the appointment of such mediators having at least five (5) years' experience as legal practitioners.
- 11.4. The decision of the mediators shall be given in writing as soon as reasonably possible after the dispute has been referred to the mediation process but not longer than six (6) weeks from the date on which the hearing, including argument, was concluded.
- 11.5. The decision and agreement shall be final and binding. If the mediation process is not agreed upon by the Parties then the matter shall be escalated to any court of competent jurisdiction, including its award in respect of the costs of such arbitration.
- 11.6. Each Party shall bear its costs and the costs of the mediation process shall be borne equally by the Parties unless there is no mediation agreement reached and the subsequent arbitrator decides otherwise.
- 11.7. In the event that arbitration were necessitated due to a failure of the mediation process, arbitration shall be conducted in terms of the Rules for Expedited Arbitration in terms of the Arbitration Foundation of Southern Africa and shall be held in Windhoek; be conducted in English and in terms of Namibian law.
- 11.8. The Parties may be legally represented and may present evidence by independent experts or as otherwise permitted by the arbitrators.
- 11.9. The aforesaid notwithstanding, any Party shall be entitled to approach any competent court having jurisdiction for urgent relief on an interim basis, pending the finalization of the resolution of the dispute in terms of this clause.

12. GENERAL

12.1. Entire agreement, variation

12.1.1. This document contains the entire agreement between the parties and any amendment or variation hereof shall only be valid and enforceable if reduced to writing and signed by both parties.

12.2. Applicable law

12.2.1. This agreement shall be subject to the laws of the Republic of Namibia.

12.3. Severability

12.3.1. If any provision of this agreement is or becomes invalid or unenforceable, such provision shall be devisable and be regarded as *pro non scripto*, the remainder of this agreement is to be regarded as valid and binding.

12.4. No stipulation for the benefit of a third person

12.4.1. Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e., a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favor of that person.

12.5. No representations

12.5.1. A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement unless the representation is recorded in this Agreement.

12.6. Indulgences

12.6.1. The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

12.7. Cession and delegation

12.7.1. A Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.

12.8. Signature in counterparts

12.8.1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

12.9. Good faith

12.9.1. The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

12.10. Co-operation

12.10.1. Each of the Parties undertakes at all times to do all such things, perform all such acts, and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

13. SIGNATURE

13.1. FOR AND ON BEHALF OF THE SCHOOL

Ethan Van Drunen

Date:

Witness

Date

13.2. FOR AND ON BEHALF OF THE SERVICE PROVIDER - La Bonne Table

Name: Printed & Signed

Date



Tuck Shop

Memorandum of Agreement

Witness

Date