

Conditions on future financial assistance – Al Amanah College Ltd.

Context

1. This document sets out the conditions for the provision of financial assistance from the NSW Minister for Education (the "Minister") under section 83B of the *Education Act 1990* (NSW) (the "Act") to Al Amanah College Ltd. (ABN 59 516 770 877) - (the "School"). These conditions are set by the Minister under the provisions of section 83E(1) of the Act following a non-compliance declaration made by the Minister on 18th of March 2021 pursuant to section 83F of the Act.
2. These conditions place obligations and duties on the School. The performance of these obligations and duties shall be a pre-requisite for the provision of any future financial assistance to the School from the Minister.
3. It is the intention of the Minister that the imposition of these conditions will help to ensure that future financial assistance provided to the School will only be used for the benefit of the students attending the School, including meeting their educational and administrative needs, and facilitating the operation of the School.

Commencement & Term

4. These conditions come into effect on and from the day that they are set by the Minister (the "Effective Date").
5. The School must, within 7 days of the Effective Date execute this document as acknowledgement and agreement that it will comply with this document's terms; and, deliver a copy of the executed document to the *Director, Non-Government Schools Unit*, of the NSW Department of Education (the "Secretariat") (for the attention of the Advisory Committee).
6. The terms and conditions of this document will continue to have effect until any of the following occurs:
 - 6.1. the Minister, upon the recommendation of the Advisory Committee, notifies the School that it will no longer be subject to these terms and conditions;
 - 6.2. except related to an action associated with the School's compliance with the Act, the School is no longer the recipient of financial assistance or grants from the Minister; or
 - 6.3. the Minister determines to cease funding in accordance with the Act.

Acknowledgment of Non-Compliance

7. By executing this document, the School acknowledges and agrees that it was non-compliant with the provisions of Division 3 of Part 7 of the Act including:
 - 7.1. Ownership of a hotel and restaurant located at 471 Chapel Road, Bankstown NSW, including all capital/ fixed assets associated with the property - ("Hotel Site");
 - 7.2. Ownership of a residential property located at 8 Conway Road, Bankstown NSW which was acquired by the School to facilitate the development of the Hotel Site;
 - 7.3. Outstanding interest payments of \$2.4M relating to previous loans made by the School to Salamah College Limited (ABN 99 124 633 263) in NSW - ("Salamah College"); and,
 - 7.4. Outstanding interest payments of \$820.9K relating to previous loans made by the School to Glenroy Private Ltd. (ABN 21 150 095 284) in Victoria - ("Glenroy Private").

Future Government Financial Assistance

8. Subject to the performance of condition 5, from the Effective Date the Minister shall provide financial assistance to the School on a monthly basis and in accordance with the schedule of payments at Annexure 'A'.

Suspension of Financial Assistance

9. If the School fails to comply with any of these conditions, taking into account any extension granted under condition 43, funding shall be suspended until the School has fully discharged its obligations, the relevant conditions are satisfied, and the Advisory Committee recommends to the Minister that any suspension of financial assistance be lifted.
10. The Advisory Committee will not make a recommendation to the Minister that the suspension of financial assistance to the School be lifted until the Advisory Committee is satisfied that the School has complied with the relevant condition/s.
11. In the event of a suspension of financial assistance, once the School considers that the relevant conditions have been met the School:
 - 11.1. may provide the Secretariat with written notice of the School's assertions regarding its compliance including any supporting evidence of such compliance; and,
 - 11.2. shall provide any additional documentation which the Secretariat may request (which may include statutory declarations).
12. The Advisory Committee may, at its next available scheduled meeting after receiving any information under condition 11, make a recommendation to the Minister that the suspension of financial assistance to the School be lifted.
13. Notwithstanding any other condition, if the School later resolves any non-compliance with these conditions it is not entitled to Government funding for the period it did not receive any payments because during that period it was non-compliant with these conditions.

Ongoing Compliance with Conditions

14. Subject to condition 6, and following the School's compliance with conditions 15 to 41 (inclusive) the Advisory Committee will:
 - 14.1. make a recommendation to the Minister, whether or not the School should continue to be subject to the terms and conditions set out in this document; and,
 - 14.2. if the recommendation pursuant to condition 14.1 is that the School should continue to be subject to the terms and conditions set out in this document, make a further recommendation to the Minister every 12 months thereafter until such time as a recommendation is made that the School is no longer subject to the terms and conditions set out in this document.

Publication - Acknowledgement Letter

15. The School shall:
 - 15.1. within 30 days of the Effective Date, include a letter in the same form as the document at Annexure 'B' in a prominent position in a newsletter published by the School;
 - 15.2. within 30 days of the Effective Date, publish a copy of the letter in the same form as the document at Annexure 'B' and these conditions on the School's intranet available to all parents, guardians and carers of students, in a manner that is accessible to the School community, presented in a legible format and located in a clear and prominent position, as

agreed by the Secretariat. The publication shall remain accessible until the School is released from compliance with the conditions set out in this document;

- 15.3. within 30 days of the Effective Date, send a copy of the letter in the same form as the document at Annexure 'B' to all parents, guardians and carers who have children currently enrolled at the School.
16. Any documents published in accordance with condition 15 are to be in English and any other Significant Language spoken by the students at the School (or their parents, guardians or carers). Under this condition, a Significant Language means any language or dialect spoken by at least 25% of the students (or their parents, guardians or carers).
17. The School shall provide a copy of the documents nominated in condition 15 to the Secretariat within 30 days of when the relevant obligation falls due.
18. The School shall provide any additional documentation which the Secretariat may request (which may include statutory declarations) in order to satisfy itself that the School has complied with conditions 15 and 16.
19. The School must not communicate or publish any statements or send any correspondence to parents, guardians and carers of students that contradicts the content of Annexure 'B', this document or is otherwise factually inaccurate or misleading.

Hotel Site

20. Within three (3) years from the Effective Date the School must:
 - 20.1. Convert the existing Hotel Site to a use that is for the operation of the School; or
 - 20.2. Sell the Hotel Site at a purchase price that is at or above reasonable market value and pay all funds realised from the sale of the Hotel Site to the School.
21. Prior to the performance of condition 20 and from the Effective Date, the School, its agents, officers, employees, contractors or assigns must not use the Hotel Site as a hotel, restaurant or for any other use that is not for the purpose of operating the School.

8 Conway Road – Bankstown

22. Within three (3) years from the Effective Date the School must:
 - 22.1. Convert the property to a use that is for the operation of the School; or
 - 22.2. Sell the property at a purchase price that is at or above reasonable market value and pay all funds realised from the sale of the property to the School.

Loans to Other Schools

23. The School must within 12 months from the Effective Date use its best endeavours to recover all interest payments relating to previous loans made by the School to Salamah College.
24. The School must within 12 months from the Effective Date use its best endeavours to recover all interest payments relating to previous loans made by the School to Glenroy Private.
25. The School shall not use its assets or income to provide a financial facility, loan, mortgage, credit, security, gift or donation that is for the benefit of any other person.

Gardenvue Apartments Pty. Ltd. (ABN 39 082 397 644)

26. The School shall submit to the Secretariat verified copies of the following audited financial statements for Al Amanah College Ltd.:

- 26.1. for the financial year ending in 2020 by 1 April 2021;
- 26.2. for the financial year ending in 2021 by 1 March 2022;
- 26.3. for the financial year ending in 2022 by 1 March 2023;
- 26.4. for the financial year ending in 2023 by 1 March 2024.

Building Grants Assistance Scheme

- 27. The School is disqualified from receiving any financial assistance through the Building Grants Assistance Scheme administered by the NSW Department of Education and the relevant Block Grant Authority for a period of three (3) years from the Effective Date.

Compliance Review, Risk Assessment & Compliance Program

- 28. The School shall, within 30 days of the Effective Date, at its own cost, engage a suitably qualified and independent governance and compliance professional ("Assessor"). The appointment of the Assessor will be approved by the Secretariat.
- 29. The Assessor is to complete within 90 days of their appointment:
 - 29.1. a detailed review of the business operations, senior management structure and governance of the School and a written report in respect of the same ("Compliance Review"). The Compliance Review must examine all board operations, policies, minutes procedures and decision-making processes; and assesses the School's compliance with section 83C of the Act.
 - 29.2. a risk assessment identifying, and ranking in order of severity, all areas of the School's operations and activities which may pose a risk of contravening the provisions of s.83C of the Act and a written report in respect of the same ("Risk Assessment").
- 30. The Compliance Review and Risk Assessment are to be provided to the School by the Assessor upon their completion. Within 21 days of the Assessor providing these reports to the School, the School must submit them to the Secretariat.
- 31. Within 90 days of the date that the Compliance Review and Risk Assessment are provided to the Secretariat, the School shall:
 - 31.1. having considered the Compliance Review and Risk Assessment provided by the Assessor and consulted with the Assessor and the Secretariat, develop and implement a compliance program to address the identified issues of non-compliance and any matters raised by the Assessor and Secretariat in relation to the Compliance Review and Risk Assessment (the "Compliance Program");
 - 31.2. the Compliance Program shall include a mitigation plan which details how all of the risks identified in the Risk Assessment and Compliance Review are to be mitigated and when those risks will be mitigated;
 - 31.3. establish and implement satisfactory governance arrangements to ensure that no part of the School's assets (in so far as they relate to the School) or the School's income (in so far as it arises from the operation of the School) is used for any purpose other than for the operation of the School;
 - 31.4. ensure that the Compliance Program includes a complaints handling system (the "Complaints Handling System"). The Complaints Handling System will be consistent with AS/NZS 10002:2014 Guidelines for complaint management in organisations. The School will ensure that staff and the school community are made aware of the Complaints Handling System; and
 - 31.5. submit the Compliance Program to the Secretariat.

Governance – Directors and Officers

32. Within 120 days of the Effective Date, the School shall ensure that the directors and officers of the School are independent of the membership of School and have no related business or personal affiliations with the School (except as a director or officer of the School), members of the School or any Related Entity (as that term is defined in condition 47) of the School.
33. From the Effective Date, each newly appointed director, officer or senior manager or principal of the School shall:
- 33.1. be suitably skilled, qualified and experienced in the management of an organisation;
 - 33.2. be of good character; and,
 - 33.3. not be a sitting director, officer or employee of a Related Entity of the School within the period of five (5) years prior to the person's appointment as a director, officer, senior manager or principal of the School.
34. The School prior to the appointment of any director or officer, must provide that person with a letter of appointment in substantially the same form as the letter at Annexure 'C' and which outlines that person's obligations and duties.

Governance – Training

35. Within 90 days of the Effective Date, the School, in consultation with the Assessor, shall develop and implement an induction and ongoing training program that requires all directors, officers, senior managers and principals to undertake and complete training in corporate governance, business and financial management and ethics including but not limited to:
- 35.1. Governance for Good – an ACNC guide for not-for-profit board members;
 - 35.2. [Managing Conflicts of Interest](#) – an ACNC guide for not-for-profit board members;
 - 35.3. the online ACNC webinar "[Welcome to the Board](#)";
 - 35.4. the [Education Act, 1990 \(NSW\)](#);
 - 35.5. [Non-Government Schools Not-For-Profit Guidelines](#); and,
 - 35.6. [Registered and Accredited Individual Non-government Schools \(NSW\) Manual](#).
36. Any training undertaken by a director, officer, senior manager or principal of the School to satisfy the requirements of condition 35 shall be conducted by a training provider that is registered with the Australian Skills Quality Authority (ASQA) as a registered training organisation ("RTO").

Governance - Financial Management & Conflicts of Interest

37. The School shall, within 30 days of the Effective Date:
- 37.1. include declarations of conflicts of interest as a standing item on all Board meeting agendas;
 - 37.2. create and maintain a register that details all conflicts of interest including, but not limited to:
 - (a) the name of the person/s or entity/entities that have the conflict of interest;
 - (b) the nature of the interest/s;
 - (c) the period the conflict of interest existed; and,
 - (d) details of all actions taken to mitigate the conflict of interest.
 - 37.3. create and maintain, in consultation with the Assessor, a register detailing all Related Entity transactions, in accordance with the NSW Education Standards Authority's (NESA's) registration requirements regarding related-party transactions registers;
 - (a) create and implement effective policies and procedures, including:

- (b) a Conflicts of Interest policy;
- (c) a fraud prevention policy;
- (d) a register of all financial assistance and grants received and disbursed by the School which documents the purpose of any such financial assistance or grant;
- (e) a procedure for regular periodic financial reporting to the School's directors;
- (f) an asset register of all property and assets owned or controlled by the School which shall include the purchase price, current assessed value or disposal price of those assets;
- (g) a policy/procedure that clearly separates the financial delegations of the School's board, the CEO (or equivalent) and CFO (or equivalent) and identifies actions for monitoring appropriate use of delegations; and,
- (h) record-keeping policies and procedures and apply such policies and procedures to all of the School's business records and information.

38. The School shall, within 120 days of the Effective Date:

38.1. engage the Assessor to review and, if necessary, make changes to the School's procurement policy, or to prepare a new procurement policy, as the Assessor sees fit (the "Procurement Policy"), which will include the following requirements:

- (a) the provision of independent advice about reasonable market price and terms;
- (b) obtaining a minimum of three quotes from different providers for each purchase of property, goods or services; and
- (c) an explanation of how the relevant agreement with the supplier serves the School's best interest; and,
- (d) provide the Secretariat with a copy of the reviewed/ amended Procurement Policy.

39. Until conditions 37 and 38 have been satisfied, the School shall not enter into any commercial or business arrangements with any Related Entity.

Record Keeping, Notification & Self-Reporting

40. From the Effective Date, the School shall submit written notification to the Secretariat within 14 days of any of the following events occurring:

40.1. a director, officer, or employee of the School is charged or convicted with a Serious Breach of Australian law. For the purpose of this clause a Serious Breach of Australian law includes:

- (a) an indictable offence; or
- (b) the breach of a law that has a civil penalty of 60 penalty units or more.

40.2. the School becomes insolvent or unable to meet its debts/ liabilities when they become due;

40.3. a director or officer of the School is declared bankrupt;

40.4. a Significant Asset is acquired, sold or otherwise disposed of by the School. For the purposes of this clause a Significant Asset means:

- (a) real property; or
- (b) any capital asset with an estimated market value of greater than A\$150,000.00

40.5. the School is involved in any litigation or legal proceedings commenced in Australia; or

40.6. the School fails to perform any obligation or duty expressed in this document.

41. The School shall comply with all applicable laws relating to the management and retention of business records and information relating to the School.

Reporting to the Secretariat and the Advisory Committee

42. Any provision of documents, notifications, information, or otherwise to the Secretariat should be addressed to the *Director, Non-Government Schools Unit* of the NSW Department of Education (for the attention of the Advisory Committee).
43. Despite any other provisions contained in this document, the School may request an extension of time to comply with any obligation contained in this document. Any such request must be in writing, setting out the reasons for the request and the period of extension which is sought, and submitted to the Secretariat no later than 7 days before the obligation which is the subject of the request falls due. The Secretariat must act reasonably when considering whether or not to grant or refuse any such request.

General Conditions

44. The School shall be liable for any costs associated with the performance of these conditions.
45. The School shall bear the onus of proving its compliance with these conditions.
46. The School shall not use any financial assistance provided by the Minister to pay for costs associated with the procurement of professional legal services, court or tribunal fees associated with any litigation involving the NSW Department of Education, the Advisory Committee or the Minister.

Definition of "Related Entity"

47. In this document, "**Related Entity**" means a person or a legal entity that is related to a proprietor or school either as a result of office, membership, management, control or influence or a personal/familial relationship and includes but is not limited to:
- (a) a person or close member of that person's family is a related entity if that person:
 - (i) has control or joint control over the proprietor or school;
 - (ii) has significant influence over the proprietor or school;
 - (iii) is a member of the key management personnel of the proprietor or school.
 - (b) an entity is a related entity to a proprietor or school if any of the following conditions apply:
 - (i) the entity and the proprietor or school are members of the same group of companies;
 - (ii) the entity is an associate or joint venture of the proprietor or school;
 - (iii) the entity and the proprietor or school are joint ventures of the same third party;
 - (iv) the entity is a joint venture of a third entity and the proprietor or school is an associate of the third entity;
 - (v) the entity is controlled or jointly controlled by a person identified in (a);
 - (vi) a person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or parent of the entity);
 - (vii) the entity, or any other member of a group of companies of which it is part, provides key management personnel services to the proprietor or school or to the parent of the proprietor or school.
 - (c) an employee of the proprietor, school or an entity identified in (b).

Acknowledgement of Future Compliance Matters

48. By executing this document the School acknowledges and agrees that:

- 48.1. a failure to comply with the obligations and duties expressed within this document to the satisfaction of the Advisory Committee or Secretariat, as required, may result in further compliance action by the Minister against the School, including but not limited to, suspension or ceasing of financial assistance and/or the recovery of any financial assistance previously paid to the School during periods when it was operating for-profit or was non-compliant with the provisions of the Act; and
- 48.2. the Minister may determine to cease funding to the School in accordance with the Act upon the Advisory Committee making a recommendation that the Minister do so because of the School's failure to comply with the obligations and duties expressed within this document.

EXECUTED by **AL AMANAH COLLEGE LTD.** in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name of director (please print)

Name of director/secretary (please print)

Annexure A

Schedule of Financial Assistance (condition 8)

Month	Percentage of annual entitlement to be paid
Jan	0.00%
Feb	16.67%
Mar	8.33%
Apr	8.33%
May	8.33%
Jun	8.33%
Jul	0.00%
Aug	16.67%
Sep	8.33%
Oct	0.00%
Nov	16.66%
Dec	8.33%
Total	100.00%

Annexure B

Letter to parents and guardians (condition 15)

Within 30 days of the School executing this document The letter at Annexure 'B' is to be sent to all parents and guardians who have children currently enrolled at Al Amanah College, Bankstown and Liverpool NSW. The letter must be sent to those parents and guardians to their last registered residential address.

This letter must be and published on all of the School's websites so it is accessible to the public, is presented in legible formats and is located in a clear and prominent position on those websites. The letter must be published in English.

Information contained in the letter, including a link in hypertext markup language to the letters published on the School's website, must be contained in a prominent position in the next newsletter published by the School after it executes this document.

Dear Parent/ Guardian,

The NSW Department of Education has been investigating Al Amanah College at Bankstown and Liverpool in relation to the school's compliance with the NSW *Education Act 1990 (the Act)*. As the school receives funding from the NSW Government, the school must not operate 'for-profit'. This means that the school must ensure all payments using school funds are genuinely required to meet the educational objectives and requirements of the students and the operation of the school.

The Department's investigation found that the school was operating for-profit in the years 2011 to 2018 (inclusive). Amongst other things the school used its assets and income for purposes that were not needed for the operation of the school, including;

1. Since 2011, the school made payments (in the form of interest-free loans) to Salamah College Ltd. (a related entity) worth \$13.01 million.
2. Since 2011, the school made payments (in the form of interest-free loans) to Glenroy Private Ltd. (a non-government school in Victoria and a related entity) worth \$3.58 million.
3. The school purchased the property at 471 Chapel Road, Bankstown NSW in February 2006 for \$6.1 million. The property was purchased with an existing commercial lease registered on the title (Mantra Hotels - the tenant operated a hotel). That lease expired in 2016 but the school continued to use the property as a hotel (operated as Gardenview Hotel by a related entity) until 2019.
4. The school purchased the property at 8 Conway Road, Bankstown NSW in February 2012 for \$550,000 with the intention that the property support traffic access to the adjacent site at 471 Chapel Road, Bankstown, if that site was developed into a school campus. An existing residential house is located on this site. 471 Chapel Road, Bankstown was operated as a hotel and restaurant until 2019.

5. In 2016 the proprietor/school contracted Gardenview Apartments Pty. Ltd. for the refurbishment, repair and management of the hotel and restaurant located at 471 Chapel Road, Bankstown. The school paid this company \$165,000 for refurbishment costs. No market testing or competitive tendering process was undertaken to select the contractor, a related entity.
6. In Dec 2016 a rental appraisal indicated that 2-4 Winspear Avenue, Liverpool NSW (both properties the school is on) had a lease value of \$280,100 p.a. It is unlikely that building footprints of non-school buildings were excluded from the valuation. The 2 Winspear Ave lease states the school is liable for 100% of outgoings (no written lease for 4 Winspear Ave). In 2017 the school paid the Islamic Charity Projects Association Inc. at least \$23,000 more rent than what the rental appraisal indicated.
7. From 2015 the school made payments to a related entity for goods and services that were unreasonable in the circumstances having regard to the fact that financial assistance was provided to the school by the Minister. From 2012 to 2018 the school paid approx. \$3.5million to Darulfatwa Islamic High Council of Australia ("Darulfatwa"), a related entity. No market testing or competitive procurement practices were undertaken in relation to provision of these services. In 2014 the school paid Darulfatwa \$74,400 above the costs they were liable to pay.
8. In August 2011, the school paid Zamoquest Pty. Ltd, \$106,100 for landscaping (fencing), amenities and installation of playground equipment. At the time, two directors of the school were also directors and shareholders of Zamoquest Pty. Ltd.

These matters caused the school to be in breach of the Act that governs the use of the NSW Government financial assistance provided to non-government schools in NSW.

The directors and senior management of Al Amanah College have admitted that the school operated for profit in the years indicated. The current school Board acknowledges this historical non-compliance to the students, parents and guardians and the school community.

The Department has requested that Al Amanah College take steps to resolve these matters quickly to ensure stability and minimise disruption to students and staff of the school. The school has been placed on conditions and must comply with conditions in order to receive any future financial assistance from the Minister. A copy of those conditions can be found at [\[insert weblink\]](#).

The school will continue to be monitored by the Department to assess the school's compliance with the Act.

Yours sincerely,

Chair of the Board

Al Amanah College Ltd.

Principal

Al Amanah College

Annexure C

Letter of Appointment (condition Error! Reference source not found.)

[Name]

[Address]

[Date]

Dear [new Director/ Officer or Senior Manager's Name],

Appointment as a responsible person for [ENTITY NAME]

Congratulations on your appointment to the governing body of [entity name].

In your role, you have a special opportunity to contribute to the work and life of [entity name]. Being a [board or committee] member can be challenging at times, but it can also be a rewarding way to help [entity name] achieve its charitable purpose.

As a member of the [board or committee] of a charity registered with the Australian Charities and Not-for-profits Commission, you have duties and responsibilities that come with your role. You may also have other obligations and duties under to other government agencies or under other laws.

The ACNC governance standards set core, minimum governance standards that all charities must meet. Governance standard five requires that charities take reasonable steps to make sure that the members of their governing body know and understand their legal duties and carry out their duties. These duties generally require you to be careful and conscientious in your role and to act with common sense and integrity.

The duties are:

- **To act with reasonable care and diligence.** You must exercise your powers and duties with the care and diligence that a reasonable person would if they were in your place.
- **To act in good faith in the best interests of the charity and for a proper purpose.** When acting as a board member you must make decisions that are in the best interest of the [charity/company] and to further its charitable purpose.
- **Not to improperly use information or position.** Any special knowledge that you gain as a [board or committee] member must only be used for the benefit of the [charity/company] and never to further personal or other interests. Similarly, you must not use your position to improperly gain an advantage for yourself or someone else, or cause detriment to the [charity/company].
- **To disclose conflicts of interest.** If your duty to act in the best interests of the charity is in conflict with (or may conflict with) your personal interests you must disclose this responsibly. [Insert reference to any relevant conflict of interest policy/ procedure or requirement in governing documents].

- **To ensure that financial affairs are managed responsibly.** Ensure that there are systems and processes in place that ensure that the [charity's/ company's] resources are being effectively put towards the [charity's charitable/ company's] purpose and are protected from misuse.
- **Not to allow the [charity/company] to operate while insolvent.** You must ensure that the [charity/company] can pay its debts when they are due or will become due and that it does not continue to operate if it cannot pay its debts.

Knowing and carrying out your duties as a [board or committee] member helps [entity name] to carry out its [charitable/ business] purpose and protects its resources against misuse. You can find more information about the duties of those who manage charities on the ACNC's website (www.acnc.gov.au) or in the ACNC's guide *Governance for good*.

If you have any concerns about meeting these duties, talk to [name of relevant person] or contact the ACNC for information. Remember that there are resources available and people who can help you to better understand and meet your duties.

Congratulations again on your appointment as a [board or committee] member [charity name]. Thank you for donating your time and expertise.

Regards,

[Name]

[Position]