

EXECUTION VERSION

Project Gold

## Loan facility agreement

Goodstart Childcare Limited (as Company)

Commonwealth of Australia (as Financier)

National Australia Bank Limited (as Security  
Trustee)

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## **Attachments**

<b>Substitution certificate</b>	
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# The agreement

## Loan facility agreement

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Date ►

Between the parties	
Company	<b>Goodstart Childcare Limited</b> ABN 69 139 967 794 of 43 Metroplex Avenue, Murarrie QLD 4172 <b>(Company)</b>
Financier	<b>Commonwealth of Australia</b> acting through the Department of Education, Employment and Workplace Relations or such other Commonwealth department that has responsibility for provision of benefits in connection with services provided by childcare centres (as notified to the parties in writing from time to time)  ABN 63 578 775 294 of Level 4, 148-180 City Walk, Canberra ACT 2601 <b>(Financier)</b>
Security Trustee	<b>National Australia Bank Limited</b> ABN 12 004 044 937 of Level 25, 255 George Street, Sydney NSW 2000 <b>(Security Trustee)</b>
Background	The Financier has agreed to provide the Facility to the Company on the terms of this agreement and the Common Terms Deed.
The parties agree	as set out in the Operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

## 1 Definitions and interpretation

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### 1.1 Agreement components

This agreement includes any schedule.

### 1.2 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
<b>A.B.C. Learning Centres Limited</b>	A.B.C. Learning Centres Limited, ACN 079 736 664 (Administrators Appointed) (Receivers and Managers Appointed).
<b>Administration Fee</b>	the fee payable in accordance with clause 12.1.
<b>Administration Fee Payment Date</b>	the day that is 90 days after the end of the 2009/2010 Financial Year and, thereafter, each anniversary of that date up to and including the date that is 90 days after the end of the 2015/2016 Financial Year.
<b>Availability Period</b>	the period commencing on the date of this agreement and ending on the earlier of: <ol style="list-style-type: none"> <li>1 the date falling 6 months after Financial Close; and</li> <li>2 the date on which the Commitment is cancelled in full under this agreement.</li> </ol>
<b>Base Rate</b>	on the Funding Date, the indicative mid rate published at or about 11.30am by the Reserve Bank of Australia for Australian Treasury Fixed Coupon Bonds with a maturity on, or after but closest to, the Termination Date.  All calculations of rates for the purposes of this definition will be expressed as a yield percent per annum to maturity.
<b>Change in Law</b>	any present or future law, regulation, treaty, order or official directive or request (which, if not having the force of law, would be complied with by a responsible financial institution) which commences, is introduced, or changes, after the date of this agreement.
<b>Change of Control</b>	there is any change to the ownership or membership structure of the Company from that in place as at the date of this agreement.
<b>Commitment</b>	\$15,000,000 as adjusted under this agreement.
<b>Common Terms Deed</b>	the document titled 'Common Terms Deed' dated on or about the date of this

	agreement between, among others, the Company and the Financier.
<b>Deferral Event</b>	in respect of any interest, that the payment of all or part of that interest on an Interest Payment Date is not permitted under the terms of the Intercreditor Deed.
<b>Deferral Notice</b>	a notice given under clause 5.3.
<b>Deferred Interest</b>	at any time, the amount of any interest that the Company has been obliged to defer under clause 5.3 and has not paid on the Interest Payment Date for that interest payment, together with any interest which has accrued on or been added to that Deferred Interest under clause 5.3 and which has not been paid.
<b>Event of Default</b>	an 'Event of Default' or 'Commonwealth Event of Default', each as defined in the Common Terms Deed.
<b>Facility</b>	the amortising term cash advance facility made available by the Financier to the Company under this agreement, as described in clause 3.1.
<b>Finally Paid</b>	'Finally Paid' as defined in the Security Trust Deed.
<b>Finance Party</b>	<ol style="list-style-type: none"> <li>1 the Financier; and</li> <li>2 the Security Trustee.</li> </ol>
<b>Financial Close</b>	the date on which the Funding Portion is provided.
<b>Financier</b>	the Commonwealth of Australia acting through the Department of Education, Employment and Workplace Relations, or such other Commonwealth department that has responsibility for childcare centres (as notified to the parties in writing from time to time), and any person who is a Substitute Financier but not including any Retired Financier.
<b>Funding Date</b>	the date on which the Funding Portion is provided, or is to be provided, to or at the request of the Company under this agreement.
<b>Funding Notice</b>	a notice given under clause 4.1.
<b>Funding Portion</b>	the portion of the Commitment provided under this agreement by way of the provision of a cash advance or otherwise.
<b>Funding Rate</b>	the Base Rate on the Funding Date.
<b>Interest Period</b>	the period specified in clause 4.5.
<b>Net Proceeds</b>	the consideration (whether cash or assets) received by any Group Member in respect of the Disposal of all or any part of the business, undertaking or assets of any Group Member (including the amount of any intercompany debt repaid to continuing Group Members), but after deduction of all Taxes applicable on, or to any gain resulting from, the Disposal and of all reasonable costs, fees and expenses properly incurred by continuing Group Members in arranging and

	effecting that Disposal.
<b>Overdue Margin</b>	2% per annum.
<b>Overdue Rate</b>	the aggregate of: 1 the Overdue Margin; and 2 the Funding Rate.
<b>Payment Currency</b>	the currency in which any payment is actually made.
<b>Relevant Currency</b>	the currency in which a payment is required to be made under the Transaction Documents and, if not expressly stated to be another currency, is Dollars.
<b>Repayment Date</b>	each date specified as such in column 1 of the repayment schedule in clause 6.2(a) (as adjusted in accordance with clause 6.2(d)).
<b>Repayment Amount</b>	in respect of a Repayment Date, the amounts specified as such in column 2 of the repayment schedule in clause 6.2(a) (as adjusted in accordance with clause 6.2(d)).
<b>Retired Financier</b>	a Financier: 1 whose Commitment is zero; and 2 to whom no Secured Moneys are owed (either contingently or otherwise) as a Financier.
<b>Retiring Financier</b>	a Financier which substitutes a Substitute Financier under clause 14.3 for any of its Commitment.
<b>Same Day Funds</b>	immediately available and freely transferable funds.
<b>Substitution Certificate</b>	a certificate in or substantially in the form of Attachment 1 which is executed pursuant to clause 14.3.
<b>Substitute Financier</b>	a person: 1 substituted by a Financier under clause 14.3 for any of the Financier's Commitment; or 2 who becomes the Financier by virtue of clause 14.2(a).
<b>Termination Date</b>	the date that is 7 years from Financial Close, or any earlier date the Facility is Finally Paid.
<b>Transaction Document</b>	a 'Commonwealth Finance Document' as defined in the Common Terms Deed.
<b>Undrawn Commitment</b>	at any time, the Commitment at that time less the Principal Outstanding.



### **1.3 Common Terms Deed**

- (a) A word or phrase (other than one defined in clause 1.1) defined in the Common Terms Deed has the same meaning in this agreement.
- (b) This agreement is the 'Commonwealth Facility Agreement', a 'Secured Facility Agreement', a 'Commonwealth Finance Document' and a 'Transaction Document' for the purposes of the Common Terms Deed.
- (c) Each Finance Party is a 'Secured Creditor' for the purposes of the Common Terms Deed.

### **1.4 Interpretation**

- (a) Clauses 1.3 (other than clause 1.3(q)) to 1.6 (inclusive) of the Common Terms Deed apply to this agreement as if set out in full in this agreement and as if references in those clauses to 'this deed' were to 'this agreement'.
- (b) Unless the context requires otherwise:
  - (1) a Default is 'continuing' or 'subsisting' if it has not been remedied or waived in writing by the Financier before action is taken in respect of it; and
  - (2) a reference to 'wilful default' in relation to the Security Trustee means any wilful failure to comply with, or wilful breach by, the Security Trustee of any of its obligations under any Commonwealth Finance Document other than a failure or breach which:
    - (A) arises as a result of a breach of a Commonwealth Finance Document by a person other than the Security Trustee and (subject to any provisions of the Commonwealth Finance Documents which limit its liability in respect of the acts and omissions thereof) its directors, officers, employees, agents, delegates or attorneys;
    - (B) is in accordance with a lawful court order or direction or is required by law; or
    - (C) is in accordance with a proper instruction or direction of the Financier.

### **1.5 Security Trustee's limitation of liability protection**

- (a) The Security Trustee enters into this agreement and each other Commonwealth Finance Document to which it is a party (other than the Security Trust Deed) solely in its capacity as trustee of the Security Trust and in no other capacity.
- (b) The Security Trustee will have no liability under or in connection with this agreement or any other Commonwealth Finance Document (whether to the Secured Creditors, the Transaction Parties or any other person) other than to the extent to which the liability is able to be satisfied out of the Secured Property from which the Security Trustee is actually indemnified for the liability. Subject to paragraph (e) of this clause 1.5, this limitation of the Security Trustee's liability applies despite any other provision of this agreement or any other Commonwealth Finance Document and extends to all liabilities and obligations of the Security Trustee in relation to any representation, warranty, conduct, omission, agreement or transaction related to this agreement or any other Commonwealth Finance Document.
- (c) Subject to paragraphs (d) and (e) of this clause 1.5, no party may sue the Security Trustee personally, seek the appointment of a liquidator, administrator, receiver or similar person to the Security Trustee or prove in any liquidation, administration or arrangement of or affecting the Security Trustee.

- (d) Nothing in this clause 1.5 or any similar provision in any other Commonwealth Finance Document limits or adversely affects the powers of the Security Trustee or any Receiver in respect of any Secured Property.
- (e) This clause 1.5 will not apply to a liability of the Security Trustee to the extent that it is not satisfied because, under this agreement or any other Commonwealth Finance Document or by operation of law, there is a reduction in the extent of the Security Trustee's indemnification as a result of the Security Trustee's fraud, gross negligence or wilful default.
- (f) The Security Trustee does not have any obligations to any party under or in connection with this agreement or any other Commonwealth Finance Document, except as expressly provided in this deed and each other Commonwealth Finance Document to which it is a party.

## **1.6 Liability must be limited and must be indemnified**

The Security Trustee is not obliged to do or not do anything in connection with this agreement or any other Commonwealth Finance Document (including enter into any transaction or incur any liability) unless:

- (a) the Security Trustee's liability is limited in a manner which is consistent with clause 1.5;
- (b) the Security Trustee is indemnified (or otherwise put in funds) to its reasonable satisfaction against any liability or loss arising from, and any costs, charges and expenses (including those incurred in connection with advisers) properly incurred in connection with, doing or not doing that thing; and
- (c) it has received the relevant instructions from the relevant Secured Creditors.

## **1.7 Intercreditor Deed**

This agreement is subject to the Intercreditor Deed. If there is any inconsistency between the terms of this agreement and the Intercreditor Deed (in the sense that a party cannot comply with both), the terms of the Intercreditor Deed prevail to the extent of that inconsistency. Each party to this agreement agrees to comply with the terms of the Intercreditor Deed.

## **1.8 Capacity of the Commonwealth**

- (a) The Commonwealth enters into this agreement only in its capacity as 'Financier' under this agreement and a 'Secured Creditor' and 'Beneficiary' under the other Transaction Documents and not in any other capacity, including as a Government Agency responsible for taxation and enforcement of laws in relation to the same or the regulation of, and the enforcement of laws in respect of, businesses generally, inclusive of any of the following functions:
  - (1) the funding of childcare centres and educational facilities through the provision of tax and other welfare benefits to users of those facilities; or
  - (2) the enforcement of laws generally to the extent they are relevant to the business of operating a childcare centre or educational facility and the funding of benefits referred to in paragraph (1) above.
- (b) Nothing in this agreement should be construed as limiting or otherwise impairing the Commonwealth's rights, powers, discretions or responsibility for, or relating to, the enforcement of laws applicable to any matter referred to in clauses 1.8(a)(1) and (a)(2).

## 2 Conditions precedent

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### 2.1 Conditions precedent to Funding Portion

The Financier is not obliged to provide the Commitment or the Funding Portion until the Financier has received all of the following in form and of substance satisfactory to the Financier:

- (a) **Common Terms Deed CPs:** each of the items set out in clause 2.1 of the Common Terms Deed;
- (b) **Senior Facility Documentation:** a copy of the Senior Facility Agreement duly executed by all parties to it;
- (c) **Senior CPs and Equity:** evidence that:
  - (1) all the conditions precedent to the Senior Financier's initial Funding Portion specified in clauses 2.1 and 2.2 of the Senior Facility Agreement, other than the condition precedent requiring the funding of the Commonwealth Debt, have been, or will be, satisfied on Financial Close; and
  - (2) the Company has received the agreed amount of Subordinated Debt being, in aggregate, a minimum of \$30,000,000;
- (d) **Information:** such information as the Financier requests with respect to the current and projected financial position of the Company; and
- (e) **Administration Fee:** the Administration Fee that is due and payable on Funding Date in accordance with clause 12.1 (if any).

### 2.2 Conditions precedent to Funding Portion

The Financier is not obliged to provide the Funding Portion until the following conditions are fulfilled to the Financier's satisfaction:

- (a) **Funding Notice:** the Company has delivered the Funding Notice to the Financier requesting the Funding Portion;
- (b) **Funding Date:** the Funding Date is a Business Day within the Availability Period;
- (c) **Commitment:** the Principal Outstanding for the Facility will not exceed the Commitment as a result of the Financier providing the Funding Portion; and
- (d) **No Default or Review Event:** no Default or Review Event has occurred which is continuing or will occur as a result of the Funding Portion being provided.

### 2.3 Certified copies

An Officer of the Company must certify a copy of a document given to the Financier under clauses 2.1 or 2.2 to be a true copy of the original document. The certification must be made no more than 5 Business Days before the date on which it is provided.

### 2.4 Conditions subsequent

If the Financier makes available the Funding Portion in circumstances where a condition precedent to the provision of the Funding Portion has not been satisfied, the Company must satisfy (or take such other action requested by the Financier to remedy the non-satisfaction of) the condition precedent within 2 Business Days (or such longer period as the Financier specifies) of receipt by the Company of notice from the Financier requiring it to do so.

## **2.5 Benefit of conditions precedent**

A condition in this clause 2 is for the benefit only of the Financier, and only the Financier may waive it.

## **3 Commitment, purpose and availability of Facility**

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### **3.1 Provision of Commitment**

Subject to the terms of this agreement, the Financier makes available to the Company an amortising term cash advance facility in an aggregate amount equal to the Commitment.

### **3.2 Purpose**

The Company must use the net proceeds of the Funding Portion for the purpose of payment towards the purchase price for the Acquisition Assets under the Acquisition Documents.

### **3.3 Cancellation at end of Availability Period**

On the last day of the Availability Period (or such later date or time as the Financier may agree in writing), the Commitment will be cancelled to the extent of the Undrawn Commitment.

## **4 Funding and rate setting procedures**

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### **4.1 Delivery of Funding Notice**

If the Company requires the provision of the Funding Portion, it must deliver to the Financier the Funding Notice.

### **4.2 Requirements for Funding Notice**

The Funding Notice to be effective must be:

- (a) in writing in the form of, and specifying the matters required in, of Schedule 2;
- (b) for an amount not exceeding the Commitment; and
- (c) received by the Financier before 11.00am on a Business Day at least 2 Business Days before the proposed Funding Date (or any shorter period that the Financier agrees in writing).

### **4.3 Irrevocability of Funding Notice**

The Company is irrevocably committed to draw the Funding Portion from the Financier in accordance with the Funding Notice given to the Financier.

### **4.4 Number of Funding Portions**

The Company must ensure that there is only one Funding Portion for the full amount of the Commitment or for such lesser amount as may be specified in the Funding Notice.

## **4.5 Interest Periods**

- (a) The first Interest Period will be for the period between Financial Close and the date that is 90 days after the end of the 2009/2010 Financial Year. Thereafter, each Interest Period will be 1 year in duration.
- (b) If an Interest Period ends on a day which is not a Business Day, it is regarded as ending on the next Business Day in the same calendar month or, if none, the preceding Business Day.
- (c) An Interest Period for the Funding Portion commences either on the Funding Date or on the last day of the immediately preceding Interest Period.
- (d) No Interest Period may end after the Termination Date.

## **4.6 Determination of Funding Rate**

- (a) The Financier must notify the Company of the Funding Rate as soon as reasonably practicable, and in any event within 2 Business Days, after it has made its determination of the Funding Rate.
- (b) In the absence of manifest error, the determination of the Funding Rate by the Financier is conclusive evidence of that rate against the Company.

## **5 Loan Facility**

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### **5.1 Payment to Company**

If the Company gives the Funding Notice, the Financier must pay the specified Funding Portion in Same Day Funds in Dollars to the Company or as directed by the Company in the relevant Funding Notice.

### **5.2 Interest**

- (a) The Company must pay interest on the principal amount of the Funding Portion for each Interest Period at the Funding Rate.
- (b) Interest is calculated on daily balances on the basis of a 365 day year and for the actual number of days elapsed from and including the first day of each Interest Period to, but excluding, the last day of the Interest Period or, if earlier, the date of prepayment or repayment of the Funding Portion under this agreement.
- (c) The Company must pay accrued interest in arrears to the Financier on each Interest Payment Date.

### **5.3 Deferral of interest payments**

- (a) If a Deferral Event occurs in respect of any interest payable on an Interest Payment Date, the Company must, as soon as practicable, but no later than the relevant Interest Payment Date, give the Financier a Deferral Notice in respect of that part or whole (as applicable) of the interest that cannot be paid due to the occurrence of that Deferral Event.

- (b) If the Company has given a Deferral Notice in respect of part only of any interest, the Company must pay to the Financier on the Interest Payment Date for that interest an amount equal to the interest payable minus that part.
- (c) Interest accrues on Deferred Interest:
  - (1) for so long as the Deferred Interest (and any interest payable under this clause 5.3) remains unpaid in full, commencing on the Interest Payment Date for the interest which (or part of which) became Deferred Interest; and
  - (2) at a rate per annum equal to the Funding Rate calculated daily.
- (d) Interest accrued under clause 5.3(c) on Deferred Interest will be compounded, and added to Deferred Interest on each subsequent Interest Payment Date and will itself bear interest in accordance with clause 5.3(c).
- (e) For the avoidance of doubt, but subject to the terms of the Intercreditor Deed, this clause 5.3 does not apply to limit availability of funds to meet any claims of the Financier in a winding up of the Company.
- (f) The Company shall, to the extent permitted under the Intercreditor Deed, pay all or part of any Deferred Interest on an Interest Payment Date.

## 6 Repayment and prepayment

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### 6.1 Repayment

The Company must repay to the Financier the Funding Portion and all other Secured Moneys:

- (a) in full on the Termination Date; and
- (b) otherwise as required under this agreement (including under this clause 6).

### 6.2 Scheduled repayments

- (a) On each Repayment Date, the Company must repay Principal Outstanding in an amount equal to the lesser of:
  - (1) the total amount it is permitted to pay for the purposes of this clause under the terms of the Intercreditor Deed; and
  - (2) the Repayment Amount for that Repayment Date (as adjusted in accordance with clause 6.2(d)), plus the total amount of all Repayment Amounts payable on any prior Repayment Dates (to the extent those Repayment Amounts were not repaid in full when they became due and payable),

or, if less, the whole of the Principal Outstanding in accordance with the following repayment schedule:

Repayment Date	Repayment Amount
The date that is 90 days after 30 June 2010	Nil

The date that is 90 days after 30 June 2011	\$1,000,000
The date that is 90 days after 30 June 2012	\$1,000,000
The date that is 90 days after 30 June 2013	\$2,000,000
The date that is 90 days after 30 June 2014	\$2,000,000
The date that is 90 days after 30 June 2015	\$4,000,000
The date that is 90 days after 30 June 2016	\$5,000,000
<b>Total</b>	<b>\$15,000,000</b>

- (b) The final instalment will be the Principal Outstanding at the Termination Date.
- (c) Amounts prepaid in respect of the Facility under clauses 6.3, 6.4 or 6.5 will be applied to reduce on a pro rata basis the remaining Repayment Amounts.
- (d) On each occasion that a prepayment is made under clauses 6.3, 6.4 or 6.5, the Financier must prepare a new repayment schedule of Repayment Amounts and give a copy of the revised schedule to the Company.
- (e) The latest revised repayment schedule of Repayment Amounts that the Financier prepares and issues under clause 6.2(d) shall be taken to replace the then current repayment schedule for the purposes of clause 6.2(a).

### 6.3 Voluntary Prepayment

- (a) The Company may prepay any of the Principal Outstanding in relation to the outstanding Funding Portion by giving the Financier at least 10 Business Days' prior notice specifying the prepayment date.
- (b) Prepayment of part of the Principal Outstanding may only be made in a minimum amount of \$1,000,000 and in an integral multiple of \$1,000,000.
- (c) The Company must prepay the Principal Outstanding specified in the prepayment notice on the prepayment date specified in the notice.
- (d) A notice given under clause 6.3(a) is irrevocable.

### 6.4 Mandatory Prepayments – insurance proceeds, Acquisition Claims and disposals

If, at any time, a Group Member receives:

- (a) **Insurance proceeds:** proceeds from an insurance claim in relation to the Group which in aggregate with insurance proceeds received by all Group Members in that Financial Year are in excess of \$1,000,000 (or the equivalent amount in any other currency), excluding any insurance proceeds:
  - (1) received in respect of third party liabilities (including workers' compensation, personal injury, director's and officers' and public risk policies) and, under the

terms of those policies, paid directly to third parties (other than Group Members);

- (2) received in respect of loss of revenue under a business interruption policy and which are included (or are to be included) in EBITDA for the Financial Year in which they are received; or
  - (3) applied within 180 days of receipt towards reinstatement or replacement of the asset or assets to which the proceeds relate or towards another purpose as approved by the Financier acting reasonably; or
- (b) **Acquisition Claims:** proceeds from an Acquisition Claim, excluding proceeds applied within 180 days of receipt towards meeting or reimbursing a Group Member in respect of liabilities in relation to which the amount was received or towards another purpose as approved by the Financier acting reasonably; or
- (c) **Disposals:** proceeds from the disposal of an asset which in aggregate with disposal proceeds received by all Group Members in that Financial Year are in excess of \$1,000,000 (or the equivalent amount in any other currency), excluding any disposal proceeds:
- (1) arising from a Permitted Disposal referred to in paragraphs 1 and 2 of the definition of that term; or
  - (2) applied within 180 days of receipt towards reinstatement or replacement of the asset or assets to which the proceeds relate or towards another purpose as approved by the Financier acting reasonably,

then the Company must prepay the Principal Outstanding in an amount equal to:

- (A) where clauses 6.4(a) or (b) applies, the proceeds received, net of all costs, expenses and Taxes incurred in making or enforcing the claim; and
- (B) where clause 6.4(c) applies, the Net Proceeds of the Disposal.

## 6.5 Mandatory Prepayments – Change of Control, change of business or disposal

If, at any time without the prior written consent of the Financier:

- (a) **Change of Control:** a Change of Control occurs; or
- (b) **change of business:** there is a material change in the Core Business of the Group; or
- (c) **disposal of all assets:** the Group Members dispose of all or substantially all of their assets and undertaking (whether in a single transaction or a series of related transactions),

then the Financier may declare:

- (1) the Secured Moneys are immediately due and payable; and
- (2) the Commitment is cancelled.

## 6.6 Prepayments generally

- (a) Any prepayments or repayments made by the Company may not be redrawn.
- (b) Any repayment or prepayment of any amount under any provision of this agreement will be made together with interest and fees accrued on the amount repaid or prepaid but otherwise without premium or penalty.



## **6.7 Date for Prepayment**

- (a) Amounts required to be prepaid under clauses 6.4 or 6.5 will be made immediately upon such amounts becoming due and payable or, if requested by the Financier, on the last day of the Interest Period.
- (b) If requested by the Financier, the amount required to be prepaid will be paid into a prepayment account in the name of the Company held with a bank nominated by the Financier (**Prepayment Account Bank**) (**Prepayment Account**). The Prepayment Account will bear interest at the usual commercial rates of the Prepayment Account Bank. No amount may be withdrawn from the Prepayment Account other than to make a prepayment required under clauses 6.4 or 6.5 or, if no Event of Default is subsisting, the Company may withdraw any interest earned on the Prepayment Account.

## **7 Payments**

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### **7.1 Manner of payment**

All payments by the Company under the Transaction Documents must be made:

- (a) in Same Day Funds;
- (b) in Dollars; and
- (c) no later than 11.00am on the due date,  
to the Financier's account as specified by the Financier to the Company or in any other manner the Financier or the Security Trustee directs from time to time.

### **7.2 Payments on a Business Day**

If a payment is due on a day which is not a Business Day, the due date for that payment is the next Business Day in the same calendar month or, if none, the preceding Business Day, and interest must be adjusted accordingly.

### **7.3 Payments in gross**

All payments which the Company is required to make under any Transaction Document must be without:

- (a) any set-off, counterclaim or condition; or
- (b) any deduction or withholding for any Tax or any other reason unless the Company is required to make a deduction or withholding by applicable law.

### **7.4 Additional payments**

If:

- (a) the Company is required to make a deduction or withholding in respect of Tax (other than Excluded Tax) from any payment to be made to a Finance Party under any Transaction Document; or
- (b) a Finance Party is required to pay any Tax (other than Excluded Tax) in respect of any payment it receives from the Company or the Financier under any Transaction Document,  
the Company:

- (c) indemnifies each Finance Party against that Tax; and
- (d) must pay to each Finance Party an additional amount which the Financier determines to be necessary to ensure that each Finance Party receives when due a net amount (after payment of any Tax in respect of each additional amount) that is equal to the full amount it would have received if a deduction or withholding or payment of Tax had not been made.

## **7.5 Taxation deduction procedures**

If clause 7.4(a) applies:

- (a) the Company must pay the amount deducted or withheld to the appropriate Government Agency as required by law; and
- (b) the Company must:
  - (1) use reasonable endeavours to obtain a payment receipt from the Government Agency (and any other documentation ordinarily provided by the Government Agency in connection with the payment); and
  - (2) within 2 Business Days after receipt of the documents referred to in clause 7.5(b)(1), deliver copies of them to the Financier.

## **7.6 Amounts payable on demand**

If any amount payable by the Company under any Transaction Document is not expressed to be payable on a specified date, that amount is payable by the Company on demand by the Financier.

## **7.7 Appropriation of payments**

- (a) Except where clause 7.7(b) applies, all payments made by the Company under a Transaction Document may be appropriated as between principal, interest and other amounts as the Financier determines or, failing any determination, in the following order:
  - (1) first, towards reimbursement of all fees, costs, expenses, charges, damages and indemnity payments due and payable by the Company under the Transaction Documents;
  - (2) second, towards payment of interest due and payable under the Transaction Documents; and
  - (3) third, towards repayment or prepayment of the Principal Outstanding.
- (b) Any money recovered by a Finance Party as a result of the exercise of a Power under a Security must be appropriated in the manner provided in that Security.
- (c) Any appropriation under clauses 7.7(a) or 7.7(b) overrides any appropriation made by the Company.

## **7.8 Rounding**

The Financier may round amounts to the nearest unit of Relevant Currency in making any allocation or appropriation under the Transaction Documents.

## **7.9 Currency exchanges**

If the Financier receives an amount under a Transaction Document in a currency which is not in the Relevant Currency, the Financier:

- (a) may convert the amount received into the Relevant Currency in accordance with its normal procedures; and
- (b) is only regarded as having received the amount that it has converted into the Relevant Currency.

## 8 Representations and warranties, undertakings

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### 8.1 Representations and warranties

- (a) The Company represents and warrants to and for the benefit of each Finance Party that all its representations and warranties in the Common Terms Deed and each Transaction Document are, or will be, true and correct in all respects when made or regarded as having been made.
- (b) The Company represents and warrants in favour of the Financier that:
  - (1) entry by the Company and the Security Trustee into this agreement does not, in any way, fetter the Commonwealth of Australia's rights in relation to the development or implementation of policy; and
  - (2) the Company has complied with all laws.
- (c) The representations and warranties given under clause 8.1(b) are repeated on the Funding Date and each Interest Payment Date with respect to the facts and circumstances then subsisting.
- (d) The Company acknowledges that it has not entered into this agreement or any other Transaction Document in reliance on any representation, warranty, promise or statement of a Finance Party or of any person on behalf of any Finance Party.

### 8.2 Performance under Transaction Documents

The Company must fully and punctually perform its obligations under the Common Terms Deed and each other Transaction Document.

### 8.3 Additional General Undertakings

In addition to its obligations under the Common Terms Deed, the Company must:

- (a) not close or make a Disposal of any Childcare Centres in the first 12 months following Financial Close;
- (b) not close any Childcare Centres without the Company having first:
  - (1) satisfied all statutory and other legal requirements to provide notice of a closure of a Childcare Centre;
  - (2) provided the Financier with evidence that it has used its best endeavours to:
    - (A) minimise the number of Childcare Centres that it closes; and
    - (B) maintain the total number of children in the care of the Childcare Centres; and
  - (3) used reasonable endeavours to arrange alternative care options for children displaced by the closure;

- (c) not change its status as a not-for-profit organisation;
- (d) not sub-contract the child care services provided by the Childcare Centres to a for-profit organisation;
- (e) not sub-contract the child care services provided by the Childcare Centres to a not-for-profit organisation without prior consultation with the Financier;
- (f) ensure that, unless it has closed, or made a Disposal of, a Childcare Centre in accordance with this clause 8.3, all Childcare Centres retain as its principal purpose the provision of long day care child care services; and
- (g) recognise the previous service and all service benefits and entitlements of those employees of A.B.C. Learning Centres Limited's businesses that accept employment with the Company (including, but not limited to, years of service, annual leave, personal leave and long service leave entitlements) accrued during those employees' period of employment with A.B.C. Learning Centres Limited's businesses or any of its predecessors.

#### **8.4 Additional Information Undertakings**

In addition to its obligations under the Common Terms Deed, the Company undertakes to provide the Financier with:

- (a) as soon as practicable and in any event no later than 90 days after each half Financial Year, a report on progress against, and achievement of, key performance indicators and other objectives associated with educational enhancements, early learning quality improvements, strengthening of community involvement and other agreed outcomes developed in relation to the Company's business from time to time in the preceding 6 months; and
- (b) any information reasonably requested by any department or Parliament, any Commonwealth department, or any federal or state Parliament promptly following receipt of such request.

#### **8.5 Financial covenants**

On any date that is on or after the Senior Discharge Date (as defined in the Security Trust Deed), the Company may make a written request to the Financier that the financial covenants provided for in clause 4.26 of the Common Terms Deed cease to operate. The Financier will, without any obligation to accept, consider any such request in good faith, provided that the Borrower is at the relevant time complying with clause 4.26 of the Common Terms Deed.

### **9 Events of Default and Review Events**

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#### **9.1 Effect of Event of Default**

- (a) If an Event of Default is subsisting the Financier may, at any time after its occurrence by notice to the Company declare that:
  - (1) the Secured Moneys are immediately due and payable; or
  - (2) the Commitment of the Financier is cancelled,
 or make each of the declarations under clauses 9.1(a)(1) and 9.1(a)(2).

- (b) The Company must immediately repay the Secured Moneys on receipt of a notice under clause 9.1(a)(1).

## 9.2 Effect of Review Event

- (a) If a Review Event is subsisting, the Financier may give notice to the Company that the Review Event is unacceptable (**Review Notice**).
- (b) On the receipt of a Review Notice, the Company agrees to negotiate with the Financier in good faith to attempt to agree to appropriate amendments to the Transaction Documents to take into account the Review Event.
- (c) If the Company and the Financier fail to agree (each acting in good faith) on the appropriate amendments to the Transaction Documents within 30 days of the Company's receipt of a Review Notice, then the Financier may give notice (**Financier's Notice**) to the Company that:
- (1) the Secured Moneys are to become due and payable; and
  - (2) the Commitment of the Financier is to be cancelled,
- on the date (**Early Repayment Date**) that occurs 90 days after the date of the Financier's Notice, in which case the Commitments are cancelled and the Secured Moneys are immediately due and payable on the Early Repayment Date.

## 9.3 Company to continue to perform

- (a) If the Financier makes a declaration under clause 9.1:
- (1) the declaration does not affect the obligations of the Company under the Transaction Documents; and
  - (2) the Company must continue to perform its obligations under the Transaction Documents as if the declaration had not been made, subject to any directions given by a Finance Party under any Transaction Document.
- (b) Clause 9.3(a) does not affect the Company's obligations under clause 9.1.

## 9.4 Enforcement

- (a) The Transaction Documents may be enforced if an Event of Default subsists without notice to the Company or any other person even if:
- (1) a Finance Party accepts any part of the Secured Moneys after an Event of Default; or
  - (2) there has been any other Event of Default.
- (b) No Finance Party is liable to the Company for any Loss the Company may suffer, incur or be liable for arising out of or in connection with a Finance Party exercising any Power, except to the extent specifically set out in a Transaction Document.

## 9.5 Investigating accountants

Any time while an Event of Default subsists, the Financier may, by notice to the Company appoint, at the cost of the Company, an investigating accountant or other consultants, instigate such investigations and request such reports as it deems necessary, including accounting, legal and valuation reports.

## 10 Illegality and Anti-money laundering

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### 10.1 Illegality

- (a) If any Change in Law or other event makes it illegal for the Financier to perform its obligations under the Transaction Documents or fund or maintain its Commitments, the Financier may by notice to the Company:
- (1) suspend its obligations under the Transaction Documents for the duration of the illegality; or
  - (2) by notice to the Company, cancel the Commitment and require the Company to repay the Secured Moneys in respect of the Financier in full on the date which is 40 Business Days after the date on which the Financier gives the notice or any earlier date required by, or to comply with, the applicable law.
- (b) A notice under clause 10.1(a)(2) is irrevocable and the Company must, on the repayment date determined under clause 10.1(a)(2), pay to the Financier on account of the Financier the Secured Moneys in respect of the Financier in full.

### 10.2 Anti-money laundering

- (a) The Company agrees that any Finance Party may delay, block or refuse to process any transaction without incurring any liability if that Finance Party suspects that:
- (1) the transaction may breach any laws or regulations in the Commonwealth of Australia or any State or Territory of it or elsewhere or any other country;
  - (2) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by the United States, the European Union or any country; or
  - (3) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in the Commonwealth of Australia or any State or Territory of it or elsewhere or any other country.
- (b) The Company must provide all information to each Finance Party which the Finance Party reasonably requires in order to manage its money-laundering, terrorism financing or economic and trade sanctions risk or to comply with any laws or regulations in Australia or any other country. The Company agrees that the Finance Party may disclose any information concerning any party to any Transaction Document to any law enforcement, regulatory agency or court where required by any such law or regulation in the Commonwealth of Australia or any State or Territory of it or elsewhere or any other country.
- (c) Unless the Company has disclosed that it is acting in a trustee capacity or on behalf of another party, the Company warrants that it is acting on its own behalf in entering into any Transaction Document.
- (d) The Company declares and undertakes to each Finance Party that the processing of any transaction by the Finance Party in accordance with the Company's instructions will not breach any laws or regulations in Australia or, to the best of its knowledge, any other country.

## 11 Indemnities

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### 11.1 Foreign currency indemnity

If, at any time:

- (a) a Finance Party, a Controller, a Receiver or an Attorney receives or recovers any amount payable by the Company including:
  - (1) under any judgment or order of any Government Agency;
  - (2) for any breach of any Transaction Document;
  - (3) on the liquidation or bankruptcy of the Company or any proof or claim in that liquidation or bankruptcy; or
  - (4) any other thing into which the obligations of the Company may have become merged; and
- (b) the Payment Currency is not the Relevant Currency,  
the Company indemnifies each Finance Party, Controller, Receiver or Attorney against any shortfall between the amount payable in the Relevant Currency and the amount actually or notionally received or recovered by each Finance Party, Controller, Receiver or Attorney after the Payment Currency is converted or translated into the Relevant Currency under clause 11.2.

### 11.2 Conversion of currencies

In making any currency conversion under clause 11.1, a Finance Party, Controller, Receiver or Attorney may itself or through its bankers purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the times it thinks fit.

### 11.3 Continuing indemnities and evidence of loss

- (a) Each indemnity of the Company in a Transaction Document is a continuing obligation of the Company, despite:
  - (1) any settlement of account; or
  - (2) the occurrence of any other thing,  
and remains in full force and effect until:
    - (3) the Secured Moneys are Finally Paid; and
    - (4) each Security has been finally discharged.
- (b) Each indemnity of the Company in a Transaction Document is an additional, separate and independent obligation of the Company and no one indemnity limits the general nature of any other indemnity.
- (c) Each indemnity of the Company in a Transaction Document survives the termination of any Transaction Document.
- (d) A certificate given by an Officer of a Finance Party detailing the amount of any Loss covered by any indemnity in a Transaction Document is sufficient evidence unless the contrary is proved.

## 12 Fees, Tax, costs and expenses

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### 12.1 Administration fee

The Company must pay to the financier a non-refundable administration fee of \$100,000 payable in equal instalments of \$14,285.71 on each Administration Fee Payment Date.

### 12.2 Tax

- (a) The Company must pay any Tax, other than an Excluded Tax in respect of any Finance Party, which is payable in respect of a Transaction Document (including in respect of the execution, delivery, performance, release, discharge, amendment or enforcement of a Transaction Document).
- (b) The Company must pay any fine, penalty or other cost in respect of a failure to pay any Tax described in clause 12.2(a) except to the extent that the fine, penalty or other cost is caused by the Financier's failure to lodge money received from the Company within 5 Business Days before the due date for lodgement.
- (c) The Company indemnifies each Finance Party against any amount payable under clause 12.2(a) or 12.2(b).

### 12.3 Costs and expenses

The Company must pay:

- (a) all reasonable costs and expenses of each Finance Party in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of any Transaction Document;
- (b) all costs and expenses of each Finance Party in relation to the enforcement, protection or waiver of any rights under any Transaction Document;
- (c) all reasonable costs and expenses of each Finance Party in relation to the consent or approval of a Finance Party given under any Transaction Document; and
- (d) all reasonable costs and expenses of each Finance Party and, in the case of the Financier, incurred in its capacity as Financier under this agreement, in relation to any enquiry by a Government Agency involving the Company, including any legal costs and expenses and any professional consultant's fees, on a full indemnity basis.

### 12.4 GST

- (a) If GST is or will be imposed on a supply made under or in connection with a Transaction Document by a Finance Party, the Finance Party may, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
  - (1) increase the consideration otherwise provided for that supply under the Transaction Document by the amount of that GST; or
  - (2) otherwise recover from the recipient of the supply the amount of that GST.
- (b) Each Finance Party must issue a Tax Invoice to the recipient of the supply no later than 5 Business Days after payment to the Finance Party of the GST inclusive consideration for that supply.



## 13 Interest on overdue amounts

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### 13.1 Payment of interest

The Company must pay interest on:

- (a) any of the Secured Moneys due and payable by it, but unpaid;
  - (b) any interest payable but unpaid under this clause 13; and
  - (c) if an Event of Default subsists and a declaration has been made under clause 9.1(a) in respect of the moneys outstanding under this agreement, all of the Principal Outstanding and such other outstanding amounts the subject of the declaration,
- provided that if this clause 13 requires the Company to pay interest on a relevant amount, interest shall not also accrue on that amount under any other provision of this agreement.

### 13.2 Accrual of interest

The interest payable under this clause 13:

- (a) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the Secured Moneys becomes merged; and
- (b) may be capitalised at monthly intervals.

### 13.3 Rate of interest

The rate of interest payable under this clause 13 on any part of the Secured Moneys is the higher of:

- (a) the Overdue Rate determined by the Financier:
  - (1) on the date that part of the Secured Moneys becomes due and payable but is unpaid (in the case of interest referred to in clause 13.1(a) or 13.1(b));
  - (2) on the date the Event of Default occurred (in the case of interest referred to in clause 13.1(c)) and
  - (3) on each date which is one month after the immediately preceding date on which the Overdue Rate was determined under this clause 13.3(a); and
- (b) the rate fixed or payable under a judgment or other thing referred to in clause 13.2(a).

## 14 Assignment and substitution

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### 14.1 Assignment by the Company

The Company must not assign or novate any of its rights or obligations under a Transaction Document without the Financier's prior written consent.

## 14.2 Assignment by Financier

The Financier may assign or novate any of its rights and obligations under a Transaction Document to any person if:

- (a) the assignee or transferee (as the case may be) is a statutory body, commission or other authority created by legislative instrument of the Parliament of the Commonwealth of Australia (**Assignee**), provided that the Assignee has all of the rights and obligations of the Commonwealth under the Transaction Documents novated to it by the same or another legislative instrument of the Parliament of the Commonwealth of Australia; or
- (b) the Company provides its consent to that assignment or novation (such consent must not be unreasonably withheld or delayed or be subject to unreasonable conditions).

The Company's consent to a proposed assignment or transfer will be deemed to have been provided by the Company in the event that:

- (1) a Default subsists at the time of the proposed assignment or transfer; or
- (2) the Company did not respond to the Financier's request for consent to that proposed assignment or transfer within 5 Business Days of the Company being notified in writing of the proposed assignment or transfer from the Financier.

## 14.3 Substitution certificate

If the Financier wishes to novate any of its rights and obligations under a Transaction Document to a Substitute Financier, the Retiring Financier and the Substitute Financier must execute a Substitution Certificate in, or substantially in, the form of Attachment 1 and deliver a copy of the same to the Company.

## 14.4 Assist

The Company must do any thing that the Financier reasonably requests including, executing any documents or amending any Transaction Document, to effect any transfer, assignment, novation or substitution under this clause 14.

## 14.5 Participation permitted

The Financier may grant a participation interest (being a right to share in the financial benefits of this agreement, without any rights against the Company) in any of the Financier's rights and benefits under this agreement to any other person without having to obtain the consent of, or to notify, the Company.

## 14.6 No increase in costs

If the Financier assigns or novates any of its rights or obligations under any Transaction Document, the Company is not required to pay any net increase in the aggregate amount of costs, Taxes, fees or charges which is a consequence of the transfer or assignment.

## 15 Saving provisions

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### 15.1 No merger of security

- (a) Nothing in this agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects:
  - (1) any Encumbrance or indemnity in favour of any Finance Party; or

- (2) any Power.
- (b) No other Encumbrance or Transaction Document which a Finance Party has the benefit of in any way prejudicially affects any Power.

## **15.2 Exclusion of moratorium**

To the extent not excluded by law, a provision of any legislation which directly or indirectly:

- (a) lessens, varies or affects in favour of the Company any obligations under a Transaction Document; or
  - (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by any Finance Party of any Power,
- is negated and excluded from each Transaction Document and all relief and protection conferred on the Company by or under that legislation is also negated and excluded.

## **15.3 Conflict**

Where any right, power, authority, discretion or remedy conferred on a Finance Party, a Controller, a Receiver or an Attorney by any Transaction Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, those conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

## **15.4 Consents**

- (a) Whenever the doing of any thing by the Company is dependent on the consent of a Finance Party, the Finance Party may withhold its consent or give it conditionally or unconditionally in its absolute discretion, unless expressly stated otherwise in a Transaction Document.
- (b) Any conditions imposed on the Company by a Finance Party under clause 15.4(a) must be complied with by the Company.

## **15.5 Principal obligations**

This agreement is:

- (a) a principal obligation and is not ancillary or collateral to any other Encumbrance or other obligation; and
- (b) independent of, and unaffected by, any other Encumbrance or other obligation which any Finance Party may hold at any time in respect of the Secured Moneys.

## **15.6 Non-avoidance**

If any payment by the Company to a Finance Party is avoided for any reason including any legal limitation, disability or incapacity of or affecting the Company or any other thing, and whether or not:

- (a) any transaction relating to the Secured Moneys was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of any Finance Party, the Company:

- (c) as an additional, separate and independent obligation, indemnifies each Finance Party against that avoided payment; and
- (d) acknowledges that any liability of the Company under the Transaction Documents and any right or remedy of the Finance Parties under the Transaction Documents is the same as if that payment had not been made.

### **15.7 Set-off authorised**

If the Company does not pay any amount when due and payable by it to any Finance Party under a Transaction Document, the Finance Party may:

- (a) apply any credit balance in any currency in any account of the Company with the Finance Party in or towards satisfaction of that amount; and
- (b) effect any currency conversion which may be required to make an application under clause 15.7(a).

### **15.8 Financier's certificates and approvals**

- (a) A certificate signed by any Officer of the Financier in relation to any amount, calculation or payment under any Transaction Document is sufficient evidence of that amount, calculation or payment unless the contrary is proved.
- (b) Where any provision of a Transaction Document requires the Financier's approval, that approval will not be effective unless and until it is provided in writing.

### **15.9 No reliance or other obligations and risk assumption**

The Company acknowledges and confirms that:

- (a) it has not entered into any Transaction Document in reliance on any representation, warranty, promise or statement made by or on behalf of any Finance Party;
- (b) in respect of the transactions evidenced by the Transaction Documents, no Finance Party has any obligations other than those expressly set out in the Transaction Documents; and
- (c) in respect of interest rates or exchange rates, no Finance Party is liable for any movement in interest rates or exchange rates or any information, advice or opinion provided by any Finance Party or any person on behalf of any Finance Party, even if:
  - (1) provided at the request of the Company (it being acknowledged by the Company that such matters are inherently speculative);
  - (2) relied on by the Company; or
  - (3) provided incorrectly or negligently.

### **15.10 Power of attorney**

- (a) For consideration received, the Company irrevocably appoints the Financier and each Officer of the Financier as the attorney of the Company to:
  - (1) execute and deliver all documents; and
  - (2) do all things,which are necessary or desirable to give effect to each Transaction Document.

- (b) An attorney appointed under clause 15.10(a) may appoint a substitute attorney to perform any of its powers.

## 16 General

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### 16.1 Confidential information

A Finance Party must not disclose to any person:

- (a) any Transaction Document; or
- (b) any information about the Company, except:
  - (c) in connection with an actual or proposed permitted assignment, novation, participation or securitisation under clause 14, or entry by a Finance Party into a credit default swap where the disclosure is made on the basis that the recipient of the information will comply with this clause 16.1 in the same way that the Finance Party is required to do;
  - (d) to any professional or other adviser consulted by it in relation to any of its rights or obligations under the Transaction Documents;
  - (e) to the Reserve Bank of Australia, the Australian Tax Office or any Government Agency requiring or requesting disclosure of the information;
  - (f) in connection with the enforcement of its rights under the Transaction Documents;
  - (g) on a confidential basis to any Affiliate or Related Body Corporate;
  - (h) where the information is already in the public domain, or where the disclosure would not otherwise breach any duty of confidentiality;
  - (i) if required by law; or
  - (j) otherwise with the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

### 16.2 Company to bear cost

Any thing which must be done by the Company under any Transaction Document, whether or not at the request of any Finance Party, must be done at the cost of the Company.

### 16.3 Notices

- (a) Any notice or other communication including, any request, demand, consent or approval, to or by a party to this agreement must be in legible writing and in English addressed to the party in accordance with its details set out in Schedule 1 or as specified to the sender by the party by notice.
- (b) If the sender is a company any such notice or other communication must be signed by an Officer of the sender.
- (c) Any such notice or other communication is regarded as being given by the sender and received by the addressee:
  - (1) if by delivery in person, when delivered to the addressee;

- (2) if by post, on delivery to the addressee; or
- (3) if by facsimile, when received by the addressee in legible form,  
but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.
- (d) Any such notice or other communication can be relied on by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (e) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under clause 16.3(c) and informs the sender that it is not legible.

#### **16.4 Governing law and jurisdiction**

- (a) This agreement is governed by the laws of New South Wales.
- (b) The Company irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) The Company irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) The Company irrevocably waives any immunity in respect of its obligations under this agreement that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.

#### **16.5 Waivers**

- (a) Waiver of any right arising from a breach of this agreement or of any Power arising on default under this agreement or on the occurrence of a Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this agreement or the occurrence of a Default; or
  - (2) a Power created or arising on default under this agreement or on the occurrence of a Default,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this agreement or on a default under this agreement or on the occurrence of an Event of Default as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- (e) This clause may not itself be waived except in writing.

#### **16.6 Variation**

A variation of any term of this agreement must be in writing and signed by the parties.

## **16.7 Cumulative rights**

The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of any Finance Party, Controller, Receiver or Attorney.

## **16.8 Attorneys**

Each of the attorneys executing this agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

## **16.9 Counterparts**

- (a) This agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this agreement by signing any counterpart.

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<b>Notice details</b>	<b>33</b>
<b>Funding Notice</b>	<b>33</b>



## Notice details

<b>Company</b>	<b>Goodstart Childcare Limited</b>
Address	43 Metroplex Avenue, Murarrie QLD 4172
Attention	Gavin Bartlett
Phone	(07) 3906 3163
Fax	(07) 3908 2524
Email	gbartlett@childcare.com.au

<b>Financier</b>	<b>Commonwealth of Australia</b>
Address	Level 4, 148-180 City Walk, Canberra ACT 2601
Attention	Director of the Office of Early Childhood Education and Child Care Department of Education, Employment and Workplace Relations
Fax	(02) 6123 5563

<b>Security Trustee</b>	<b>National Australia Bank Limited</b>
Address	Level 25, 255 George Street, Sydney NSW 2000
Attention	Head of Agency
Fax	+61 2 9237 1634
Email	james.r.vassallo@nab.com.au

# Funding Notice

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## Clause 4.2 (Requirements for Funding Notice)

To: **[insert name of Agent]** (Financier)

Attention: **[insert relevant name]**

We refer to the loan facility agreement dated **[insert date]** between Goodstart Childcare Limited (as **Company**), the Commonwealth of Australia (as **Financier**) and National Australia Bank Limited (as **Security Trustee**) (**Facility Agreement**).

Under clause 4 of the Facility Agreement:

- (a) we give you notice that we wish to draw under the Facility Agreement on **[insert date]** (**Funding Date**);
- (b) the aggregate amount to be drawn is \$**[insert amount]**;
- (c) The proceeds of the Funding Portion are to be used in accordance with clause 3.2 of the Facility Agreement.
- (d) We request that the proceeds be remitted to account number **[insert account number]** at **[insert details]**.
- (e) We represent and warrant that no Default or Review Event has occurred which is continuing or will occur as a result of the Funding Portion being provided; **[, except as follows: [insert details], and we propose the following remedial action [insert details]]**.

Expressions defined in the Facility Agreement have the same meaning when used in this Funding Notice.

date \_\_\_\_\_

Signed for and on behalf of  
**Goodstart Childcare Limited**  
by

sign here ► \_\_\_\_\_  
Officer


print name \_\_\_\_\_

Executed as an agreement

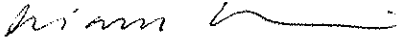
---

**Company**

Signed for  
**Goodstart Childcare Limited**  
by its attorney

sign here ►   
Attorney  
print name JAMES LEWIS


in the presence of

sign here ►   
Witness  
print name Liam Williams

---

**Financier**

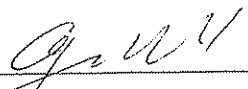
Signed for and on behalf of the  
**Commonwealth of Australia represented by and acting through the  
Department of Education, Employment and Workplace Relations**  
by its authorised officer

sign here ►   
Authorised Officer

print name Murray Kimber

position Branch Manager, Child Care Policy and  
Payments Branch, Early Childhood Programs  
Group

in the presence of

sign here ►   
Witness  
print name Alan Broadbent-Jones

**Security Trustee**

Signed for  
**National Australia Bank Limited**  
by its attorney

sign here ▶



Attorney

print name

**JAMES VASSALLO**

---

in the presence of

sign here ▶



Witness

print name

**Christopher Floreani**

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## Attachments

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**Substitution certificate**

## Substitution certificate

## Clause 14.3 (Substitution certificate)

This agreement is made by	
Retiring Financier	<i>[Insert details]</i>
Substitute Financier	<i>[Insert details]</i>
The parties agree	in consideration of, among other things, the mutual promises contained in this agreement.

## 1 Interpretation

## 1.1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
Facility Agreement	loan facility agreement dated <i>[insert date]</i> originally between Goodstart Childcare Limited (as <b>Company</b> ), Commonwealth of Australia (as <b>Financier</b> ) and National Australia Bank Limited (as <b>Security Trustee</b> ).
Substituted Commitment	the rights and obligations under the Facility Agreement of the Retiring Financier in respect of the Commitments and the Principal Outstanding of the Retiring Financier and all other related rights and obligations set out below:  Commitment \$ <i>[insert amount]</i>  Principal Outstanding \$ <i>[insert amount]</i>
Substitution Date	<i>[Insert date]</i> .

## 1.2 Incorporated definitions

A word or phrase defined in the Facility Agreement has the same meaning when used in this agreement.

### **1.3 Interpretation**

- (a) Clause 1 of the Facility Agreement applies to this agreement as if set out in full in this agreement.
- (b) A reference in this agreement to 'identical' rights or obligations is a reference to rights or obligations substantially identical in character to those rights or obligations rather than identical as to the person entitled to them or obliged to perform them.

## **2 Substitution**

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### **2.1 Effect of substitution**

From the Substitution Date:

- (a) no party to the Transaction Documents has any further obligation to the Retiring Financier in relation to the Substituted Commitment;
- (b) the Retiring Financier is released from and has no further rights or obligations to a party to the Transaction Documents in relation to the Substituted Commitment and any Transaction Document to that extent;
- (c) the Retiring Financier grants to the Substitute Financier rights which are identical to the rights which the Retiring Financier had in respect of the Substituted Commitment and any Transaction Document to that extent; and
- (d) the Substitute Financier assumes obligations towards each of the parties to the Transaction Documents which are identical to the obligations which the Retiring Financier was required to perform in respect of the Substituted Commitment before the acknowledgment set out in clause 2.1(b).

### **2.2 Substitute Financier**

With effect on and from the Substitution Date:

- (a) the Substitute Financier is taken to be a party to the Transaction Documents with Commitments equal to the Substituted Commitment and the Facility Agreement is amended accordingly;
- (b) a reference in the Facility Agreement to 'Financier' includes a reference to the Substitute Financier;
- (c) the Substitute Financier is taken to be a party to the Security Trust Deed and the Intercreditor Deed;
- (d) the Substitute Financier becomes bound by the Security Trust Deed and the Intercreditor Deed and has the same rights as if it were a party to the Security Trust Deed and Intercreditor Deed as a 'Beneficiary' and a 'Senior Creditor'; and
- (e) each reference in the Security Trust Deed and the Intercreditor Deed to a 'Beneficiary' and 'Senior Creditor' is taken to include a reference to the Substitute Financier.

### **2.3 Preservation of accrued rights**

The Retiring Financier and all other parties to the Facility Agreement remain entitled to, and bound by, their respective rights and obligations in respect of the Substituted Commitment and any of their other rights and obligations under the Transaction Documents which have accrued up to the Substitution Date.

## **3 Acknowledgments**

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### **3.1 Copies of Transaction Documents**

The Substitute Financier acknowledges that it has received a copy of the Transaction Documents and all other information which it has requested in connection with the Transaction Documents.

### **3.2 Acknowledgment**

The Substitute Financier acknowledges and agrees that the Facility Agreement applies as if references to the Financier included the Retiring Financier and references to any Transaction Document included this agreement.

## **4 Payments**

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### **4.1 Payments by Financier**

With effect on and from the Substitution Date, the Financier must make all payments due under the Facility Agreement in connection with the Substituted Commitment to the Substitute Financier, without having any further responsibility to the Retiring Financier in respect of the same.

### **4.2 As between Financier**

The Retiring Financier and the Substitute Financier must make directly between themselves the payments and adjustments which they agree with respect to accrued interest, fees, costs and other rights or other amounts attributable to the Substituted Commitment which accrue before the Substitution Date.

## **5 Warranty**

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Each of the Retiring Financier and the Substitute Financier represent and warrant to the other parties that the requirements of clause 14 of the Facility Agreement have been complied with in relation to the Substituted Commitment.

## **6 Notices**

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The details of the Substitute Financier for the purpose of Schedule 1 of the Facility Agreement are as set out in Schedule 1 of this agreement.

## **7 General**

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Clause 15 of the Facility Agreement applies to this agreement as if it were fully set out in this agreement.



## 8 Attorneys

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Each of the attorneys executing this agreement states that the attorney has no notice of revocation of that attorney's power of attorney.

Schedule 1

Name	ABN/ACN/ARBN	Notice Details	Commitment
		Address: Attention: Facsimile:	

Executed as an agreement

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**Retiring Financier**

Signed for  
**[Type party name]**  
by his/her/its attorney

sign here ► \_\_\_\_\_  
Attorney

print name \_\_\_\_\_

in the presence of

sign here ► \_\_\_\_\_  
Witness

print name \_\_\_\_\_

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**Substitute Financier**

Signed for  
**[Type party name]**  
by his/her/its attorney

sign here ► \_\_\_\_\_  
Attorney

print name \_\_\_\_\_

in the presence of

sign here ► \_\_\_\_\_  
Witness

print name \_\_\_\_\_

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