

# Deed

EXECUTION VERSION

Project Gold

## Common Terms Deed

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Goodstart Childcare Limited (as Company)

Commonwealth of Australia (as Commonwealth)

National Australia Bank Limited (as Senior Agent)

National Australia Bank Limited (as Security  
Trustee)

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## Common Terms Deed

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Date ▶ 28 May 2010

Between the parties	
Company	<p><b>Goodstart Childcare Limited</b>            ABN 69 139 967 794 of 43 Metroplex Avenue, Murarrie QLD 4172  <b>(Company)</b></p>
Commonwealth	<p><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>(Commonwealth)</b></p>
Senior Agent	<p><b>National Australia Bank Limited</b>            ABN 12 004 044 937 of Level 25, 255 George Street, Sydney NSW 2000            who enters into this deed as agent for the 'Financiers' under the Senior Facility Agreement  <b>(Senior Agent)</b></p>
Security Trustee	<p><b>National Australia Bank Limited</b>            ABN 12 004 044 937 of Level 25, 255 George Street, Sydney NSW 2000  <b>(Security Trustee)</b></p>
Background	<p>The Secured Creditors have agreed to provide financial accommodation to the Company on the terms of this deed, the Secured Facility Agreements and the other Transaction Documents.</p>

The parties agree

as set out in this deed, in consideration of, among other things, the mutual promises contained in this deed.

## Operative part

### 1 Definitions and interpretation

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#### 1.1 Agreement components

This deed includes any schedule.

#### 1.2 Definitions

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

<b>Term</b>	<b>Meaning</b>
<b>Accounting Standards</b>	generally accepted accounting principles in Australia.
<b>Acquisition</b>	the acquisition by the Company of the Acquisition Assets in accordance with the Acquisition Documents.
<b>Acquisition Assets</b>	the assets of ABC Learning Centres Limited (Receivers and Managers Appointed) (Administrators Appointed) ACN 079 736 664 and its subsidiaries to be acquired by the Company pursuant to the Sale Agreement.
<b>Acquisition Claim</b>	any claim for breach of contract or warranty, or any claim under an indemnity against any person (including any employee, officer or adviser of the Company) in relation to the Acquisition, a Due Diligence Report or an Acquisition Document.
<b>Acquisition Costs</b>	all legal, accountancy and other advisory fees, out of pocket expenses and stamp, registration, transfer or similar taxes incurred by or on behalf of the Company in connection with the Acquisition.
<b>Acquisition Documents</b>	<ol style="list-style-type: none"> <li>1 the Sale Agreement;</li> <li>2 each assignment in favour of the Company in relation to a Childcare Centre Lease;</li> <li>3 each Escrow Deed; and</li> <li>4 the Transition Services Deed.</li> </ol>
<b>Affiliate</b>	in relation to an entity, any other entity Controlled, directly or indirectly, by that entity, any other entity that Controls, directly or indirectly, that entity or any other entity, directly or indirectly under common Control with that entity.

<b>Approved Hedging Policy</b>	the hedging policy formulated by the Company and approved by or on behalf of each Secured Creditor which must be consistent with the requirements of clause 4.24(a).
<b>Associate</b>	an 'associate' as defined in section 318 of the Tax Act.
<b>Attorney</b>	an attorney appointed under a Transaction Document.
<b>Austock Entity</b>	<ol style="list-style-type: none"> <li>1 Austock Property Management Limited as responsible entity for the Austock Education Trust;</li> <li>2 Austock Property Management Limited as responsible entity for the Austock Childcare Fund; or</li> <li>3 Austock Funds Management Limited as responsible entity for the Australian Social Infrastructure Fund (as the case may be),</li> </ol> <p>(as the case may be) and includes Trust Company Limited as custodian of the Austock Education Trust, the Austock Childcare Fund and the Australian Social Infrastructure Fund (if applicable).</p>
<b>Austock Bank Guarantee Governing Deed</b>	a deed titled 'Bank Guarantee Governing Deed' dated on or about the date of this deed between the Company and one or more Austock Entities.
<b>Austock Consent Deed</b>	a deed dated on or about the date of this deed between, among others, one or more Austock Entities and the Security Trustee in respect of any Childcare Centre Leases in respect of which an Austock Entity is the Lessor.
<b>Authorisation</b>	<ol style="list-style-type: none"> <li>1 any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence (including a Childcare Centre Licence), approval, permit, authority or exemption; or</li> <li>2 in relation to anything which a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.</li> </ol>
<b>Average Monthly Occupancy Rate</b>	<p>with respect to each month, the ratio (expressed as a percentage) of A:B, where:</p> <p>A = the number of children that have occupied a place at each Childcare Centre during that month. To the extent that a child did not occupy a place at all times that the place was available during that month then the occupation of that child will be included on a proportionate basis to reflect the extent to which it occupied that place during the times it was available during that month; and</p> <p>B = the aggregate number of places that are available (whether or not occupied) at each Childcare Centre during that month. To the extent that a place is not available for the full duration of that month then it will be included on a proportionate basis based on the proportion of the month in which it was available.</p>



<b>Bank Guarantee Cash Collateral Account</b>	has the meaning given to that term in the Senior Facility Agreement.
<b>Bank Guarantee Governing Deed</b>	<ol style="list-style-type: none"> <li>1 an Austock Bank Guarantee Governing Deed; or</li> <li>2 an Orchard Bank Guarantee Governing Deed.</li> </ol>
<b>Bill</b>	A bill of exchange as defined in the Bills of Exchange Act 1909 (Cth).
<b>Borrower Charge</b>	the fixed and floating charge granted by the Company in favour of the Security Trustee on or about the date of this deed.
<b>Business Day</b>	<ol style="list-style-type: none"> <li>1 for the purposes of clause 10.2, a day on which banks are open for business in the city where the notice or other communication is received excluding a Saturday, Sunday or public holiday; and</li> <li>2 for all other purposes, a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday.</li> </ol>
<b>Business Plan</b>	the business plan (including the Financial Model) prepared by the Company in respect of the period of 5 years commencing on Financial Close and delivered under clause 2.1(p) or any revised version of such business plan provided under clause 4.1(f), agreed by or on behalf of each Secured Creditor to be the Business Plan for the purpose of this deed, in each case as amended in accordance with clause 4.15(b).
<b>Calculation Date</b>	30 June, 30 September, 31 December and 31 March each year, commencing on 30 September 2010.
<b>Calculation Period</b>	each period of 12 months ending on a Calculation Date.
<b>Capital Expenditure</b>	expenditure by the Group on maintenance, refurbishment or upgrading equipment, machinery, fixed assets, real property improvements or any other capital assets which under the Accounting Standards is regarded as capital expenditure.
<b>Childcare Centre</b>	each childcare centre listed in Schedule 4 (other than a Non-Transferring Childcare Centre) or a new childcare centre opened by a Group Member whether by way of acquisition or otherwise, in each case, for so long as it is owned or leased and operated by the Group.
<b>Childcare Centre Lease</b>	a Lease in respect of a Childcare Centre.
<b>Childcare Centre Licence</b>	any licence issued by a Government Agency required by the Group to operate the Core Business or any Childcare Centre.

<b>Collateral Security</b>	any present or future Encumbrance, Guarantee or other document or agreement created or entered into by a Group Member or any other person as security for, or to credit enhance, the payment of any of the Secured Moneys.
<b>Commitment</b>	in relation to a Secured Creditor and a Secured Facility Agreement, has the meaning specified in the Secured Facility Agreement for that Secured Creditor.
<b>Commonwealth Commitment Letter</b>	the letter from the Commonwealth to the Company dated 21 December 2009.
<b>Commonwealth Default</b>	<ol style="list-style-type: none"> <li>1 any Default; or</li> <li>2 any event of default, potential event of default or review event under any Commonwealth Finance Document which the Commonwealth and the Company agree in writing is a 'Commonwealth Default' for the purposes of this deed.</li> </ol>
<b>Commonwealth Event of Default</b>	<ol style="list-style-type: none"> <li>1 any Event of Default; or</li> <li>2 any event of default, potential event of default or review event under any Commonwealth Finance Document which the Commonwealth and the Company agree in writing is a 'Commonwealth Event of Default' for the purposes of this deed.</li> </ol>
<b>Commonwealth Facility Agreement</b>	the agreement entitled 'Loan facility agreement' between the Commonwealth and the Company dated on or about the date of this deed.
<b>Commonwealth Finance Document</b>	<ol style="list-style-type: none"> <li>1 this deed;</li> <li>2 the Commonwealth Facility Agreement;</li> <li>3 the Commonwealth Commitment Letter;</li> <li>4 a Security;</li> <li>5 the Security Trust Deed;</li> <li>6 the Intercreditor Deed;</li> <li>7 a Subordination Deed Poll;</li> <li>8 a Collateral Security;</li> <li>9 a Lessor Consent Deed;</li> <li>10 a Security Trust Deed Accession Deed;</li> <li>11 a 'Substitution Certificate' under and as defined in the Commonwealth Facility Agreement;</li> <li>12 any other agreement which the Company and the Commonwealth or the Commonwealth and the Security Trustee agree in writing is a Commonwealth Finance Document, or</li> <li>13 any undertaking or agreement entered into or given under any of the above. It includes a written undertaking by the Company or a Group Member to the Commonwealth under or in relation to any of the above documents.</li> </ol>

<b>Commonwealth Permitted Payments</b>	<p>payments required to be made by the Company to the Commonwealth with respect to:</p> <ol style="list-style-type: none"> <li>1 interest (including default interest, capitalised interest and other interest (such as deferred interest) that accrued in a previous period which was not permitted to be paid under the Intercreditor Deed);</li> <li>2 Commonwealth Principal (including Commonwealth Principal which would have otherwise been due and payable under any Commonwealth Finance Document but was not permitted to be paid under the Intercreditor Deed); and</li> <li>3 the Commonwealth Administration Fee,</li> </ol> <p>in each case in accordance with the Commonwealth Finance Documents (whether such amounts are due and payable during the current Financial Year or due and payable from an earlier Financial Year and which remain unpaid for the current Financial Year) and without taking into account the effect of the Intercreditor Deed.</p>
<b>Completion</b>	has the meaning given to that term in the Sale Agreement.
<b>Compliance Certificate</b>	a certificate substantially in the form of Schedule 6 signed by 2 directors of the Company.
<b>Contested Tax</b>	a Tax payable by a Group Member where the Group Member is contesting its liability to pay that Tax in good faith, and has reasonable grounds to do so, and where the Group has sufficient financial resources to pay that Tax if a legally binding determination is made that payment is required.
<b>Control</b>	control as defined in section 50AA of the Corporations Act; and references to <b>Controls</b> and <b>Controlled</b> will be construed accordingly.
<b>Controller</b>	a controller as defined in section 9 of the Corporations Act.
<b>COP</b>	the accounting profit or loss of all Childcare Centres for the relevant period as reported in the Oracle Corporation Australia Pty Ltd accounting system report named COPMGT09 (or similar report agreed by the Company and the Secured Creditors in writing) determined in accordance with the Accounting Standards.
<b>Core Business</b>	the management and operation of childcare centres across Australia.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Debt Service Cover Ratio</b>	<p>on any date, the ratio calculated as follows:</p> <p>Debt Service Cover Ratio = A ÷ B, where:</p> <p>A = EBITDA for the Group in respect of the 12 month period ending on that date:</p>

	<ol style="list-style-type: none"> <li>1 minus Net Capital Expenditure paid during that period;</li> <li>2 minus Tax paid net of cash tax refunds or rebates received in respect of that period for the Group on a consolidated basis;</li> <li>3 minus the amount of any increase or plus the amount of the decrease (as the case may be) in Working Capital of the Group on a consolidated basis during that period; and</li> </ol> <p>B = either:</p> <ul style="list-style-type: none"> <li>• during the Senior Period, the aggregate of the following amounts for the 12 month period ending on that date: <ol style="list-style-type: none"> <li>1 principal amortisation of Facility A (Senior Facility) during the relevant period required in accordance with the Senior Facility Agreement and any of the scheduled repayments of principal required under any Senior Finance Document; and</li> <li>2 Interest Expense paid in cash by Group Members during the relevant period (but not including Interest Expense incurred on transactions between Transaction Parties or Excluded Interest), less Interest Income of the Group during that period,</li> </ol> determined in each case for the Group on a consolidated basis; </li> <li>or</li> <li>• following the Senior Period, the aggregate of the following amounts for the 12 month period ending on that date: <ol style="list-style-type: none"> <li>1 principal amortisation of the cash advance facility during the relevant period required in accordance with the Commonwealth Facility Agreement; and</li> <li>2 Interest Expense paid in cash by Group Members during the relevant period (but not including Interest Expense incurred on transactions between Transaction Parties or Excluded Interest), less Interest Income of the Group during that period,</li> </ol> determined in each case for the Group on a consolidated basis, as the case may be.</li> </ul>
<b>Default</b>	<ol style="list-style-type: none"> <li>1 an Event of Default; or</li> <li>2 a Potential Event of Default.</li> </ol>
<b>Disposal</b>	sell, assign, transfer, or otherwise dispose of or cease to hold, or part with possession of, or create a right to or an interest in an asset.
<b>Distribution</b>	<ol style="list-style-type: none"> <li>1 any dividend, distribution or other amount declared or paid by a Group Member on any Marketable Securities issued by it; and</li> <li>2 any payment of principal, interest, or other amounts in respect of any Financial Indebtedness of a Group Member to an Associate or a Related Body Corporate of a Group Member or a member of the Company;</li> <li>3 any payment (including a management or other fee) made to a direct or indirect shareholder or stockholder, a Sponsor, an Associate of a Sponsor or a Related Body Corporate of a Sponsor (including any director).</li> </ol> <p>For the purposes of this definition, 'Distribution' does not include payments made under in respect of any Subordinated Debt which are permitted under clause 4.25(a).</p>

<b>Dollars, A\$ and \$</b>	the lawful currency of the Commonwealth of Australia.
<b>Due Diligence Reports</b>	<ol style="list-style-type: none"> <li>1 an accounting due diligence report prepared by KPMG dated 24 December 2009;</li> <li>2 a letter of tax advice prepared by KPMG dated 10 December 2009; and</li> <li>3 a legal due diligence report prepared by Gilbert &amp; Tobin dated 8 December 2009,</li> </ol> <p>in relation to the Acquisition and the Acquisition Assets.</p>
<b>EBITDA</b>	in respect of any period (without double counting) the consolidated operating profit of the Group for that period before interest, income Taxes, individually significant or extraordinary items (including any Acquisition Costs contemplated in the Funds Flow Statement or otherwise approved in writing by each Secured Creditor), depreciation and amortisation, as determined in accordance with the Accounting Standards.
<b>Encumbrance</b>	<p>an interest or power:</p> <ol style="list-style-type: none"> <li>1 reserved in or over an interest in any asset, including any retention of title; or</li> <li>2 created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,</li> </ol> <p>by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes any agreement to grant or create any of the above.</p>
<b>Environmental Law</b>	any legislation regulating Pollutants in connection with the protection of the environment or health and safety.
<b>Escrow Agent</b>	in respect of each Escrow Deed, the partners carrying on business under the name 'Henry Davis York' appointed as escrow agent under any Escrow Deed.
<b>Escrow Deeds</b>	<p>each of:</p> <ol style="list-style-type: none"> <li>1 the document titled 'Escrow Deed (Retention Account)' dated 22 December 2009 between, among others, the persons named in it as vendors, the Company as purchaser and Christopher John Honey, Murray Campbell Smith and John Patrick Cronin as receivers; and</li> <li>2 the document titled 'Escrow Deed (R&amp;M Retention Account)' and dated 22 December 2009 between, among others, the persons named in it as vendors, the Company as purchaser and Christopher John Honey, Murray Campbell Smith and John Patrick Cronin as receivers.</li> </ol>
<b>Event of Default</b>	any event specified in clause 5.
<b>Excluded Interest</b>	Interest Expense in respect of the Commonwealth Secured Moneys, the Social Capital Notes, the Members Subordinated Notes or the Members Deeply Subordinated Notes which is:

	<ol style="list-style-type: none"> <li>1 capitalised or deferred;</li> <li>2 interest (which is itself capitalised or deferred) on such capitalised or deferred interest; or</li> <li>3 paid in cash in accordance with the Intercreditor Deed (in the case of the Commonwealth Secured Moneys) or the Subordination Deed Poll (in the case of the Social Capital Notes, the Members Subordinated Notes or the Members Deeply Subordinated Notes),</li> </ol> <p>in each case in accordance with the Commonwealth Finance Documents (including the Intercreditor Deed) or the Note Documents and the Subordination Deeds (as applicable).</p>
<b>Excluded Tax</b>	<p>a Tax imposed by any jurisdiction on the net income of a Secured Creditor but not a Tax:</p> <ol style="list-style-type: none"> <li>1 calculated on or by reference to the gross amount of any payment (without allowance for any deduction) derived by a Secured Creditor under a Transaction Document or any other document referred to in a Transaction Document; or</li> <li>2 imposed as a result of a Secured Creditor being considered a resident of or organised or doing business in that jurisdiction solely as a result of it being a party to a Transaction Document or any transaction contemplated by a Transaction Document.</li> </ol>
<b>Facility</b>	any facility (including any guarantee facility) provided in accordance with the provisions of a Secured Facility Agreement.
<b>Facility A (Senior Facility)</b>	the facility defined in the Senior Facility Agreement as 'Facility A'.
<b>Facility B (Senior Facility)</b>	the facility defined in the Senior Facility Agreement as 'Facility B'.
<b>Facility C Commitment</b>	the 'Commitment' as defined in the Senior Facility Agreement for Facility C (Senior Facility).
<b>Facility C (Senior Facility)</b>	the facility defined in the Senior Facility Agreement as 'Facility C'.
<b>Facility D (Senior Facility)</b>	the facility defined in the Senior Facility Agreement as 'Facility D'.
<b>Fee Letter</b>	each letter defined as a Fee Letter in a Secured Facility Agreement or the Security Trust Deed.
<b>Finance Lease</b>	a Lease constituting, or accounted for in a similar way to, a finance lease or capitalised lease under the Accounting Standards.

<b>Financial Close</b>	the date on which the first Funding Portion is provided.
<b>Financial Indebtedness</b>	<p>any debt or other monetary liability in respect of moneys borrowed or raised or any financial accommodation including under or in respect of any:</p> <ol style="list-style-type: none"> <li>1 Bill, bond, debenture, note or similar instrument;</li> <li>2 acceptance, endorsement or discounting arrangement;</li> <li>3 Guarantee in respect of any moneys borrowed or raised or any financial accommodation;</li> <li>4 Finance Lease;</li> <li>5 agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service for more than 90 days;</li> <li>6 obligation to deliver goods or provide services paid for in advance by any financier;</li> <li>7 agreement for the payment of capital or premium on the redemption of any preference shares;</li> <li>8 interest or currency swap or hedge arrangement, financial option, futures contract or analogous transaction (the amount of such Financial Indebtedness being the marked to market value of the relevant transaction); or</li> <li>9 counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution,</li> </ol> <p>and irrespective of whether the debt or liability:</p> <ol style="list-style-type: none"> <li>10 is present or future;</li> <li>11 is actual, prospective, contingent or otherwise;</li> <li>12 is at any time ascertained or unascertained;</li> <li>13 is owed or incurred alone or severally or jointly or both with any other person; or</li> <li>14 comprises any combination of the above.</li> </ol>
<b>Financial Model</b>	the 10 year operating model delivered by the Company as part of the Business Plan and containing, without limitation, profit and loss, cash flow, balance sheet and capital expenditure forecasts for the Group and related commentary supporting those forecasts.
<b>Financial Report</b>	<p>in relation to an entity, the following financial statements and information in relation to the entity:</p> <ol style="list-style-type: none"> <li>1 a statement of financial performance;</li> <li>2 a statement of financial position; and</li> <li>3 a statement of cashflows,</li> </ol> <p>prepared in compliance with the Accounting Standards and the Corporations Act.</p>
<b>Financial Undertaking</b>	the undertakings set out in clause 4.26.

<b>Financial Year</b>	each calendar year ending on 30 June.
<b>Forecast Quarterly EBITDA</b>	for a Calculation Date, the forecast quarterly EBITDA for the calendar quarter ending on that Calendar Date set out in the Financial Model that is provided to and accepted by each Secured Creditor on Financial Close as part of the Business Plan in satisfaction of the condition precedent in clause 2.1(p).
<b>Free Cash Flow</b>	<p>in respect of any period, EBITDA for that period minus the sum of the following for the Group (on a consolidated basis) for that period:</p> <ol style="list-style-type: none"> <li>1 Tax paid net of cash tax refunds or rebates received in respect of that period;</li> <li>2 Net Capital Expenditure paid during that period;</li> <li>3 the aggregate of the following amounts: <ul style="list-style-type: none"> <li>• principal amortisation of the Facilities under the Senior Facility Agreement or any other Senior Finance Document during the relevant period;</li> <li>• Interest Expense (but not including Interest Expense incurred on transactions between Transaction Parties or Excluded Interest) which is paid in cash by Group Members during the relevant period less Interest Income of the Group during that period,</li> </ul> </li> </ol> <p>and minus the amount of the increase or plus the amount of the decrease (as the case may be) in Working Capital of the Group (on a consolidated basis) during that period.</p>
<b>Funding Date</b>	the date on which a Funding Portion is provided or issued, or is to be provided or issued, to or at the request of the Company under a Secured Facility Agreement.
<b>Funding Notice</b>	a Funding Notice as defined in a Secured Facility Agreement.
<b>Funding Portion</b>	a portion of Financial Indebtedness provided under a Secured Facility Agreement, whether by way of issue of a guarantee, the provision of a cash advance or otherwise.
<b>Funds Flow Statement</b>	the funds flow statement provided under clause 2.1(s).
<b>Government Agency</b>	any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
<b>Group</b>	<ol style="list-style-type: none"> <li>1 the Company; and</li> <li>2 each of its Subsidiaries (if any),</li> </ol> <p>but does not include Mediasphere Holdings Pty Ltd (ACN 120 008 924).</p>



<b>Group Member</b>	a member of the Group.
<b>Group Structure Diagram</b>	the group structure diagram in Schedule 5, as amended or updated by the delivery of a new diagram to each relevant Secured Creditor under clause 4.1(h).
<b>GST</b>	the goods and services tax levied under the GST Act.
<b>GST Act</b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Guarantee</b>	<p>any guarantee, suretyship, letter of credit, letter of comfort or any other obligation:</p> <ol style="list-style-type: none"> <li>1 to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;</li> <li>2 to indemnify any person against the consequences of default in the payment of; or</li> <li>3 to be responsible for,</li> </ol> <p>any debt or monetary liability or obligation (whether or not it involves the payment of money) of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.</p>
<b>Guarantor</b>	any person who becomes a Guarantor as required by clause 4.27, excluding any such person who has ceased to be a Guarantor under clause 6.2.
<b>Guarantor Group</b>	the Company and each Group Member which is a Guarantor.
<b>Hedging Agreements</b>	each interest rate, foreign exchange transaction, equity or equity index option, bond option, commodity swap, commodity option, cap transaction, currency swap transaction, cross-currency swap rate transaction or any other hedge or derivative agreement entered into by a Group Member, including any master agreement and any transaction or confirmation under it.
<b>Insolvency Event</b>	<ol style="list-style-type: none"> <li>1 any Group Member is or is presumed or deemed to be unable or admits its inability to pay its debts as they fall due;</li> <li>2 a moratorium is declared in respect of any indebtedness of any Group Member;</li> <li>3 any corporate action or legal proceedings (other than legal proceedings which are withdrawn or dismissed within 10 days of the commencement of such corporate action or legal proceedings) is taken in relation to: <ul style="list-style-type: none"> <li>• the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (including by scheme of arrangement) of any Group Member other than a solvent liquidation or reorganisation of the relevant person;</li> <li>• an insolvent composition, assignment or arrangement with all or any</li> </ul> </li> </ol>

	<p>class of creditors of any Group Member;</p> <ul style="list-style-type: none"> <li>• the appointment of a Controller, liquidator, receiver, administrator or other similar officer in respect of any Group Member or any of its assets; or</li> <li>• enforcement of any encumbrance over any assets of any Group Member in respect of an amount exceeding \$500,000;</li> </ul> <p>4 any expropriation, attachment, sequestration, distress or execution affects any asset or assets of any Group Member having an aggregate value of not less than \$500,000 (or its equivalent in any other currency or currencies) and is not discharged within 28 days of the commencement of such action;</p> <p>5 a Controller, administrator or similar officer is appointed in respect of a Group Member or any asset of any Group Member;</p> <p>6 a liquidator or provisional liquidator is appointed in respect of a Group Member or an order is made for the winding up of any Group Member;</p> <p>7 as a result of the operation of section 459F(1) of the Corporations Act, a Group Member is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);</p> <p>8 any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a Group Member; or</p> <p>9 any similar event analogous to or having a substantially similar effect to any of the events specified in paragraphs 1 to 8, above, occurs in relation to any Group Member under the laws of any applicable jurisdiction.</p>
<b>Insurance Policy</b>	in respect of a Group Member, an insurance policy required to be held by it under clause 4.23.
<b>Intellectual Property Rights</b>	all patents, trade marks, service marks, designs, copyright, business names, trade secrets, know how and other intellectual property rights and interests (in each case whether registered under any statute or not).
<b>Intercreditor Deed</b>	the intercreditor deed dated on or about the date of this deed between, among others, the Company and the Security Trustee.
<b>Interest Cover Ratio</b>	<p>on any date, the ratio of A:B, where:</p> <p>1 'A' is EBITDA of the Group for the 12 month period ending on that date; and</p> <p>2 'B' is Interest Expense incurred by Group Members during the relevant period (but not including Interest Expense incurred on transactions between Transaction Parties or Excluded Interest), less Interest Income of the Group during that period,</p> <p>determined in each case for the Group on a consolidated basis.</p>
<b>Interest Expense</b>	<p>for a period, an amount equal to all interest and other financing costs incurred by the Group over that period, calculated on a consolidated basis including:</p> <p>1 the face amount of Bills or other financial instruments drawn, issued, endorsed or accepted by a Group Member (but not reliquefaction bills)</p>

	<p>less their net proceeds after discount;</p> <p>2 the interest component of payments in respect of Finance Lease obligations; and</p> <p>3 all line, facility, letter of credit, guarantee and similar fees and all fees and other amounts of a regular or recurring nature payable in relation to Financial Indebtedness but not establishment, arrangement and other fees payable once only on the initial provision of financial accommodation and agency fees,</p> <p>and adjusted for the net amount of any difference payments by or to a Group Member under any interest rate Hedging Agreement, net payments by a Group Member under an interest rate Hedging Agreement being added to Interest Expense and net payments to a Group Member under an interest rate Hedging Agreement being subtracted from Interest Expense.</p>
<b>Interest Income</b>	<p>for a period, means all amounts of interest and amounts in the nature of interest or of similar effect to interest received in cash in that period by any Group Member but not including:</p> <p>1 any such amounts earned on transactions between the Group Members; and</p> <p>2 any adjustment for difference payments by or to a Group Member under an interest rate Hedging Agreement.</p>
<b>Interest Payment Date</b>	<p>the last day of an Interest Period and, if an interest Period is longer than 3 months, each date during that Interest Period falling at 3 monthly intervals after the first day of that Interest Period.</p>
<b>Interest Period</b>	<p>a period selected or determined to be an Interest Period under a Secured Facility Agreement.</p>
<b>Key Management Contracts</b>	<p>each management contract in respect of a Key Manager.</p>
<b>Key Manager</b>	<p>1 Matthew Horton (Chief Executive Officer);</p> <p>2 Peter Ryan (Chief Operating Officer);</p> <p>3 Ly-Eng Ea (Chief Financial Officer); or</p> <p>4 any replacement of a Key Manager appointed in the manner contemplated by the definition of 'Review Event'.</p>
<b>Lease</b>	<p>a lease, charter, hire purchase, hiring agreement or any other agreement under which any property is or may be used or operated by a person other than the owner.</p>
<b>Lessee Cure Period</b>	<p>in relation to a Lessee Default, any grace period allowed under the relevant Childcare Centre Lease to remedy that Lessee Default before the Lessor becomes entitled to terminate, rescind or accept a repudiation of, or suspend the performance of any of its obligations under, that Childcare Centre Lease.</p>

<b>Lessee Default</b>	<p>the occurrence of:</p> <ol style="list-style-type: none"> <li>1 any breach of, or default under, a Childcare Centre Lease by, or in relation to, the Company; or</li> <li>2 any other event or circumstance,</li> </ol> <p>which entitles, or which with the giving of notice, the expiration of time or the satisfaction or non-satisfaction of any condition would entitle, a Lessor to terminate, rescind or accept repudiation of, or suspend the performance of any of its obligations under, a Childcare Centre Lease.</p>
<b>Lessor</b>	in respect of a Childcare Centre Lease, the lessor under that Childcare Centre Lease.
<b>Lessor Consent Deed</b>	<ol style="list-style-type: none"> <li>1 an Austock Consent Deed;</li> <li>2 an Orchard Consent Deed; or</li> <li>3 any other consent deed between a lessor of a Childcare Centre Lease, the Company and the Security Trustee where the lessor, among other things, consents to the Security over that Childcare Centre Lease.</li> </ol>
<b>Leverage Ratio</b>	<p>means either:</p> <ul style="list-style-type: none"> <li>• during the Senior Period, on any date, the ratio of A:B, where: <ol style="list-style-type: none"> <li>1 'A' is all outstanding Financial Indebtedness of the Group on that date under the Senior Facility Agreement or any other Senior Finance Document other than the Principal Outstanding under Facility C (Senior Facility) and Principal Outstanding under Facility D (Senior Facility);</li> <li>2 'B' is EBITDA of the Group for the 12 month period ending on that date;</li> </ol> </li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>• following the Senior Period, on any date, the ratio of A:B, where: <ol style="list-style-type: none"> <li>1 'A' is all outstanding Financial Indebtedness of the Group on that date under the Commonwealth Facility Agreement;</li> <li>2 'B' is EBITDA of the Group for the 12 month period ending on that date;</li> </ol> </li> </ul> <p>as the case may be.</p>
<b>Loan Note Deed Poll (Members' Deeply Subordinated Notes)</b>	the deed so entitled granted by the Company in favour of each Members' Deeply Subordinated Noteholder dated on or about the date of this deed.
<b>Loan Note Deed Poll (Members' Subordinated Notes)</b>	the deed so entitled granted by the Company in favour of each Members' Subordinated Noteholder dated on or about the date of this deed.
<b>Loan Note Deed Poll (Social Capital Notes)</b>	the deed so entitled granted by the Company in favour of each Social Capital Noteholder dated on or about the date of this deed.
<b>Loss</b>	any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment.

<b>Marketable Securities</b>	'marketable securities' as defined in section 9 of the Corporations Act.
<b>Material Adverse Effect</b>	a material adverse effect on: <ol style="list-style-type: none"> <li>1 any Group Member's ability to perform any of its obligations under any Transaction Document;</li> <li>2 the enforceability or priority of a Transaction Document; or</li> <li>3 the assets, business or operations of the Group taken as a whole.</li> </ol>
<b>Material Contract</b>	<ol style="list-style-type: none"> <li>1 a Key Management Contract;</li> <li>2 a Childcare Centre Lease;</li> <li>3 a Childcare Licence;</li> <li>4 a Bank Guarantee Governing Deed; or</li> <li>5 any other document that the Company and the Secured Creditors agree in writing is a Material Contract for the purposes of this deed.</li> </ol>
<b>Material Document</b>	<ol style="list-style-type: none"> <li>1 an Acquisition Document;</li> <li>2 a Material Contract;</li> <li>3 a Note Document; or</li> <li>4 any other document which the Company and each Secured Creditor agree is a Material Document for the purposes of this deed.</li> </ol>
<b>Members' Deeply Subordinated Notes Documents</b>	<ol style="list-style-type: none"> <li>1 the Subscription Deed (Members' Deeply Subordinated Notes); or</li> <li>2 the Loan Note Deed Poll (Members' Deeply Subordinated Notes).</li> </ol>
<b>Members' Deeply Subordinated Noteholder</b>	each of: <ol style="list-style-type: none"> <li>1 Mission Australia;</li> <li>2 Social Ventures Australia Limited;</li> <li>3 The Benevolent Society; and</li> <li>4 Brotherhood of St Laurence,</li> </ol> and any person who either holds or has issued to them a Note issued pursuant to the Members' Deeply Subordinated Notes Documents.
<b>Members' Subordinated Notes Documents</b>	<ol style="list-style-type: none"> <li>1 the Subscription Deed (Members' Subordinated Notes); or</li> <li>2 the Loan Note Deed Poll (Members' Subordinated Notes).</li> </ol>
<b>Members' Subordinated Noteholder</b>	each of: <ol style="list-style-type: none"> <li>1 Mission Australia;</li> <li>2 The Benevolent Society; and</li> <li>3 Brotherhood of St Laurence,</li> </ol> and any person who either holds or has issued to them a Note issued

	pursuant to the Members' Subordinated Notes Documents.
<b>Net Capital Expenditure</b>	<p>all Capital Expenditure of the Group less any Capital Expenditure of the Group funded from:</p> <ol style="list-style-type: none"> <li>1 the proceeds of an insurance claim in relation to the Group;</li> <li>2 the proceeds from an Acquisition Claim; or</li> <li>3 the proceeds from the Disposal of an asset, (but only to the extent the proceeds referred to in 1, 2 or 3 above are not included in EBITDA); and</li> <li>4 any Subordinated Debt provided after Financial Close.</li> </ol>
<b>New Senior Creditor</b>	has the meaning given to that term in the Security Trust Deed.
<b>New Senior Creditor Representative</b>	has the meaning given to that term in the Security Trust Deed.
<b>New Senior Finance Document</b>	has the meaning given to that term in the Security Trust Deed.
<b>Net Tax Benefit</b>	any amount that is retained in the Group in cash as a result of any exemption or concession of the Company from obligations to pay either income or payroll Tax in Australia or any state or territory of Australia.
<b>Non-Transferring Lease Centre</b>	has the meaning given to that term in the Sale Agreement.
<b>Note</b>	for a Note Document, has the meaning given to 'Loan Note' in the relevant Note Documents.
<b>Note Document</b>	<ol style="list-style-type: none"> <li>1 a Social Capital Notes Document;</li> <li>2 a Members' Deeply Subordinated Notes Document; or</li> <li>3 a Members' Subordinated Notes Document.</li> </ol>
<b>Noteholder</b>	<ol style="list-style-type: none"> <li>1 a Members' Deeply Subordinated Noteholder;</li> <li>2 a Members' Subordinated Noteholder; or</li> <li>3 a Social Capital Noteholder.</li> </ol>
<b>Officer</b>	<ol style="list-style-type: none"> <li>1 in relation to a Group Member, a director or a secretary, or a person notified to be an authorised officer, of the Group Member; or</li> <li>2 in relation to a Secured Creditor, any person whose title includes the word 'Director', 'Managing Director', 'Manager' or 'Vice President', 'Secretary', 'Deputy Secretary', 'Group Manager', or 'Branch Manager', and any other</li> </ol>

	person appointed by the Secured Creditor to act as its authorised officer for the purposes of this deed.
<b>Orchard</b>	Orchard Capital Investments Limited as responsible entity for the Orchard Childcare Property Fund and includes Sandhurst Trustees Limited as custodian of Orchard Childcare Property Fund (if applicable).
<b>Orchard Bank Guarantee Governing Deed</b>	a deed titled 'Bank Guarantee Governing Deed' dated on or about the date of this deed between the Company and Orchard.
<b>Orchard Consent Deed</b>	a deed dated on or about the date of this deed between, among others Orchard and the Security Trustee in respect of any Childcare Centre Leases in respect of which Orchard is the Lessor.
<b>Permitted Acquisition</b>	<ol style="list-style-type: none"> <li>1 the Acquisition;</li> <li>2 any acquisition of an asset that: <ul style="list-style-type: none"> <li>• is made in the ordinary course of business of the Group Member;</li> <li>• is compatible with the Core Business; and</li> <li>• where the consideration payable by the Group Member with respect to all such acquisitions since Financial Close is less than \$1,000,000; or</li> </ul> </li> <li>3 any other acquisition of an asset or an interest in a business or company approved by each Secured Creditor in writing.</li> </ol>
<b>Permitted Disposal</b>	<ol style="list-style-type: none"> <li>1 the expenditure of cash (as long as the transaction in respect of which the expenditure is made is not otherwise prohibited under this deed or any other Transaction Document) and the disposal of any other asset is made in the ordinary course of day to day trading;</li> <li>2 the Disposal of an asset by a Group Member to another Group Member which is a Security Provider;</li> <li>3 the Disposal of obsolete or redundant vehicles, plant and equipment and on arm's length terms;</li> <li>4 any other Disposal of assets not already provided for in paragraphs 1 to 3 above where the aggregate value of assets disposed of by any Group Member does not exceed \$1,000,000 in the 12 months ending on the date of the relevant Disposal; or</li> <li>5 any other Disposal made with the prior written consent of each Secured Creditor.</li> </ol>
<b>Permitted Encumbrance</b>	<ol style="list-style-type: none"> <li>1 any Encumbrance created under the Securities;</li> <li>2 any right of set off or combination arising by operation of law or practice over money deposited with a bank or financial institution in the ordinary course of a Group Member's business and where such bank or financial institution is also a Secured Creditor;</li> <li>3 any lien arising by operation of law and in the ordinary course of business of an Group Member's business provided the debt it secures is paid when</li> </ol>

	<p>due or contested in good faith by appropriate means;</p> <p>4 any Encumbrance created over an asset the subject of a Permitted Finance Lease in accordance with paragraph 3 of the definition of Permitted Financial Indebtedness; and</p> <p>5 any Encumbrance created with the prior written consent of each Secured Creditor,</p> <p>which affects or relates to any of the assets of any Group Member.</p>
<b>Permitted Finance Lease</b>	any Finance Lease where the lessor in respect of such Finance Lease may only have recourse to the asset leased under such Finance Lease and, on an unsecured basis only, to a Group Member.
<b>Permitted Financial Accommodation</b>	<p>1 any financial accommodation or any Guarantee provided by a Group Member in respect of financial accommodation with the prior written consent of each Secured Creditor;</p> <p>2 any financial accommodation or any Guarantee provided by a member of the Guarantor Group to another member of the Guarantor Group;</p> <p>3 any financial accommodation or any Guarantee provided by a Group Member to secure the obligations of another Group Member where the incurring of those obligations is otherwise permitted under this deed; or</p> <p>4 the \$950,000 unsecured Financial Indebtedness owing by Mediasphere Holdings Pty Limited (ACN 120 008 924) (<b>Mediasphere</b>) to the Company as at Financial Close, so long as the total amount of unsecured Financial Indebtedness owing by Mediasphere does not exceed \$950,000 and the terms of such Financial Indebtedness do not change from those terms in place on the date of this deed.</p>
<b>Permitted Financial Indebtedness</b>	<p>1 any Financial Indebtedness incurred or permitted to be incurred under any Transaction Document;</p> <p>2 any Subordinated Debt;</p> <p>3 Financial Indebtedness under Permitted Finance Leases up to a maximum principal amount at any time of \$5,000,000;</p> <p>4 Financial Indebtedness owing by a Group Member to a Security Provider;</p> <p>5 any Financial Indebtedness owed to a person under a Hedging Agreement which is permitted to be entered into under clause 4.24;</p> <p>6 a Guarantee pursuant to Part 2M.6 of the Corporations Act (provided that each Group Entity (as defined in the relevant Guarantee) is a Security Provider);</p> <p>7 any unsecured Financial Indebtedness under any unsecured working capital facility provided which replaces Facility C (Senior Facility) where the Facility C Commitment is cancelled or is reduced after an annual review, up to a maximum amount of \$15,000,000 (less any remaining Facility C Commitment after the cancellation or reduction);</p> <p>8 any financial accommodation or any Guarantee provided by a Group Member to secure the obligations of another Group Member where the incurring of those obligations is otherwise permitted under this deed;</p> <p>9 any bond paid to the Company or a Group Member under the Child Care Management System administered by the Department of Education, Employment and Workplace Relations; or</p> <p>10 any other Financial Indebtedness not exceeding \$5,000,000 in aggregate</p>



	for the Group as a whole at any time.
<b>Pollutant</b>	a pollutant, contaminant, dangerous, toxic or hazardous substance, petroleum or petroleum product, chemical, solid, special liquid, industrial or other waste.
<b>Potential Event of Default</b>	any thing which would become an Event of Default on the giving of notice (whether or not notice is actually given), the expiry of time, the satisfaction or non-satisfaction of any condition, or any combination of the above.
<b>Power</b>	any right, power, authority, discretion or remedy conferred on a Secured Creditor, a Receiver or an Attorney by any Transaction Document or any applicable law.
<b>Principal Outstanding</b>	at any time: <ol style="list-style-type: none"> <li>1 where used in respect of a Facility, the aggregate principal amount of all outstanding Funding Portions under that Facility at that time; or</li> <li>2 where used without reference to a Facility, the aggregate principal amount of all outstanding Funding Portions under all Facilities at that time.</li> </ol>
<b>Property Mortgage</b>	the real property mortgage granted by the Company in favour of the Security Trustee on or about the date of this deed over the property comprised in Lot 376 in Registered Plan 846620, Title Reference 18376087 and known as 208 Eagle Street, Collingwood Park QLD 4301.
<b>Receiver</b>	a receiver or receiver and manager appointed under a Security.
<b>Related Body Corporate</b>	a related body corporate as defined in section 50 of the Corporations Act.
<b>Relevant Documents</b>	<ol style="list-style-type: none"> <li>1 a Material Document; or</li> <li>2 a Transaction Document.</li> </ol>
<b>Retiring Guarantor</b>	has the meaning given in clause 6.2.
<b>Review Event</b>	any event, whether or not it is within the control of a Group Member, where: <ol style="list-style-type: none"> <li>1 a Key Manager ceases to hold the office nominated for it in the definition of Key Manager and such Key Manager is not replaced within 90 days by a person who, in the reasonable opinion of the Secured Creditors having regard to any relevant advice from industry experts or consultants, has the skills, qualifications and experience to carry out the relevant functions previously carried out by such Key Manager;</li> <li>2 more than: <ul style="list-style-type: none"> <li>• 15% in any 12 month period; or</li> </ul> </li> </ol>

	<ul style="list-style-type: none"> <li>• 30% during the term of this deed,</li> </ul> <p>of the properties by COP leased by the Austock Entities to the Company are Disposed of by the relevant Austock Entity (or relevant Austock Entities) during the relevant period in circumstances where a replacement consent deed on no worse terms from the perspective of the Secured Creditors than the Austock Consent Deed is not entered into with the new landlord of the property within 90 days of the relevant Disposal; or</p> <p>3 more than:</p> <ul style="list-style-type: none"> <li>• 15% in any 12 month period; or</li> <li>• 30% during the term of this deed,</li> <li>• of the properties by COP leased by the Orchard to the Company are Disposed of by Orchard during the relevant period and a replacement consent deed on no worse terms from the perspective of the Secured Creditors than the Orchard Consent Deed is not entered into with the new landlord of the property within 90 days of the relevant Disposal;</li> </ul> <p>4 one or more Childcare Centre Leases of Childcare Centres representing, whether alone or in aggregate, 5% or more of COP are terminated in any 12 month period without the consent of the Secured Creditors;</p> <p>5 any person (other than a Secured Creditor claiming in respect of this Review Event) fails to perform any other undertaking or obligation of it under:</p> <ul style="list-style-type: none"> <li>• a Subordination Deed Poll;</li> <li>• any Lessor Consent Deed with either an Austock Entity or Orchard, unless the Secured Creditors (acting reasonably) are satisfied that the failure to perform the relevant obligations would not be likely to have a prejudicial effect on the interests of the Secured Creditors;</li> <li>• Bank Guarantee Governing Deed, unless the Secured Creditors (acting reasonably) are satisfied that the failure to perform the relevant obligations would not be likely to have a prejudicial effect on the interests of the Secured Creditors; or</li> <li>• an Acquisition Document, unless the Secured Creditors (acting reasonably) are satisfied that the failure to perform the relevant obligations would not be likely to have a prejudicial effect on the interests of the Secured Creditors.</li> </ul>
<p><b>Sale Agreement</b></p>	<p>the document titled 'Business Sale Deed' dated 22 December 2009 between the persons named in it as vendors, the Company as purchaser and Christopher John Honey, Murray Campbell Smith and John Patrick Cronin as receivers as amended pursuant to a Deed of Variation to Business Sale Deed dated on or about the date of this deed.</p>
<p><b>Same Day Funds</b></p>	<p>immediately available and freely transferable funds.</p>
<p><b>Secured Creditors</b></p>	<p>each Beneficiary as defined in the Security Trust Deed.</p>
<p><b>Secured Facility Agreement</b></p>	<p>1 the Senior Facility Agreement; or</p> <p>2 the Commonwealth Facility Agreement; or</p> <p>3 any new Senior Finance Document with the words 'Facility Agreement' in the title.</p>

<b>Secured Hedging Agreement</b>	a swap or other agreement to hedge against interest rate exposure entered into by the Company with a Senior Secured Creditor which complies with clause 4.24.
<b>Secured Hedge Counterparty</b>	a Senior Secured Creditor that has entered into a Secured Hedging Agreement with the Company.
<b>Secured Moneys</b>	<p>all debts and monetary liabilities of each Group Member to each Secured Creditor under or in relation to any Transaction Document and in any capacity, irrespective of whether the debts or liabilities:</p> <ol style="list-style-type: none"> <li>1 are present or future;</li> <li>2 are actual, prospective, contingent or otherwise;</li> <li>3 are at any time ascertained or unascertained;</li> <li>4 are owed or incurred by or on account of any Group Member alone, or severally or jointly with any other person;</li> <li>5 are owed to or incurred for the account of any Secured Creditor alone, or severally or jointly with any other person;</li> <li>6 are owed to any other person as agent (whether disclosed or not) for or on behalf of any Secured Creditor;</li> <li>7 are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;</li> <li>8 are owed to or incurred for the account of any Secured Creditor directly or as a result of: <ul style="list-style-type: none"> <li>• the assignment or transfer to any Secured Creditor of any debt or liability of any Group Member (whether by way of assignment, transfer or otherwise); or</li> <li>• any other dealing with any such debt or liability;</li> </ul> </li> <li>9 are owed to or incurred for the account of a Secured Creditor before the date of this deed or before the date of any assignment of this deed to any Secured Creditor by any other person or otherwise; or</li> <li>10 comprise any combination of the above,</li> </ol> <p>subject always to clause 1.12 of the Security Trust Deed.</p>
<b>Secured Property</b>	the property subject to a Security.
<b>Security</b>	<p>each of:</p> <ol style="list-style-type: none"> <li>1 the Borrower Charge;</li> <li>2 the Property Mortgage; or</li> <li>3 any other Encumbrance granted by a Group Member to secure any of the Secured Moneys, including any mortgage of a Childcare Centre Lease entered into in accordance with the requirements of this deed or any other Transaction Document.</li> </ol>
<b>Security Provider</b>	a person who has granted a Security.

<b>Security Trust</b>	has the meaning given to that term in the Security Trust Deed.
<b>Security Trust Deed</b>	the security trust deed dated on or about the date of this deed between, among others, the Company and the Security Trustee.
<b>Security Trust Deed Accession Deed</b>	<ol style="list-style-type: none"> <li>1 the 'Accession Deed (Beneficiary)' as defined in the Security Trust Deed; or</li> <li>2 the 'Accession Deed (Security Provider)' as defined in the Security Trust Deed .</li> </ol>
<b>Selection Date</b>	the last day of an Interest Period.
<b>Senior Commitment Letter</b>	the letter from National Australia Bank Limited to the Company dated 17 December 2009.
<b>Senior Default</b>	<ol style="list-style-type: none"> <li>1 any Default; or</li> <li>2 any event of default, potential event of default or review event under any Senior Finance Document which any Senior Secured Creditor and the Company agree in writing is a 'Senior Default' for the purposes of this deed.</li> </ol>
<b>Senior Event of Default</b>	<ol style="list-style-type: none"> <li>1 any Event of Default; or</li> <li>2 any event of default, potential event of default or review event under any Senior Finance Document which a Senior Secured Creditor and the Company agree in writing is a 'Senior Event of Default' for the purposes of this deed.</li> </ol>
<b>Senior Facility Agreement</b>	the loan facility agreement between, amongst others, National Australia Bank Limited and the Company dated on or about the date of this deed.
<b>Senior Finance Document</b>	<ol style="list-style-type: none"> <li>1 this deed;</li> <li>2 the Senior Facility Agreement;</li> <li>3 a Fee Letter to which a Senior Secured Creditor is expressed to be a party;</li> <li>4 the Senior Commitment Letter;</li> <li>5 a Security;</li> <li>6 the Security Trust Deed;</li> <li>7 the Intercreditor Deed;</li> <li>8 a Subordination Deed Poll;</li> <li>9 a Collateral Security;</li> <li>10 a Lessor Consent Deed;</li> <li>11 a Security Trust Deed Accession Deed;</li> </ol>

	<p>12 a Secured Hedging Agreement;</p> <p>13 a 'Substitution Certificate' under and as defined in the Senior Facility Agreement;</p> <p>14 a 'Senior Finance Document' as defined in any New Senior Finance Document;</p> <p>15 any other agreement which the Company and the Senior Agent or the Company and the Security Trustee agree in writing is a Senior Finance Document, or</p> <p>16 any undertaking or agreement entered into or given under any of the above. It includes a written undertaking by the Company or a Group Member to a Senior Secured Creditor under or in relation to any of the above documents</p>
<b>Senior Financier</b>	a 'Financier' as defined in the Senior Facility Agreement.
<b>Senior Period</b>	is defined in the Security Trust Deed.
<b>Senior Repayment</b>	<p>1 the payments required to be made in accordance with clauses 7.2 (Scheduled repayments – Facility A) and 7.4 (Mandatory Prepayments – Free Cash Flow) to 7.6 (Mandatory Prepayments – Change of Control, change of business, listing or disposal) (inclusive) of the Senior Facility Agreement; and</p> <p>2 any repayments of principal required to be made by the Company under any Senior Finance Document.</p>
<b>Senior Secured Creditor</b>	<p>1 a 'Finance Party' as defined in the Senior Facility Agreement; or</p> <p>2 a 'Finance Party' as defined in any New Senior Finance Document.</p>
<b>Social Capital Debt</b>	amounts owing actually or contingently by the Company in respect of the Social Capital Notes.
<b>Social Capital Notes Documents</b>	<p>1 the Subscription Deed (Social Capital Notes); and</p> <p>2 the Loan Note Deed Poll (Social Capital Notes).</p>
<b>Social Capital Noteholder</b>	any person who either holds or has issued to them a Note issued pursuant to the Social Capital Notes Documents.
<b>Social Capital Notes</b>	the notes issued by the Company which are constituted under the Loan Note Deed Poll (Social Capital Notes) in respect of funding of the Social Capital Debt.
<b>Social Purpose Investment</b>	amounts that are to be invested by the Company in social improvements and projects in relation to the business of the Group

<b>Sponsor</b>	<ol style="list-style-type: none"> <li>1 Mission Australia;</li> <li>2 Social Ventures Australia Limited;</li> <li>3 The Benevolent Society;</li> <li>4 Brotherhood of St Laurence; and</li> <li>5 Robin Crawford.</li> </ol>
<b>Subscription Deed (Members' Deeply Subordinated Notes)</b>	each deed so entitled between the Company and a Members' Deeply Subordinated Noteholder dated on or about the date of this deed.
<b>Subscription Deed (Members' Subordinated Notes)</b>	each deed so entitled between the Company and a Members' Subordinated Noteholder dated on or about the date of this deed.
<b>Subscription Deed (Social Capital Notes)</b>	each deed so entitled between the Company and a Social Capital Noteholder dated on or about the date of this deed.
<b>Subordinated Debt</b>	<ol style="list-style-type: none"> <li>1 any Financial Indebtedness of the Group under the Members' Deeply Subordinated Note Documents or the Members' Subordinated Notes Documents;</li> <li>2 the Social Capital Debt; or</li> <li>3 any other Financial Indebtedness of the Group which is subordinated to the Secured Moneys in a manner acceptable to the Secured Creditors (acting reasonably).</li> </ol>
<b>Subordination Deed Poll</b>	<ol style="list-style-type: none"> <li>1 the subordination deed poll dated on or about the date of this deed to be executed by the Company in its personal capacity and as agent and attorney on behalf of the Noteholders; or</li> <li>2 any document which subordinates any Subordinated Debt to the Secured Moneys in a manner acceptable to the Secured Creditors.</li> </ol>
<b>Subsidiary</b>	a subsidiary as defined in section 46 of the Corporations Act.
<b>Sunset Date</b>	31 December 2010.
<b>Tax</b>	<ol style="list-style-type: none"> <li>1 any tax including the GST, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or</li> <li>2 any income, stamp or transaction duty, tax or charge,</li> </ol> <p>which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.</p>
<b>Tax Act</b>	the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth), as applicable.

<b>Tax Invoice</b>	includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.
<b>Title Document</b>	any original, duplicate or counterpart certificate or document of title.
<b>Total Assets</b>	in respect of the Group or the Guarantor Group, as the case may be, on any date, the total assets of the Group or the Guarantor Group (as the case may be) as shown in the most recent Financial Report for the period ending on that date (or, in the case of the Guarantor Group, if not shown separately in the most recent Financial Report, the total assets of the Guarantor Group determined with reference to that most recent Financial Report and in accordance with the Accounting Standards).
<b>Transaction Document</b>	<ol style="list-style-type: none"> <li>1 a Commonwealth Finance Document; or</li> <li>2 a Senior Finance Document</li> </ol>
<b>Transaction Party</b>	<ol style="list-style-type: none"> <li>1 the Company;</li> <li>2 a Guarantor; or</li> <li>3 a Security Provider.</li> </ol>
<b>Transition Services Deed</b>	the document titled 'Transition Services Deed' and dated 22 December 2009 between the persons named in it as vendors, the Company as purchaser and Christopher John Honey, Murray Campbell Smith and John Patrick Cronin as receivers.
<b>Waiver</b>	any consent, agreement, approval, waiver or release.
<b>Working Capital</b>	<ol style="list-style-type: none"> <li>1 the sum of: <ul style="list-style-type: none"> <li>• debtors less provision for doubtful debts;</li> <li>• sundry debtors;</li> <li>• prepayments;</li> <li>• other current assets;</li> <li>• inventory less inventory reserve;</li> </ul> </li> <li>2 minus the sum of: <ul style="list-style-type: none"> <li>• accounts payable;</li> <li>• accrued compensation;</li> <li>• other accrued liabilities; and</li> <li>• accrued provisions.</li> </ul> </li> </ol>

### 1.3 Interpretation

In this deed headings and bold type are for convenience only and do not affect the interpretation of this deed and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) an expression suggesting or referring to a natural person or an entity includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.3(e) implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to, this deed and a reference to this deed includes any attachment, exhibit and schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document other than, in the case of any Transaction Document, any amendments, supplements, replacements or novations not permitted in accordance with the Transaction Documents;
- (i) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person, or death of a natural person;
- (j) a reference to a party to any document includes that party's successors and permitted assigns;
- (k) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits;
- (m) a reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind;



- (n) no provision of this deed may be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (o) a reference to a body, other than a party to this deed (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) references to time are to Sydney time;
- (q) a Default is 'continuing' or 'subsisting' if it has not been remedied or waived in writing by or on behalf of the Secured Creditors before action is taken in respect of it; and
- (r) 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 Transaction Document other than a failure or breach which:
  - (1) arises as a result of a breach of a Transaction Document by a person other than the Security Trustee and (subject to any provisions of the Transaction Documents which limit its liability in respect of the acts and omissions thereof) its directors, officers, employees, agents, delegates or attorneys;
  - (2) is in accordance with a lawful court order or direction or is required by law; or
  - (3) is in accordance with a proper instruction or direction of the Secured Creditors;
- (s) to the extent that this deed imposes obligations on Group Members at any time, each reference to a Group Member will be restricted to Group Members which are expressed to be a party to this deed at that time. Otherwise the relevant obligation will be taken to be an obligation of the Company to procure compliance by that Group Member with that obligation.

## 1.4 Inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

## 1.5 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

## 1.6 Accounting Standards

- (a) Subject to the remaining provisions of this clause 1.6, any accounting practice or concept relevant to this deed is to be construed or determined in accordance with the Accounting Standards as at the date of this deed.
- (b) The parties acknowledge that changes in the Accounting Standards after the date of this deed may make the operation of the Financial Undertakings, a defined term in clause 1.2 or another clause in a Transaction Document that refers to the Accounting Standards, inappropriate.
- (c) If the Company or a Secured Creditor considers that such a change has occurred and they notify the other party of that effect (the **Notification Date**), the Company and that Secured Creditors agree to negotiate with each other in good faith to attempt to agree to appropriate amendments to the affected clause or definition which take into account such change.
- (d) If the Company and all the Secured Creditors fail to agree on the appropriate amendments to the affected clause or definition within 20 Business Days (or such other period as may be agreed between the Company and the Secured Creditors) of the Notification Date, then any references to the Accounting Standards in this deed or the other relevant Transaction Document will be deemed to be a reference to the Accounting Standards as at the date of this deed.
- (e) Unless and until an agreement is reached under clause 1.6(c) in respect of this deed, the Guarantor Group will provide the Financial Reports, each Compliance Certificate and all other financial information required to be provided in accordance with this deed together with, in each case, any reconciliation statements (audited, where applicable) necessary to enable calculation of the Financial Undertakings and associated definitions based on the Accounting Standards prior to the relevant change occurring and those changes will be ignored for the purposes of the Financial Undertakings and the relevant definitions.

## 1.7 Security Trustee's limitation of liability protection

- (a) The Security Trustee enters into this deed and each other Transaction 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 deed or any other Transaction 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 1.7, this limitation of the Security Trustee's liability applies despite any other provision of this deed or any other Transaction 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 deed or any other Transaction Document.
- (c) Subject to paragraphs (d) and (e) of this clause 1.7, 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 1.7 or any similar provision in any other Transaction Document limits or adversely affects the powers of the Security Trustee or any Receiver in respect of any Secured Property.
- (e) This clause 1.7 will not apply to a liability of the Security Trustee to the extent that it is not satisfied because, under this deed or any other Transaction 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.

The Security Trustee does not have any obligations to any party under or in connection with this deed or any other Transaction Document, except as expressly provided in this deed and each other Transaction Document to which it is a party.

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

The Security Trustee is not obliged to do or not do anything in connection with this deed or any other Transaction 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 1.7;
- (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.

## **1.9 Secured Creditors and Secured Facility Agreements**

This deed is for the benefit of, and is enforceable by, each Secured Creditor from time to time in relation to each Secured Facility Agreement to which that Secured Creditor is expressed to be a party to and each other Transaction Document under which that Secured Creditor has rights, benefits or obligations.

## **1.10 Removal of benefit for particular Secured Creditor**

This deed ceases to be for the benefit of, and enforceable by, a Secured Creditor if at any time:

- (a) all Principal Outstanding and other Secured Moneys of that Secured Creditor have been Finally Paid (as defined in the Security Trust Deed); and
- (b) that Secured Creditor is not committed to providing further financial or other accommodation to any Group Member pursuant to any Transaction Document.

## **1.11 Senior Facility Agreement**

At any time prior to the repayment in full of the Secured Moneys owing to the Senior Secured Creditors under the Senior Facility Agreement, in relation to the Senior Facility Agreement:

- (a) any notice, consent, direction, opinion, approval, waiver, variation, agreement or communication which may be given, or which is required to be given, either by or to a Senior Financier under this deed (on the one hand) and any Group Member (on the other hand) may be given by, and shall be given to, the Senior Agent in accordance with the Senior Facility Agreement (on behalf of each such Senior Financier under the Senior Facility Agreement) and if so given, shall for the purposes of this deed, be regarded as having been given to or by each such Senior Financier;
- (b) the parties acknowledge and agree that the Senior Agent under the Senior Facility Agreement in giving any such notice, consent, approval, waiver, variation, direction, agreement or other communication, or forming any opinion, will be acting on the instructions of the Senior Financier under and in accordance with the Senior Facility Agreement, and references to 'acting reasonably', 'in the opinion', 'being satisfied' or similar expressions shall be construed accordingly and where used in connection with the Senior Agent shall be construed as referring to each of the Senior Financiers from whom the Senior Agent is required to obtain instructions in so acting. Each Group Member and each other Secured Creditor shall be entitled to assume in its dealings with the Senior Agent that the Senior Agent has the necessary authority to so act and to bind each Senior Financier under the Senior Facility Agreement, until such time as the Senior Agent notifies the Company and each other Secured Creditor in writing to the contrary; and
- (c) references in this deed to 'a Senior Secured Creditor' or 'the Senior Secured Creditor[s]' shall be construed accordingly.

## 1.12 Security Trust Deed

At any time prior to the repayment in full of the Secured Moneys owing to the Secured Creditors under the Senior Facility Agreement and the Commonwealth Facility Agreement:

- (a) any notice, consent, direction, opinion, approval, waiver, variation, agreement or communication which may be given, or which is required to be given, either by or to the Security Trustee under any Transaction Document (on the one hand) and any Group Member (on the other hand) may be given by, and shall be given to, the Security Trustee in accordance with the Security Trust Deed (on behalf of each such Beneficiary under the Security Trust Deed) and if so given, shall for the purposes of any Transaction Document, be regarded as having been given to or by each such Beneficiary;
- (b) the parties acknowledge and agree that the Security Trustee in giving any such notice, consent, approval, waiver, variation, direction, agreement or other communication, or forming any opinion, will be acting on the instructions of the Secured Creditors under and in accordance with the Security Trust Deed, and references to 'acting reasonably', 'in the opinion', 'in the reasonable opinion' 'being satisfied' or similar expressions shall be construed accordingly and where used in connection with the Security Trustee shall be construed as referring to each of the Secured Creditors from whom the Security Trustee is required to obtain instructions in so acting and not the Security Trustee itself;
- (c) each Group Member and each other Secured Creditor shall be entitled to assume in its dealings with the Security Trustee that the Security Trustee has the necessary authority to so act and to bind each Beneficiary under the Security Trust Deed, until such time as the Security Trustee notifies the Company and each other Secured Creditor in writing to the contrary; and

- (d) references in this deed to 'a Secured Creditor' or 'the Secured Creditor[s]' shall be construed accordingly.

### 1.13 Waivers

Until the Senior Discharge Date (as defined in the Security Trust Deed), and subject to clause 1.18, the Commonwealth consents to, and will be bound by, any Waiver given at any time by the Security Trustee, the Senior Agent, a Senior Creditor or any Receiver or Attorney under any Senior Finance Document or this deed (and any such Waiver given in respect of a provision in any Senior Finance Document will be taken also to be given in relation to the corresponding or substantially similar provisions in the Commonwealth Finance Documents) as set out, and subject to the exceptions and qualifications to, clause 3.4 of the Intercreditor Deed

### 1.14 Amendments

- (a) This deed may only be amended, replaced, novated or restated by a document executed by, or with the written consent of, all the Secured Creditors (as at the date of the proposed amendment).
- (b) Subject to the subordination and priority arrangements between the parties, paragraph (a) above does not limit between the particular Secured Creditors and the Company who are party to a particular Transaction Document from separately agreeing:
- (1) as to what extent the provisions of this deed are incorporated by reference into that Transaction Document and whether and to what extent such provisions are overridden by the provisions of that Transaction Document; or
  - (2) any Waiver of or in respect of any provision of this deed.

### 1.15 Personal Property Securities (PPS) Law

- (a) If:
- (1) a PPS Law applies, or will at a future date apply to any of the Transaction Documents or any of the transactions contemplated by them, or a Secured Creditor determines that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and
  - (2) in the opinion of the Security Trustee (acting reasonably), the PPS Law:
    - (A) adversely affects or would adversely affect any Secured Creditor's security position or the rights or obligations of a Secured Creditor under or in connection with the Transaction Documents; or
    - (B) enables or would enable any Secured Creditor's security position to be improved without adversely affecting the Company in a material respect,

the Security Trustee may give notice to the Company requiring the Company to do anything (including amending any Transaction Document or executing any new Transaction Document) that in the Security Trustee's opinion (acting reasonably) is necessary to ensure

that, to the maximum possible extent, the Secured Creditors' security position, and rights and obligations, are not adversely affected as contemplated by clause 1.15(a)(2)(A) (or that any such adverse effect is overcome), or that the Secured Creditors' security position is improved as contemplated in clause 1.15(a)(2)(B). The Company must comply with the requirements of that notice within the time stipulated in the notice provided that such time period is reasonable in the circumstances.

- (b) In this clause 1.15, **PPS Law** means:
- (1) the *Personal Property Securities Act 2009* (Cth) (**PPS Act**);
  - (2) any regulations made at any time under the PPS Act;
  - (3) any provision of the PPS Act or regulations referred to in clause 1.15(b)(2);
  - (4) any amendment to any of the above, made at any time; or
  - (5) any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in clauses 1.15(c)(1) to 1.15(c)(4).

## 1.16 Several obligations and rights of Secured Creditors

- (a) The obligations and rights of the Secured Creditors under each Transaction Document are several.
- (b) Failure of a Secured Creditor to perform its obligations under a Transaction Document does not relieve any other Secured Creditor from any of its obligations under a Transaction Document.
- (c) No Secured Creditor is responsible for the obligations of any other Secured Creditor under a Transaction Document.
- (d) Each Secured Creditor may separately enforce its rights under any Transaction Document, unless a Transaction Document provides otherwise.

## 1.17 Capacity of Senior Agent

The Senior Agent enters into, and holds the benefit of, this deed as agent for the Senior Financiers from time to time under and in accordance with the Senior Facility Agreement. Each Senior Financier is bound by this deed as a principal. The obligations and liabilities of the Senior Agent under or in connection with this deed are limited and protected to the extent set out in the Senior Facility Agreement. The Senior Agent binds all Senior Financiers in accordance with clause 16.4 of the Senior Facility Agreement.

## 1.18 Capacity of the Commonwealth

- (a) The Commonwealth enters into this deed only in its capacity as 'Financier' under the Commonwealth Facility 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 deed 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 paragraph (a).

## 2 Conditions precedent

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### 2.1 Conditions precedent to initial Funding Portion

A Secured Creditor is not obliged to provide any Funding Portion under any Secured Facility Agreement, until that Secured Creditor has received all of the following in form and of substance satisfactory to that Secured Creditor (acting reasonably, with respect to paragraphs (e), (k), (l), (q) and (s) below):

- (a) **Officer's certificate:** an officer's certificate in the form of Schedule 3 signed by a director or company secretary of the Company and given in respect of the Company and dated no more than 5 Business Days before the first Funding Date;
- (b) **Transaction Documents:** originals of each Transaction Document which can be executed before the first Funding Date, duly executed by all parties to them other than the relevant Secured Creditor and, where applicable:
  - (1) duly stamped or, if not duly stamped, evidence satisfactory to that Secured Creditor that they will be duly stamped; and
  - (2) in registrable form together with all executed documents necessary to register them;
- (c) **Material Documents:** copies of all Material Documents (other than any Material Contract referred to in items 1 to 3 (inclusive) of the definition of that term in clause 1.1), duly executed and, where applicable, duly stamped or, if not duly stamped, evidence satisfactory to that Secured Creditor that they will be duly stamped, along with evidence that there is no event of default or potential event of default (however so described) under a Material Document;
- (d) **Assignment of Childcare Centre Leases:** evidence that each Childcare Centre Lease where an Austock Entity or Orchard is the Lessor has been assigned to the Company on or before Financial Close;
- (e) **Notice of Security:** evidence that each Lessor under each Childcare Centre Lease that has been transferred (by way of assignment or entry into a new lease with the relevant landlord) to the Company (or will be transferred to the Company on or before Financial Close) under the Sale Agreement has

consented to the rights of the Company under that Childcare Centre Lease being encumbered in favour of the Security Trustee;

- (f) **Title Documents:** evidence that each Title Document required to be lodged with the Security Trustee under any Transaction Document has been so lodged;
- (g) **Enquiries:** results of searches, enquiries and requisitions in respect of the Group Members, the Acquisition Assets and the Secured Property;
- (h) **Insurance:** evidence that each member of the Guarantor Group has complied with clause 4.23, including provision of certificates of currency for each insurance policy required to be held by any Group Member in accordance with that clause 4.23;
- (i) **Opinions:**
  - (1) in the case of the Senior Agent, an opinion from Freehills in respect of the Company and certain of the Transaction Documents addressed to and able to be relied on by the Secured Creditors from time to time;
  - (2) in the case of the Commonwealth, an opinion from Clayton Utz in respect of the Company and certain of the Transaction Documents addressed to and able to be relied on by the Secured Creditors from time to time;
  - (3) in the case of all Secured Creditors, an opinion from Gilbert + Tobin in respect of each Noteholder and the Subordination Deed Poll addressed to and able to be relied on by the Secured Creditors from time to time;
- (j) **Authorisations:** evidence that the Company has obtained all Authorisations required in connection with the entry into and performance of the Relevant Documents and necessary to operate the Core Business;
- (k) **Due Diligence Reports:** copies of the Due Diligence Reports and reliance letters entitling them to be relied on by the Secured Creditors from time to time;
- (l) **No Company MAC:** evidence that no material adverse change has occurred in the business, assets or financial condition of the Company or the Acquisition Assets taken as a whole since 17 December 2009;
- (m) **No Market MAC:** evidence that nothing has occurred or been threatened in relation to the debt markets since 17 December 2009 which has or is likely to have, in the reasonable opinion of each Secured Creditor, a Material Adverse Effect which would or would be reasonably likely to prevent the Secured Creditors from providing the Secured Moneys;
- (n) **No litigation:** evidence that there is no litigation, arbitration, mediation, conciliation, governmental, administrative or judicial actions, actual or threatened, that could be reasonably expected to restrain or prevent the completion of the Acquisition in accordance with the Acquisition Documents or would have or would be likely to have a Material Adverse Effect;
- (o) **Conditions:** evidence that:
  - (1) each of the conditions required to be satisfied for first Completion have been satisfied or will be satisfied contemporaneously with



- Completion (or waived by the Company with the consent of all Secured Creditors);
- (2) first Completion will occur on Financial Close;
  - (3) the amount to be deposited by the Company in the Retention Account (as defined in the Sale Agreement) together with any Deposit repayable by, and other amount paid to, the Vendor (each as defined in the Sale Agreement) is sufficient to fund the Purchase Price (as defined in the Sale Agreement) and acquire the Acquisition Assets;
  - (4) the Company has not agreed to acquire any Substantively Unconditional Centre (as defined in the Sale Agreement) on Financial Close without the prior written consent of each Secured Creditor;
- (p) **Business Plan:** a copy of the Business Plan;
  - (q) **Fees and expenses:** evidence that all fees and expenses due and payable by the Company under the Transaction Documents have been paid or will be paid on the first Funding Date out of the proceeds of the first Funding Portion;
  - (r) **Group Structure:** evidence that there has been no change in the ownership of the Group Members from that set out in Schedule 5;
  - (s) **Funds flow statement:** a statement setting out the payments to be made in connection with the Acquisition, the Transaction Documents and Material Documents (including equity subscriptions and payment of Acquisition Costs, but not including regular payments required to be made after Financial Close with respect to any Material Contract), the payers and the recipients of such payments and evidence that sufficient amounts are available to meet all Acquisition Costs and that the aggregate amounts drawn or to be drawn by way of cash advance under the Senior Facility Agreement and Commonwealth Facility Agreement on the first Funding Date will not exceed \$70,000,000;
  - (t) **Encumbrances:** all Encumbrances over the assets of the Group Members and the Acquisition Assets, other than Permitted Encumbrances, have been released or transferred to the Security Trustee;
  - (u) **Financial Liabilities:** evidence that all Financial Indebtedness of any Group Member which is not Permitted Financial Indebtedness has been fully and finally repaid;
  - (v) **Know your client:** documentation and other evidence requested by that Secured Creditor in relation to each Group Member to satisfy the 'know your customer', 'know your client', 'client vetting' or similar procedures of that Secured Creditor or any potential assignee or potential sub-participant who is considering contracting with that Secured Creditor in connection with a Transaction Document; and
  - (w) **Event of Default/Potential Event of Default:** evidence that no Event of Default or Potential Event of Default is subsisting.

## 2.2 Certified copies

An Officer of the Company must certify a copy of a document given to a Secured Creditor under clauses 2.1 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.

### 2.3 Benefit of conditions precedent

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

## 3 Representations and warranties

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### 3.1 Representations and warranties

The Company represents and warrants in favour of each Secured Creditor that:

- (a) **registration:** it is a corporation duly incorporated or registered (or taken to be registered) and validly existing under the applicable companies laws in its jurisdiction of incorporation or registration;
- (b) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has power and authority to enter into and perform its obligations under the Relevant Documents to which it is expressed to be a party;
- (d) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of the Relevant Documents to which it is expressed to be a party;
- (e) **binding obligations:** the Relevant Documents to which it is expressed to be a party constitute its legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable in accordance with their terms subject to laws generally affecting creditors' rights and to principles of equity;
- (f) **transaction permitted:** the execution, delivery and performance by it of the Relevant Documents to which it is expressed to be a party will not breach, or result in a contravention of:
  - (1) any law, regulation or Authorisation;
  - (2) its constitution or other constituent documents; or
  - (3) any Encumbrance or agreement which is binding it (including any Childcare Centre Lease),
 and will not result in:
  - (4) the creation or imposition of any Encumbrance on any of its assets other than Permitted Encumbrances; or
  - (5) the acceleration of the date for payment of any obligation under any agreement which is binding on it;
- (g) **financial assistance/related party:** the execution and delivery by it of the Transaction Documents to which it is a party or the participation by it in any transaction in connection with any Transaction Document will not contravene Part 2J.3 or Chapter 2E of the Corporations Act;

- (h) **compliance:** it is in compliance with all laws (including Environmental Laws) applicable to it where a breach would have or is likely to have a Material Adverse Effect;
- (i) **financial information:** its most recent Financial Reports or accounts which it has provided to that Secured Creditor under clause 4.1:
- (1) give a true and fair view of the financial condition, business operations and state of affairs of each Group Member as at the date they were prepared and the results of operations for the period they cover; and
  - (2) were prepared in accordance with applicable laws and the Accounting Standards;
- (j) **no change in affairs:** there has been no change in any Group Members' financial condition, business operations or state of affairs since the end of the accounting period for its most recent Financial Reports or accounts, referred to in clause 3.1(i) which has had or is likely to have a Material Adverse Effect;
- (k) **representations true:** each of its representations and warranties contained in the Relevant Documents (other than this deed) is correct and not misleading when made or repeated;
- (l) **disclosure:**
- (1) subject to any qualification made when the relevant information is provided all information (other than forecasts and projections) provided to that Secured Creditor by or on behalf of it or the Sponsor in relation to it or its assets, business or affairs, the Group or the Acquisition Assets, business or affairs, or the Relevant Documents, was (in the case of information provided in relation to the Group before Financial Close, to the best of its knowledge, information and belief) correct in all material respects and not misleading (by omission or otherwise) in a material respect as at the time it was provided;
  - (2) all forecasts and projections provided to that Secured Creditor by or on behalf of it or the Sponsor are based on reasonable grounds as at the date of this deed or, if later, at the time provided, and were prepared in good faith and with due care and skill and after careful enquiry and based on reasonable assumptions and recent historical information;
- (m) **no failure to disclose:** neither it nor the Sponsor has withheld from that Secured Creditor any information known to it (having made due enquiry) which is reasonable for it to assume could be material to the decision of that Secured Creditor to enter into the Transaction Documents to which that Secured Creditor is a party;
- (n) **legal and beneficial owner:** it is the legal and beneficial owner of:
- (1) its Secured Property; and
  - (2) the assets stated to be owned by it as stated in its most recent Financial Reports or accounts which it has provided to that Secured Creditor under clause 4.1;

- (o) **no Encumbrances or other interests:**
- (1) there is no Encumbrance over any of its Secured Property other than a Permitted Encumbrance; and
  - (2) no person holds an interest in its Secured Property other than under a Permitted Encumbrance;
- (p) **Security:**
- (1) each Security creates the Encumbrance purported to be created by it over the assets purported to be encumbered by it with the priority it purports to have; and
  - (2) it is entitled to charge its rights under each Childcare Centre Lease in favour of the Security Trustee;
- (q) **Constitutional documents:** the constitutional documents of any entity in which the Marketable Securities subject to each Security granted by it are held do not restrict the transfer of those Marketable Securities on enforcement of a Security;
- (r) **not a trustee:** it does not enter into any Relevant Document as trustee of any trust or settlement nor does it hold assets as trustee of any trust;
- (s) **commercial benefit:** the entering into and performance by it of its obligations under the Relevant Documents to which it is expressed to be a party is for its commercial benefit and is in its commercial interests;
- (t) **Group Structure:**
- (1) all of its Subsidiaries are listed in the Group Structure Diagram;
  - (2) the Group Structure Diagram is true and correct in all respects and does not omit any material information or details; and
  - (3) each Guarantor is a wholly owned Subsidiary of the Company;
- (u) **ATO status:** the Company:
- (1) holds an exemption from payroll tax in respect of wages paid or payable in each State and Territory of Australia;
  - (2) is a tax concession charitable institution for Australian federal Tax purposes and is exempt from paying income tax, has access to certain GST concession and a fringe benefits tax rebate and continues to be entitled to its endorsement as such.
- (v) **Authorisations:** all Authorisations required by the Company to conduct the Core Business (including each Childcare Centre Licence) have been obtained by the Company and are in full force and effect;
- (w) **no litigation:** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, would be likely to have a Material Adverse Effect;
- (x) **Intellectual Property Rights:** it holds all Intellectual Property Rights required for the conduct of the Core Business;

- (y) **Payment of Taxes:**
- (1) no claims are being or are reasonably likely to be asserted against any Group Member with respect to Taxes which are reasonably likely to be determined adversely to any Group Member;
  - (2) no Group Member is overdue in the filing of any Tax returns or other information required to be filed by it with any relevant Tax authority to ensure compliance with any obligation to pay Tax; and
  - (3) each Group Member has paid all Taxes (except Contested Taxes or Taxes where the amount due and payable is less than A\$50,000) due and payable by it by the due date;
- (z) **no default:**
- (1) no Default or Review Event has occurred and is continuing, and
  - (2) no Group Member is in breach of any other document or agreement to which that Group Member is a party where that breach or its consequences have or are likely to have a Material Adverse Effect;
- (aa) **obligations:** other than as disclosed to that Secured Creditor by the Company or as specified in a Transaction Document, its obligations under each Transaction Document to which it is a party, rank and will at all times rank at least pari passu with all its other present and future unsubordinated obligations other than obligations mandatorily preferred by any law applying to companies generally;
- (bb) **Financial Model:** all factual information in the Financial Model is true in all material respects as at the date of the Financial Model or, if different, the date ascribed to it in the Financial Model, all expressions of opinion or intention and all forecasts and projections contained in the Financial Model were made in good faith with due care and skill after due and careful enquiry and were based on reasonable assumptions and recent historical information and the Financial Model as of its date was not, by omission or otherwise, misleading in any material respect;
- (cc) **Financial Indebtedness:** it has no liability in respect of Financial Indebtedness other than Permitted Financial Indebtedness and no liability in respect of Financial Indebtedness to any Sponsor or related entity of a Sponsor, except in respect of Subordinated Debt;
- (dd) **Insolvency Event:** no Insolvency Event has occurred in relation to it or any Group Member;
- (ee) **no Controller:** no Controller is currently appointed, and no steps have been taken to appoint a Controller, in relation to any of its property or the property of a Group Member under any Encumbrance;
- (ff) **Childcare Centre Lease:**
- (1) in respect of a Childcare Centre Lease with an Austock Entity, clauses 12.1.3 and 12.1(c) of the pro forma Childcare Centre Lease with an Austock Entity provided to the Secured Creditors before the date of this deed are replicated in each Childcare Centre Lease; and

- (2) in respect of a Childcare Centre Lease with Orchard, clauses of clauses 6.7(b) and 12.1(c) of the pro forma Childcare Centre Lease with Orchard provided to the Secured Creditors before the date of this deed are replicated in each Childcare Centre Lease;

(gg) **Acquisition:**

- (1) the amount to be deposited by the Company in the Retention Account (as defined in the Sale Agreement) together with, the Deposit repayable by, and any other amount paid to, the Vendor (each, as defined in the Sale Agreement) is sufficient to fund the Purchase Price (as defined in the Sale Agreement) and acquire the Acquisition Assets;
- (2) the Company has not agreed, and will not agree, to acquire any Substantively Unconditional Centre (as defined in the Sale Agreement) without the prior written consent of the Secured Creditors; and
- (3) the Company has sufficient funds to meet all its payment obligations under the Acquisition Documents as and when they are due to be paid.

### 3.2 Survival and repetition of representations and warranties

The representations and warranties given under this deed:

- (a) survive the execution of each Transaction Document; and
- (b) (except for the representations and warranties in clauses 3.1(l), 3.1(m) and 3.1(z)(1) (with respect to a Potential Event of Default and Review Event only) and 3.1(z)(2)) are repeated on each Funding Date, Selection Date and Interest Payment Date, in each case, with respect to the facts and circumstances then subsisting.

### 3.3 Reliance by Creditors

The Company acknowledges that each Secured Creditor has entered into each Transaction Document to which it is a party in reliance on the representations and warranties given under this deed.

## 4 Undertakings

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### 4.1 Provision of information and reports

The Company must provide to the Secured Creditors the following:

- (a) **Annual Financial Reports:** as soon as practicable and in any event no later than 90 days after the end of each Financial Year, copies of the annual consolidated audited Financial Report of the Group for that Financial Year;

- (b) **Quarterly Financial Reports:** as soon as practicable and in any event no later than 30 days after the end of each calendar quarter, copies of the unaudited management accounts of the Group in respect of that quarter;
- (c) **Monthly accounts:** as soon as practicable and in any event no later than 30 days after the end of each calendar month, copies of the Group's consolidated management accounts in respect of that month, which must include details of the Average Monthly Occupancy Rate for that month;
- (d) **Compliance Certificate:**
- (1) together with the documents provided under clauses 4.1(a) and 4.1(b), a Compliance Certificate (which also sets out the calculations used to achieve the information set out in it); and
  - (2) together with the documents provided under clause 4.1(a), a certificate from independent auditors appointed in accordance with clause 4.4(g) confirming the accuracy of the calculations in the Compliance Certificate provided at that time. A certificate will not be required from an auditor if, as a matter of practice for most leading audit firms, such certificates are no longer provided by auditors or if the Secured Creditors (acting reasonably) agree that the cost to the Company of obtaining such a certificate is unreasonable;
- (e) **Directors' certificate:** at any Secured Creditor's request (and only to that Secured Creditor), a certificate signed by at least 2 directors of the Company stating:
- (1) if a Default or Review Event has occurred; and
  - (2) if so, full details of the relevant Default or Review Event and the remedial action being taken or proposed;
- (f) **Business Plan:** no later than 30 days prior to the commencement of each Financial Year, an updated Business Plan including a capital expenditure budget, for a period expiring not earlier than 3 years after delivery in a form acceptable to each Secured Creditor;
- (g) **ATO status:** no later than 30 days prior to the commencement of each Financial Year, confirmation that:
- (1) the Company holds an exemption from payroll tax in respect of wages paid or payable in each State and Territory of Australia for that Financial Year; and
  - (2) is a tax concession charitable institution for Australian federal Tax purposes and is exempt from paying income tax and has access to certain GST concessions and a fringe benefits tax rebate and it is entitled to an endorsement as such ;
- (h) **Group Structure Diagram:** as soon as practicable after the relevant change occurs, an updated Group Structure Diagram on each occasion that the then current Group Structure Diagram becomes incorrect or misleading;
- (i) **Know your client:** supply or procure the supply of, documentation and other evidence requested by a Secured Creditor which is required to satisfy or comply with the 'know your customer', 'know your client' or 'client vetting' procedures of that Secured Creditor or any potential assignee or potential subparticipant or

any other person who is considering contracting with that Secured Creditor in connection with a Transaction Document;

- (j) **Acquisition:** provide regular (not less than monthly) updates as to the status of transferring Childcare Centre Leases (other than those transferred on Financial Close) and the amount, if any, of COP that will need to be refunded to the vendors under the Sale Agreement with respect to Non-Transferring Lease Centres; and
- (k) **Other information:** any other information which a Secured Creditor acting in that capacity reasonably requests in relation to it or any of its assets, financial condition, business operations or state of affairs or the financial condition and business operations of any other Group Member or the Group.

## 4.2 Proper accounts

- (a) Each Group Member must:
  - (1) keep accounting records which give a true and fair view of its financial condition, business operations and state of affairs; and
  - (2) ensure that the accounts it provides under clause 4.1 are prepared in accordance with the Accounting Standards and all applicable laws.
- (b) A Group Member may not change its Financial Year without the prior written consent of the Secured Creditors (such consent not be to unreasonably withheld or delayed).

## 4.3 Notices to the Secured Creditors

The Company must notify each of the Secured Creditors as soon as it becomes aware of:

- (a) any Default occurring;
- (b) any intention by it to exercise any right, power or remedy under any Material Document to which it is a party as a consequence of any default under it;
- (c) any litigation, arbitration, criminal, administration or other proceeding in respect of it or any of its assets being commenced or threatened which is either:
  - (1) in excess of \$500,000; or
  - (2) if adversely determined, would have or be likely to have a Material Adverse Effect;
- (d) any proposal of any Government Agency to compulsorily acquire any of its assets;
- (e) the acquisition by it of a Subsidiary; and
- (f) the acquisition by it or any of its Subsidiaries of any interest in real property.

## 4.4 Compliance

Each Group Member must:



- (a) comply with :
- (1) all its obligations under:
    - each Transaction Document to which it is a party; and
    - the Escrow Deeds; and
  - (2) in all material respects with its obligations under each Material Document (other than the Escrow Deeds and the Childcare Centre Leases (which are dealt with in clause 4.10)) to which it is a party;
- (b) ensure that no Event of Default occurs;
- (c) ensure that none of its Subsidiaries which is required to become a Guarantor under clause 4.27 does anything which a Group Member is prohibited from doing under this clause 4;
- (d) ensure that each of its Subsidiaries which is required to become a Guarantor under clause 4.27 complies with this clause 4 as if binding on each of them and as if references to it were to the Subsidiary;
- (e) in the case of the Company, ensure that each other Group Member remains a wholly owned subsidiary of the Company;
- (f) complete a comprehensive integrated management systems audit (dealing with the information technology systems and the generating of reports by the Company to show that such reports are generated based on accurate information with transparent processes) within 120 days of Financial Close and (if required) provide a rectification strategy, including a timeframe for completing such rectification, that is acceptable to each Secured Creditor (acting reasonably) within 120 days of Financial Close and, if relevant, comply with that rectification strategy within the timeframes provided for therein;
- (g) ensure that auditors acceptable to the Secured Creditors are appointed for the Group within 90 days of Financial Close and ensure that at all times an auditor acceptable to the Secured Creditors is appointed for the Group. For this purpose any one of Deloitte, Ernst & Young, KPMG and PriceWaterhouse Coopers will be an acceptable auditor; and
- (h) do all things necessary to maintain its corporate existence.

#### **4.5 Maintenance of capital**

A Group Member must not:

- (a) financially assist or pass a resolution to allow it or any other member of the Group to financially assist a person to acquire shares or units of shares (within the meaning of the Corporations Act) in a Group Member or holding company of any Group Member;
- (b) release or pass a resolution to allow it to release any person from liability in respect of any uncalled capital or other amount that is or may become payable in respect of its Marketable Securities;
- (c) other than the Notes under the Note Documents, issue any Marketable Securities to any person unless those Marketable Securities will form part of the Security Property;

- (d) reduce, repurchase, defease, retire or repay or pass a resolution to reduce repurchase, defease, retire or repay its share capital other than:
  - (1) by redeeming preference shares which constitute Permitted Financial Indebtedness; or
  - (2) with the prior written consent of each Secured Creditor;
- (e) buy-back or pass a resolution to buy-back, any of its shares other than:
  - (1) by redeeming preference shares which constitute Permitted Financial Indebtedness; or
  - (2) with the prior written consent of each Secured Creditor; or
- (f) attempt or take any steps to do anything which it is not permitted to do under clauses 4.5(a), 4.5(b), 4.5(c) or 4.5(e).

#### **4.6 Compliance with laws and Authorisations**

Each Group Member must:

- (a) comply with all laws and legal requirements (including laws in respect of Tax and Environmental Laws), including each judgment, award, decision, finding or any other determination of a Government Agency, which applies to it or any of its assets, where failure to do so will have or will be likely to have a Material Adverse Effect;
- (b) obtain, maintain and comply with all Authorisations required:
  - (1) for the enforceability against it of each Relevant Document to which it is a party, or to enable it to perform its obligations under each Relevant Document to which it is a party;
  - (2) in relation to it or any of its assets or the conduct of its business where failure to do so will have or be likely to have a Material Adverse Effect;
- (c) obtain, maintain and comply with all Childcare Centre Licences other than where the non-compliance is purely technical in nature and not material; and
- (d) not do anything which would prevent the renewal of any Authorisation referred to in clause 4.6(b) or (c) or cause it to be renewed on materially less favourable terms.

#### **4.7 Intellectual Property**

Each Group Member must:

- (a) ensure that it owns or has licensed to it on arm's length terms or has available to use all Intellectual Property Rights necessary for the conduct of its business;
- (b) take any and all steps necessary, including instituting legal proceedings, to protect those Intellectual Property Rights; and
- (c) not permit any of those Intellectual Property Rights to be abandoned, cancelled or lapse or to be liable to any claim of abandonment for non-use or otherwise.

## 4.8 Payment of Taxes and outgoings

- (a) Each Group Member must:
- (1) file all Tax returns and other information required to be filed by it with any relevant Tax authority to ensure that it complies with all of its obligations to pay Tax; and
  - (2) pay all Taxes when due, other than Contested Taxes (or Taxes where the amount due and payable is less than \$50,000).
- (b) Each Group Member must pay all Contested Taxes when the terms of any final determination or settlement require those Contested Taxes to be paid.

## 4.9 Material Documents

- (a) A Group Member must not except with the prior written consent of the Secured Creditors:
- (1) amend or vary, or agree to an amendment or variation of;
  - (2) terminate, rescind or discharge (except by performance);
  - (3) grant any waiver, time or indulgence in respect of any obligation under;
  - (4) do or omit to do anything which may adversely affect the provisions or operation of;
  - (5) do or omit to do anything which would give any other person legal or equitable grounds to do anything in clause 4.9(a)(1) to 4.9(a)(4) in respect of; or
  - (6) assign or novate its interest in, or permit any other party to assign, novate or grant any Encumbrance over its interest in (except, in the case of an assignment or novation by any other party (and not a Group Member), as expressly permitted under this deed),
- any Material Document to which it is a party,,in each case, which would or could in the reasonable opinion of the Secured Creditors (acting reasonably) prejudice the rights of the Secured Creditors without the prior consent of the Secured Creditors (such consent not be unreasonably withheld or delayed) and without giving the Secured Creditors at least 10 Business Days' notice.
- (b) The Company must not:
- (1) amend or vary, or agree to an amendment or variation of;
  - (2) terminate, rescind or discharge (except by performance);
  - (3) grant any waiver, time or indulgence in respect of any obligation under;
  - (4) do or omit to do anything which may adversely affect the provisions or operation of;

- (5) do or omit to do anything which would give any other person legal or equitable grounds to do anything in clause 4.9(a)(1) to 4.9(a)(4) in respect of; or
  - (6) assign or novate its interest in, or permit any other party to assign, novate or grant any Encumbrance over its interest in except, in the case of an assignment or novation by any other party (and not it), as expressly permitted under this deed,
- any Note or Note Document.
- (c) Each Group Member must:
    - (1) do all things necessary to preserve and enforce all of its rights, powers and remedies under each Material Document to which it is a party;
    - (2) provide to each Secured Creditor copies of all material notices served by it or received by it under any Material Document; and
    - (3) notify the Secured Creditors of any actual or alleged default under any Material Document to which it is a party as notified by, or to, the relevant counterparty.
  - (d) The Company must not sign any consent to a withdrawal or payment from the Retention Account (as defined in the Sale Agreement) without obtaining the prior written consent of each Secured Creditor. The Secured Creditors may not withhold or delay their consent unless they have not been provided with evidence satisfactory to them (acting reasonably and in good faith) that the relevant withdrawal or payment is required to be made under the Acquisition Documents.
  - (e) The Company must not pay any Adjustment Amount under and as defined in the Sale Agreement after the day that is 37 days after the Sunset Date.
  - (f) This clause 4.9 does not apply to any Childcare Centre Lease, Childcare Centre License or a Key Management Contract.

#### 4.10 Childcare Centre Leases

- (a) In respect of each Childcare Centre Lease, the Company must, unless that Childcare Centre Lease has been assigned to the Company on or before Financial Close or is subject to a new lease entered into by the Company and the landlord of the relevant Childcare Centre, use its best endeavours to procure the transfer (by way of assignment or entry into a new lease with the relevant landlord) of that Childcare Centre Lease to the Company under the Sale Agreement in the form acceptable to the Secured Creditors (acting reasonably) or in the same form in all material respects as the assignments of Childcare Centre Leases effected on or about Financial Close, on or before the Sunset Date.
- (b) In respect of each Childcare Centre Lease, the Company must:
  - (1) notify each Secured Creditor as soon as reasonably practicable after it becomes aware of any material dispute with the Lessor under or in relation to that Childcare Centre Lease;

- (2) notify each Secured Creditor as soon as reasonably practicable after it becomes aware of any Lessee Default and must provide each Secured Creditor with full details of the Lessee Default including the nature of the Lessee Default, any action which it considers appropriate to remedy the Lessee Default or the amount necessary to compensate the Lessor for the Lessee Default, and any other information which a Secured Creditor reasonably requires in relation to the Lessee Default; and
  - (3) provide each Secured Creditor with a copy of any notice of or relating to any Lessee Default and any notice exercising or relating to the exercise of any right, power, authority, discretion or remedy the Lessor has as a result of any Lessee Default within 2 Business Days of receipt by that Group Member of such notice from the Lessor.
- (c) The Company must provide each Secured Creditor promptly with any other information relating to the relevant Childcare Centre Lease or any Lessee Default reasonably requested by that Secured Creditor.

#### **4.11 Amendments to constitution**

- (a) A Group Member must not amend or allow to be amended its constitution or any other constituent document of it or any other Group Member or the terms of any of its shares (if any) which would or might prejudice either:
  - (1) the rights of the Secured Creditors; or
  - (2) any tax concession available to it,
    - without the prior written consent of the Secured Creditors (and giving the Secured Creditors at least 10 Business Days' prior written notice of any proposed amendment).
- (b) The Company must maintain its status as a company limited by guarantee.

#### **4.12 Negative pledge**

- (a) A Group Member must not create or allow to exist or agree to any Encumbrance over any of its assets other than a Permitted Encumbrance.
- (b) A Group Member must not enter into an agreement to acquire an asset:
  - (1) which is, or upon its acquisition will be, subject to an Encumbrance which is not a Permitted Encumbrance; or
  - (2) on terms providing for a retention of title by the vendor or on conditional sale terms or on terms having a similar substantive effect where this is not a Permitted Encumbrance.
- (c) A Group Member must not allow any other person to have a right or power to receive or claim any rents, profits, receivables, money or moneys worth (whether capital or income) in respect of its assets other than under a Security.
- (d) A Group Member must not sell or otherwise dispose of any of its assets on terms which permit or require those assets to be leased to or re-acquired by any Group Member

- (e) A Group Member must not:
- (1) deposit or lend money on terms that it will not be repaid until its or another person's obligations or indebtedness are performed or discharged;
  - (2) deposit with or lend money to a person to whom it is, or is likely to become actually or contingently indebted other than a Secured Creditor;
  - (3) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts in circumstances where the arrangement is in connection with the raising of Financial Indebtedness; or
  - (4) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts in circumstances where the arrangement is in connection with the acquisition of an asset,
- except for a netting or set-off arrangement with a Secured Creditor in the ordinary course of its ordinary banking arrangements for the purpose of netting debit and credit balances and any netting of payments under Secured Hedging Agreements.
- (f) A Group Member must not enter into any arrangement which, if complied with, would prevent a Group Member from complying with its obligations under the Transaction Documents.
- (g) If, by mandatory operation of law, this clause 4.12 may not prevent a Group Member creating an Encumbrance:
- (1) this clause 4.12 does not prevent a Group Member creating that Encumbrance;
  - (2) before that Encumbrance is created, a Group Member must ensure that the Security Trustee receives the benefit of a deed of priority granting first ranking priority to each Security in a form and of substance required by the Security Trustee; and
  - (3) until that deed of priority is executed and delivered to the Security Trustee and each of the Secured Creditors, the Secured Creditors are not required to provide any further Funding Portions.

#### **4.13 Financial Indebtedness**

A Group Member must not incur any Financial Indebtedness other than Permitted Financial Indebtedness.

#### **4.14 Disposals**

- (a) A Group Member must not Dispose of any:
- (1) shares held in any other Group Member; or
  - (2) of its other assets, other than pursuant to a Permitted Disposal or where required by law.

- (b) Each Secured Creditor will instruct the Security Trustee to release from the Securities at the time of Disposal any asset Disposed of as permitted by this clause 4.14.

#### **4.15 No change to business**

- (a) A Group Member must not engage in any business other than the Core Business, or do anything which would result in substantial changes to its existing business and operations carried on as at Financial Close or, if later, the date on which it becomes a Group Member or the business and operations of the Group taken as a whole.
- (b) The Company must not make any material amendment or material variation to the Business Plan without the prior written consent of each Secured Creditor.

#### **4.16 Financial accommodation**

A Group Member must not provide any financial accommodation, or give any Guarantee in respect of any financial accommodation, to or for the benefit of any person, other than Permitted Financial Accommodation.

#### **4.17 Restrictions on dealings**

A Group Member must not:

- (a) enter into an agreement;
- (b) acquire or dispose of an asset;
- (c) obtain or provide a service;
- (d) obtain a right or incur an obligation; or
- (e) implement any other transaction,

with any person unless it does so on terms which are no less favourable to it than arm's length terms. This clause 4.17 does not apply to transactions between members of the Guarantor Group, or to the payment of any Distributions or other payments permitted to be paid under clause 4.18.

#### **4.18 Restrictions on Distributions, fees**

A Group Member must not make any Distribution.

#### **4.19 Restrictions on acquisitions**

A Group Member must not (and the Company must ensure that each Group Member does not) acquire an interest in a business or a company other than pursuant to a Permitted Acquisition.

## 4.20 Tax consolidation and exemption

- (a) A Group Member must not make any election as a result of which the Group (or any Group Members) will form a consolidated group for taxation purposes unless:
- (1) each member of the proposed consolidated group is a Guarantor; and
  - (2) all members of the proposed consolidated group have entered into a valid tax sharing agreement in accordance with Division 721 of the Tax Act.
- (b) A Group Member must not enter into tax funding agreement or tax sharing agreement unless such agreement is with a member of a consolidated group for taxation purposes formed in accordance with clause 4.20(a).
- (c) The Company must ensure that, at all times,
- (1) the Company holds an exemption from payroll tax in respect of wages paid or payable in each State and Territory of Australia (and that such exemption is renewed annually); and
  - (2) is a tax concession charitable institution for Australian federal Tax purposes and is exempt from paying income tax and has access to certain GST concessions and a fringe benefits tax rebate and it is entitled to an endorsement as such from the Australian Taxation Office.

## 4.21 Key Managers

The Group Members must promptly notify the Secured Creditors upon any Key Manager ceasing to be employed in an executive role with a Group Member.

## 4.22 Undertakings regarding Secured Property

Each Group Member must:

- (a) **maintenance of the Secured Property:**
- (1) maintain and protect its Secured Property;
  - (2) keep its Secured Property in a good state of repair and in good working order allowing for fair wear and tear;
  - (3) remedy every defect in its title to any part of its Secured Property;
  - (4) take or defend all legal proceedings necessary to protect or recover any of its Secured Property in a prudent manner; and
  - (5) keep its Secured Property valid and subsisting and free from liability to forfeiture, cancellation, avoidance or loss;
- (b) **further security:**
- (1) do anything which any Secured Creditor requests which more satisfactorily charges or secures the priority of its Security, or secures



to the Security Trustee its Secured Property in a manner consistent with any provision of any Transaction Document, or aids in the exercise of any Power of a Secured Creditor, including, the execution of any document, the delivery of Title Documents or the execution and delivery of blank transfers;

- (2) when any Secured Creditor requests, execute a legal or statutory mortgage in favour of the Security Trustee over any real property acquired by it on or after the date of this deed (excluding any interest under a Childcare Centre Lease) in form and substance required by the requesting Secured Creditor (but no Secured Creditor may require an obligation which is more onerous than any obligation contained in any Transaction Document);
  - (3) use its best endeavours to register any mortgage executed under clause 4.22(b)(2);
  - (4) if so required by a Secured Creditor, grant a mortgage of lease with respect to any Childcare Centre Lease and use its best endeavours to have that mortgage of lease registered on the relevant title unless the relevant Childcare Centre Lease prohibits the grant of such a mortgage without the relevant landlord's consent and that landlord has refused its consent in accordance with the relevant Childcare Centre Lease; and
  - (5) not take any action that would restrict the Security Trustee registering a caveat noting the Security Trustee's interest in any Childcare Centre Lease on the relevant title;
- (c) **Title Documents:** deposit with the Security Trustee all the Title Documents in respect of any of its Secured Property which is subject to the fixed charge created under its Security immediately on:
- (1) its execution of its Security;
  - (2) the acquisition of any asset which forms part of its Secured Property and is subject to the fixed charge created by its Security; and
  - (3) the floating charge which is created by its Security crystallising and fixing;
- (d) **registration and protection of security:** ensure that its Security is registered and filed in all registers in all jurisdictions in which it must be registered and filed to ensure the enforceability, validity and priority of the Security against all persons and to be effective as a security;
- (e) **no partnership or joint venture:** not enter into any profit sharing arrangement in relation to its Secured Property or any partnership or joint venture with any other person without the prior written consent of each Secured Creditor;
- (f) **no caveats:** cause (or, if the Company has not granted a mortgage over the relevant Lease, use reasonable endeavours to cause) any caveat which is lodged in respect of its Secured Property, other than a caveat lodged by the Security Trustee or a Secured Creditor, to be removed as soon as reasonably practicable;
- (g) **inspection:** at any time after a Default has occurred which is continuing permit any representatives designated by any Secured Creditor to visit and inspect the

financial records and the property of the Group Member, at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives of the Group Member to discuss the affairs, finances, accounts and condition of the Group Member with the auditors, officers, employees and advisors of each Secured Creditor (including independent accountants).

#### 4.23 Insurance

- (a) **General requirements:** Each Group Member must insure and keep insured its business and assets (including its Secured Property) against any risks and liabilities to which the Group is exposed and to the extent as is commercially appropriate having regard to those risks and liabilities. Without limiting this obligation, each Group Member must effect and maintain the following insurances:
- (1) for amounts and against risks for which a person holding assets and carrying on a business similar to that of the Group Member would prudently take out insurance;
  - (2) against damage, destruction and any other risk to their full replacement value or on a reinstatement basis;
  - (3) insurance required by any law;
  - (4) against workers' compensation, public liability and business interruption; and
  - (5) for any other risk to the extent and for the amounts the Secured Creditors may reasonably require (and where such insurances are available on reasonable commercial terms) and notify to the Company from time to time.
- The Secured Creditors agree that the Group may self insure for burglary, theft, employee dishonesty, money and records.
- (b) **Payment of premiums:** Each Group Member must punctually pay all premiums and other amounts necessary to effect and maintain in force each insurance policy.
- (c) **Contents of insurance policy:** Each Group Member must ensure that every insurance policy (other than workers' compensation and public liability) is taken out in the name of the Group Member, notes the Security Trustee as an insured and insures each of their insurable interests.
- (d) **Reputable insurer:** Each Group Member must take out each insurance policy with a reputable and substantial insurer.
- (e) **Maintenance of insurance:** Each Group Member must ensure that each insurance policy contains an agreement by the insurer that, notwithstanding the lapse of that policy (except because of expiration in accordance with its terms) or any right of cancellation of the insurer or any cancellation by any Group Member (whether voluntary or involuntary), that policy will continue in force for the benefit of the Security Trustee for at least 30 days after notice of cancellation has been sent by certified mail to the Security Trustee and that no reduction in limits or coverage in that policy in whole or part or other material

change to the terms of that policy will be effected except with the Security Trustee's prior consent.

- (f) **No prejudice:** Each Group Member must not do or omit to do, or allow or permit to be done or not done, anything which may materially prejudice any insurance policy.
- (g) **Deliver documents:** Each Group Member must promptly deliver to the Secured Creditors adequate evidence as to the existence and currency of the insurances required under this clause 4.23; and
- (h) **Assistance in recovery of money:** Each Group Member must do all things reasonably required by any Secured Creditor to enable the Security Trustee to recover any money due in respect of an insurance policy.
- (i) **Notification:** Each Group Member must notify the Secured Creditors as soon as reasonably practicable after it becomes aware of:
  - (1) an event which gives rise to a claim by it of \$100,000 or more under an insurance policy; and
  - (2) the cancellation for any reason of any insurance policy required to be held by it in accordance with this clause 4.23.
- (j) **Dealing with insurance policy proceeds:**
  - (1) Unless clause 4.23(k) applies, if an Event of Default is subsisting, the proceeds in respect of any insurance policy must be used to pay the Secured Moneys outstanding at that time of each Secured Creditor or for any other purpose which each Secured Creditor approves.
  - (2) Clause 4.23(k) does not apply to proceeds received from any workers' compensation or public liability policy or reinstatement policy to the extent that the proceeds are paid to a person entitled to be compensated under the workers' compensation or public liability policy or under a contract for the reinstatement of its property.
- (k) **Application of reinstatement proceeds:** If required under the terms of a reinstatement policy, the Group Member must apply all proceeds payable under the reinstatement policy to the reinstatement of its property.

#### 4.24 Hedging

- (a) The Company must enter into and maintain Hedging Agreements to hedge, in a manner reasonably acceptable to the Secured Creditors, 75% of its floating rate interest exposure under the Facility A (Senior Facility) and Facility B (Senior Facility) for the period up to the 'Termination Date' as defined in the Senior Facility Agreement. Those Hedging Agreements must be entered into:
  - (1) on terms reasonably acceptable to the Secured Creditors; and
  - (2) within 30 days of the date of Financial Close.
- (b) A Group Member must not enter into a Hedging Agreement except:
  - (1) in accordance with clause 4.24(a) and the Approved Hedging Policy; or

- (2) otherwise with the prior written consent of each of the Secured Creditors.
- (c) The Company must, at such times as each Secured Creditor requests, furnish to each Secured Creditor any information as each Secured Creditor may, acting reasonably, require to demonstrate compliance with this clause 4.24.

#### 4.25 Subordinated Finance Documents

- (a) A Group Member must not:
- (1) repay or prepay any principal amount (or capitalised interest) outstanding under the Note Documents or otherwise in respect of any Subordinated Debt;
  - (2) pay any interest or any other amounts payable in connection with the Note Documents or otherwise in respect of any Subordinated Debt; or
  - (3) purchase, redeem, defease or discharge any amount outstanding with respect to the Note Documents or otherwise in respect of any Subordinated Debt,
- unless that payment, repayment, prepayment, purchase, redemption, defeasance or discharge is permitted under the relevant Subordination Deed Poll.
- (b) A Group Member must not:
- (1) amend or vary, or agree to an amendment or variation of; or
  - (2) terminate, rescind or discharge (except by performance),
- any Note Document unless that amendment, variation, termination, rescission or discharge is permitted under the relevant Subordination Deed Poll.

#### 4.26 Financial undertakings

The Company must ensure that:

- (a) **EBITDA Test:** EBITDA for the calendar quarter ending on 30 September 2010 is greater than 85% of Forecast Quarterly EBITDA;
- (b) **Interest Cover Ratio:** on each Calculation Date falling within the periods specified below the Interest Cover Ratio is greater than or equal to the amounts listed below:

Calculation Period	Interest Cover Ratio
the period from and including 1 July 2010 to and including 30 September 2010	2.00:1
the period from and including 1 October 2010 to and including 30 June 2011	2.60:1

the period from and including 1 July 2011 to and including 30 June 2012	3.30:1
the period from and including 1 July 2012 to and including 30 June 2013	4.70:1
thereafter	5.00:1

- (c) **Leverage Ratio:** on each Calculation Date falling within the period specified below the Leverage Ratio is less than or equal to the amount listed below:

Calculation Period	Leverage Ratio
the period from and including 1 July 2010 to and including 30 September 2010	3.30:1
the period from and including 1 October 2010 to and including 30 June 2011	2.35:1
the period from and including 1 July 2011 to and including 30 June 2012	1.65:1
the period from and including 1 July 2012 to and including 30 June 2013	1.20:1
thereafter	1.00:1

- (d) **Debt Service Cover Ratio:** on each Calculation Date falling within the period on and from 1 October 2010 the Debt Service Cover Ratio is greater than 1.10:1;

- (e) **Capital Expenditure:**

- (1) unless otherwise agreed by each Secured Creditor, the Company must ensure that the Group does not incur Capital Expenditure in any Financial Year if it would cause the total Net Capital Expenditure incurred in that Financial Year to exceed by 10% or more the amount budgeted for Capital Expenditure for that Financial Year set out in the Business Plan for that Financial Year; and
- (2) if the actual amount of Net Capital Expenditure of the Group incurred in any Financial Year is less than the amount budgeted for Capital Expenditure for that Financial Year set out in the Business Plan for that Financial Year (the difference being the **Unspent Amount**), 75% of the Unspent Amount may be carried forward and added to the Capital Expenditure amount for the immediately following Financial Year for the purpose of clause 4.26(e)(1) (but not subsequent Financial Years and when applying this clause 4.26(e)(2) any amount

previously carried forward will be ignored and will be deemed to have been spent last);

- (f) **Average Monthly Occupancy Rate:** for each calendar month the Average Monthly Occupancy Rate must be greater than or equal to the percentage listed below:

Period	Average Monthly Occupancy Rate
1 January to 31 March in each calendar year	55%
1 April to 31 December in each calendar year	65%

- (g) In addition to the certification required to be provided under clause 4.1(d), a Secured Creditor may, if it reasonably believes that there has been a breach of any of the Financial Undertakings, require the Company to provide a certificate which:

- (1) is in the form of and contains the details required by a certificate required to be provided under clause 4.1(d);
- (2) is certified in the same way in which a certificate under clause 4.1(d) is required to be certified; and
- (3) relates to a period of time ending on a date specified to the Company by that Secured Creditor or to a date specified by that Secured Creditor.

The Company must supply a certificate within 5 Business Days of a request under this clause 4.26(f).

- (h) For the purpose of testing the Financial Undertakings set out in this clause 4.26 (and, for the avoidance of doubt, for the purposes of determining the definition of "Margin" in clause 1.1 of the Senior Facility Agreement) for any Calculation Date occurring less than 12 months after Financial Close, the following principles will apply:

- (1) EBITDA will be calculated:
  - as if each Childcare Centre was acquired by the Company on the first day of the Calculation Period ending on that Calculation Date (that is, having regard to the profits of those Childcare Centres for the full 12 month period, including the period before Financial Close); and
  - after adjustment in the period to add to EBITDA an amount equal to the tax concessions that could have been recovered by the Group during that part of the Calculation Period occurring before Financial Close if all of the Childcare Centres had been acquired by the Company at the commencement of that Calculation Period;
- (2) Interest Expense will be Interest Expense based on actual numbers since Financial Close then annualised; and

- (3) the definition of Debt Service Cover Ratio will be based on Net Capital Expenditure, Tax paid or tax refunds and changes in Working Capital as if each Childcare Centre was acquired by the Company on the first day of the Calculation Period ending on that Calculation Date (that is, having regard to the profits of those Childcare Centres for the full 12 month period, including the period before Financial Close); and
- (4) amortisation or scheduled repayments with respect to a Facility will be the actual amortisation requirements or scheduled repayments with respect to that Facility since Financial Close.

#### 4.27 Group Guarantors

- (a) The Company must ensure that:
  - (1) the aggregate Total Assets of the Guarantor Group (calculated on a consolidated basis as if the members of the Guarantor Group were the only members of the Group) will not at any time be less than 95% of the consolidated Total Assets of the Group; and
  - (2) EBITDA of the Guarantor Group (calculated on a consolidated basis as if the members of the Guarantor Group were the only members of the Group) will not at any time be less than 95% of EBITDA of the Group.
- (b) A failure to comply with clause 4.27(a) at any time will not constitute a Default if the Company procures that additional Group Members become Guarantors to the extent required to ensure compliance with clause 4.27(a), within 21 days (or such minimum longer period of time as is required by law).
- (c) The Company need not procure that a company becomes a Guarantor if to do so would be contrary to any applicable law but it:
  - (1) must ensure that each Group Member is able to lawfully become a Guarantor not later than the time it would otherwise be required to do so under clause 4.27(b); and
  - (2) must ensure that no person becomes a Group Member and no other transaction is entered into in circumstances that would result in the Company being unable to comply with its obligations under this clause 4.27.

#### 4.28 Notes

The Company will not issue a Note (other than as Permitted Financial Indebtedness), or agree to the transfer of a Note (other than a Social Capital Note where the transferee has acceded to the Subordination Deed Poll), unless it has obtained the prior written consent of the Secured Creditors.

#### 4.29 Social Purpose Investment

The Company may not (and must ensure that no Group Member does) make any Social Purpose Investment unless:

- (a) all amounts that are due and payable under the Transaction Documents have been paid; and

- (b) the amount is paid from Free Cash Flow for a Financial Year (as set out in the Compliance Certificate provided by the Company in accordance with clause 4.1(d) in respect of that Financial Year) that is not required to be applied to:
  - (1) make a Senior Repayment; or
  - (2) fund the Bank Guarantee Cash Collateral Account; or
  - (3) make a Commonwealth Permitted Payment; or
  - (4) make Permitted Payments (as defined in the Subordination Deed); and
- (c) all Senior Repayments for that Financial Year have been made as required by clause 8.4 (Mandatory Prepayments – Free Cash Flow) of the Senior Facility Agreement or the relevant Senior Finance Document; and
- (d) the balance of the Bank Guarantee Cash Collateral Account meets the requirements of clause 10.3(e) (Bank Guarantee Cash Collateral Account) of the Senior Facility Agreement; and
- (e) all Permitted Payments under and as defined in the Intercreditor Deed have been made;
- (f) all Permitted Payments under and as defined in the Subordination Deed have been made; and
- (g) the investment will not cause the Company to breach any financial undertakings in clause 4.26; and
- (h) the investment will not cause the Company to breach any other legal obligations; and
- (i) no Default or Review Event is subsisting or will result from the investment; and
- (j) the maximum aggregate Social Purpose Investments made in any Financial Year does not exceed 25% of the Net Tax Benefit for that Financial Year.

#### 4.30 Conditions subsequent

The Company must provide to each Secured Creditor, as soon as reasonably practicable, but by no later than:

- (a) **Balance Sheet:** 30 June 2010 a copy of the day 1 balance sheet of the Group showing the assets held following the Acquisition;
- (b) **Hedging:** 16 June 2010, a copy of the Approved Hedging Policy; and
- (c) **Key Managers:** 30 June 2010, copies of employment contracts with each Key Manager,
- (d) **Childcare Centre Leases and Childcare Licence:** 30 June 2010, copies of each Childcare Centre Lease and Childcare Licence or, where there is no written form of Childcare Licence, evidence that the relevant Childcare Licence has been granted,

each in form and of substance satisfactory to each Secured Creditor (acting reasonably).



### 4.31 Term of undertakings

- (a) Each Group Member must, at its own cost, comply with its undertakings in this clause 4.
- (b) The undertakings in this clause 4 are for the benefit of the Secured Creditors only.

## 5 Events of Default

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Each of the following is an Event of Default whether or not it is within the control of a Group Member:

- (a) **failure to pay:** a Group Member fails to pay or repay any part of the Secured Moneys under a Transaction Document when due and payable by it and, if that failure is caused by administrative or technical error, the Group Member does not remedy the failure within 2 Business Days;
- (b) **financial undertakings:** a Group Member breaches clause 4.26;
- (c) **non-remediable failure:** a Group Member fails to perform any other undertaking or obligation of it under any Transaction Document (other than as referred to in paragraphs (a), (b) or (e) of this clause 5) and that failure is not remediable;
- (d) **remediable failure:** the failure described in clause 5(c) is in the reasonable opinion of the Secured Creditor claiming in respect of this Event of Default remediable, and the Group Member does not remedy the failure within 10 Business Days after receipt by the Group Member of a notice from the Secured Creditor claiming in respect of this Event of Default specifying the failure or, if earlier, 10 Business Days after a Group Member became aware of the failure;
- (e) **misrepresentation:** any representation or warranty or statement of a Group Member under a Transaction Document is incorrect or misleading in any material respect when made or repeated (a **Misrepresentation**) and the circumstances causing the Misrepresentation and its effect on a Secured Creditor are either not capable of remedy or, if capable of remedy, those circumstances have not been remedied within 10 Business Days of any Group Member becoming aware of the Misrepresentation;
- (f) **cross default:** any Financial Indebtedness of a Group Member in an amount in excess of \$500,000:
  - (1) becomes due and payable, or becomes capable of being declared due and payable, before the scheduled date for payment; or
  - (2) is not paid when due (after taking into account any applicable grace period);
- (g) **Insolvency Event:** an Insolvency Event occurs;
- (h) **deregistration:** a Group Member is deregistered, or any steps are taken to deregister a Group Member under the Corporations Act;
- (i) **unenforceability:**

- (1) a provision of a Transaction Document is or becomes illegal, void, voidable or unenforceable or does not have the priority it is expressed to have;
  - (2) any person (other than a Secured Creditor claiming in respect of this Event of Default) is or becomes entitled to terminate, rescind or avoid any provision of any Transaction Document;
  - (3) the execution, delivery or performance of a Transaction Document by a Group Member breaches or results in a contravention of any law; or
  - (4) any Security does not create the Encumbrance it purports to create;
- (j) **compulsory acquisition:** unless the Group Member receives compensation that is acceptable to the Secured Creditor claiming in respect of this Event of Default (acting reasonably):
- (1) all or any material part of the property of any Group Member is compulsorily acquired by or by order of a Government Agency or under law; or
  - (2) a Government Agency orders the sale, vesting or divesting of all or any material part of the property of any Group Member; or
- (k) **reduction of capital:** without the prior consent of each Secured Creditor, a Group Member:
- (1) reduces its capital (including a purchase of its shares but excluding a redemption of redeemable shares);
  - (2) passes a resolution to reduce its capital or to authorise it to purchase its shares or a Group Member passes a resolution under s 260B of the Corporations Act 2001 or an equivalent provision in an offshore jurisdiction, or calls a meeting to consider any such resolution other than with respect to its entry into the Transaction Documents; or
  - (3) applies to a court to call any such meeting or to sanction any such resolution or reduction,
- other than a solvent reduction of capital by a Group Member that is a subsidiary of the Company and which is approved in advance by each Secured Creditor;
- (l) **ceasing business:** the Group or any Group Member ceases, or threatens to cease, to carry on, or materially changes, the Core Business;
- (m) **repudiation:** a Group Member repudiates, or evidences an intention to repudiate, any Transaction Document; or
- (n) **material adverse effect:** any event occurs which, in the opinion of the Secured Creditor claiming in respect of this Event of Default (acting reasonably), would have a Material Adverse Effect.

## 6 Guarantees and indemnities

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### 6.1 Accession of Guarantors

A Group Member may become a Guarantor by delivering to each Secured Creditor the following in a form satisfactory to the Secured Creditors:

- (a) a guarantee and indemnity in relation to the Secured Moneys duly executed by the Guarantor;
- (b) a fixed and floating charge over all the assets and undertaking of the Guarantor, duly executed by the Guarantor and in substantially the same form as the Borrower Charge, to secure the Secured Moneys to the Secured Creditors;
- (c) a real property mortgage over all real property held by the Guarantor, duly executed by the Guarantor, to secure the Secured Moneys to the Secured Creditors;
- (d) such form of Security over any assets of the Guarantor not situated in Australia as the Secured Creditors may require;
- (e) each Title Document required to be lodged with the Security Trustee by the Guarantor under a Security;
- (f) an Officer's certificate substantially in the form of Schedule 3 (or in the case of an Guarantor incorporated outside Australia, such other form as the Secured Creditors may require) in respect of the Guarantor;
- (g) duly executed forms, notices and other documents which are required in order to register or file with the appropriate Government Agency any document referred to in this clause 6.1; and
- (h) such evidence and information, including legal opinions, in relation to the execution of the documents referred to in this clause 6.1 as the Secured Creditors reasonably require.

Where applicable, the Company must ensure that each document referred to in this clause 6.1 is duly stamped within the required time limit under the applicable stamp duty legislation.

### 6.2 Retiring Guarantors

The Company by notice to each Secured Creditor may request that a Guarantor (**Retiring Guarantor**) be released from its obligations under this deed. Following receipt of such a request from the Company, each Secured Creditor must consent to the release of the Retiring Guarantor (and the Secured Creditors acknowledge and agree that each Secured Creditor is required to give such consent in respect of such release) if:

- (a) no Default is continuing or would result from the acceptance of the request; and
- (b) it is not reasonably foreseeable that the release will result in a breach of clause 4.27(a).

If each Secured Creditor consents to the release of a Guarantor under this clause 6.2, the Guarantor is automatically released from liability as a Guarantor and the Security Trustee must release all Securities granted by that Guarantor.

## 7 Indemnities

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### 7.1 General indemnity

- (a) The Company indemnifies each Secured Creditor against any Loss which that Secured Creditor, a Receiver (whether acting as agent of the Company or of a Secured Creditor) or an Attorney pays, suffers, incurs or is liable for, in respect of any of the following:
- (1) any sum payable by any Group Member under any Transaction Document not being paid when due;
  - (2) a Funding Portion required by a Funding Notice not being made for any reason including any failure by a Group Member to fulfil any condition precedent contained in clause 2, but excluding any default by that Secured Creditor;
  - (3) the occurrence of any Default or Review Event;
  - (4) a Secured Creditor exercising its Powers consequent upon or arising out of the occurrence of any Default;
  - (5) the non-exercise, attempted exercise, exercise or delay in the exercise of any Power;
  - (6) it becoming, after the date of this deed, unlawful or impossible for a Secured Creditor to maintain or give effect to any of its obligations under the Transaction Documents;
  - (7) any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Group Member or with respect to any transaction contemplated by any Transaction Document;
  - (8) any act or omission of a Group Member or any of its employees or agents;
  - (9) the occupation, use or ownership of any Secured Property by a Security Provider or any of its employees or agents;
  - (10) any workers' compensation claim by any employee of a Security Provider;
  - (11) any insurance policy in respect of any Secured Property;
  - (12) any compulsory acquisition or statutory or judicial divestiture of any Secured Property;
  - (13) a Secured Creditor acting in connection with a Transaction Document in good faith on fax instructions (or, only in the case of a Secured Hedging Agreement, telephone instructions) purporting to originate from the offices of a Group Member (or, in the case of the Senior Agent, a Senior Secured Creditor) or to be given by a Group Member (or in the case of the Senior Agent, a Senior Secured Creditor);
  - (14) an indemnity a Secured Creditor gives a Controller or administrator of a Group Member; and

- (15) any other thing in respect of a Security or any Secured Property, except to the extent caused by the fraud, gross negligence or wilful default of that Secured Creditor, Receiver or Attorney under the Transaction Documents.
- (b) The indemnity in clause 7.1(a), includes the amount determined by a Secured Creditor as being incurred by reason of the liquidation or re-employment of deposits or other funds acquired or contracted for by the Secured Creditor to fund or maintain its Commitment.

## 7.2 Continuing indemnities and evidence of loss

- (a) Each indemnity of a Group Member in a Transaction Document is a continuing obligation of the Group Member, 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 fully and finally repaid; and
  - (4) each Security has been finally discharged.
- (b) Each indemnity of a Group Member in a Transaction Document is an additional, separate and independent obligation of a Group Member and no one indemnity limits the general nature of any other indemnity.
- (c) Each indemnity of a Group Member in a Transaction Document survives the termination of any Transaction Document.
- (d) A certificate given by an Officer of a Secured Creditor detailing the amount of any Loss covered by any indemnity in a Transaction Document is sufficient evidence unless the contrary is proved.

## 8 Tax, costs and expenses

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### 8.1 Tax

- (a) The Company must pay any Tax, other than an Excluded Tax, in respect of any Secured Creditor, 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 8.1(a) except to the extent that the fine, penalty or other cost is caused by each Secured Creditor's failure to lodge money received from the Company within 5 Business Days before the due date for lodgement.

- (c) The Company indemnifies each Secured Creditor against any amount payable under clause 8.1(a) or 8.1(b).

## 8.2 Costs and expenses

The Company must pay:

- (a) all reasonable costs and expenses of each Secured Creditor in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of any Transaction Document;
- (b) all costs and expenses of a Secured Creditor in relation to the enforcement, protection or waiver of any rights under any Transaction Document;
- (c) all reasonable costs and expenses of each Secured Creditor in relation to the consent or approval of a Secured Creditor given under any Transaction Document; and
- (d) all costs and expenses of each Secured Creditor in relation to any enquiry by a Government Agency (other than the Commonwealth in its capacity as a Secured Creditor) involving the Company or a Group Member,

including:

- (e) any administration costs of a Secured Creditor in relation to the matters described in clause 8.2(c) or 8.2(d); and
- (f) any legal costs and expenses and any professional consultant's fees, on a full indemnity basis.

## 8.3 GST

- (a) If GST is or will be imposed on a supply made under or in connection with a Transaction Document by a Secured Creditor, the Secured Creditor 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 that Transaction Document by the amount of that GST; or
  - (2) otherwise recover from the recipient of the supply the amount of that GST.
- (b) A Secured Creditor must issue a Tax Invoice to the recipient of the supply no later than 5 Business Days after payment to the Secured Creditor of the GST inclusive consideration for that supply.

## 9 Saving provisions

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### 9.1 No merger of security

- (a) Nothing in this deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects:
  - (1) any Encumbrance or indemnity in favour of any Secured Creditor; or
  - (2) any Power.
- (b) No other Encumbrance or Transaction Document which a Secured Creditor has the benefit of in any way prejudicially affects any Power.

### 9.2 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 a Group Member any obligations under a Transaction Document; or
- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by any Secured Creditor of any Power,

is negated and excluded from each Transaction Document and all relief and protection conferred on a Group Member by or under that legislation is also negated and excluded.

### 9.3 Conflict

Where any right, power, authority, discretion or remedy conferred on a Secured Creditor, 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.

### 9.4 Consents

- (a) Whenever the doing of any thing by a Group Member is dependent on the consent of a Secured Creditor, the Secured Creditor 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 a Group Member by a Secured Creditor under clause 9.4(a) must be complied with by the Group Member.

### 9.5 Principal obligations

This deed and each Collateral Security is:

- (a) a principal obligation and is not ancillary or collateral to any other Encumbrance (other than another Collateral Security) or other obligation; and

- (b) independent of, and unaffected by, any other Encumbrance or other obligation which any Secured Creditor may hold at any time in respect of the Secured Moneys.

## 9.6 Non-avoidance

If any payment by a Group Member to a Secured Creditor is avoided for any reason including any legal limitation, disability or incapacity of or affecting the Group Member 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 Secured Creditor,  
the Group Member:
- (c) as an additional, separate and independent obligation, indemnifies each Secured Creditor against that avoided payment; and
- (d) acknowledges that any liability of the Group Member under the Transaction Documents and any right or remedy of each Secured Creditor under the Transaction Documents is the same as if that payment had not been made.

## 9.7 Set-off authorised

If a Group Member does not pay any amount when due and payable by it to any Secured Creditor under a Transaction Document, that Secured Creditor may:

- (a) apply any credit balance in any currency in any account of the Group Member with the Secured Creditor in or towards satisfaction of that amount; and
- (b) effect any currency conversion which may be required to make an application under clause 9.7(a).

## 9.8 Creditor's certificates and approvals

- (a) A certificate signed by any Officer of a Secured Creditor 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 a Secured Creditor's approval, that approval will not be effective unless and until it is provided in writing.

## 9.9 No reliance or other obligations and risk assumption

Each Group Member 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 Secured Creditor;



- (b) in respect of the transactions evidenced by the Transaction Documents, no Secured Creditor has any obligations other than those expressly set out in the Transaction Documents; and
- (c) in respect of interest rates or exchange rates, no Secured Creditor is liable for any movement in interest rates or exchange rates or any information, advice or opinion provided by any Secured Creditor or any person on behalf of any Secured Creditor, even if:
  - (1) provided at the request of a Group Member (it being acknowledged by each Group Member that such matters are inherently speculative);
  - (2) relied on by a Group Member; or
  - (3) provided incorrectly or negligently.

### **9.10 Power of attorney**

- (a) For consideration received, each Group Member irrevocably appoints each Secured Creditor and each Officer of each Secured Creditor as the attorney of the Group Member 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 9.10(a) may appoint a substitute attorney to perform any of its powers.

## **10 General**

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### **10.1 Group Member to bear cost**

Any thing which must be done by a Group Member under any Transaction Document, whether or not at the request of any Secured Creditor, must be done at the cost of the Group Member.

### **10.2 Notices**

- (a) Any notice or other communication including, any request, demand, consent or approval, to or by a party to any Transaction Document 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 10.2(c) and informs the sender that it is not legible.

### 10.3 Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) Each Group Member irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) Each Group Member 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) Each Group Member irrevocably waives any immunity in respect of its obligations under this deed 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.

### 10.4 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, any Transaction Document or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, any Transaction Document which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

### 10.5 Waivers

- (a) Waiver of any right arising from a breach of this deed or of any Power arising on default under this deed 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 deed or the occurrence of a Default; or
- (2) a Power created or arising on default under this deed 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 deed or on a default under this deed 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.

## **10.6 Cumulative rights**

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

## **10.7 Attorneys**

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

## **10.8 Counterparts**

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

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# Schedule 1

## Notice details

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<b>Company</b>	<b>Goodstart Childcare Limited</b> ABN 69 139 967 794
Address	43 Metroplex Avenue, Murarrie QLD 4172
Attention	Gavin Bartlett
Fax	(07) 3908 2524

<b>Secured Creditor</b>	<b>Each party listed in Part A of Schedule 2</b>
-------------------------	--

<b>Senior Agent</b>	<b>National Australia Bank Limited</b> ABN 12 004 044 937
Address	255 George Street, Sydney NSW 2000
Attention	Katherine Dalton
Fax	+61 (2) 9237 1888

<b>Security Trustee</b>	<b>National Australia Bank Limited</b> ABN 12 004 044 937
Address	Level 25, 255 George Street, Sydney NSW 2000
Attention	Head of Agency
Phone	++61 2 9237 1196
Fax	+61 2 9237 1634

<b>Commonwealth</b>	<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
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

## Schedule 2

### Secured Creditors

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Clause 1.2 (Definitions)

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Name	ABN/ACN/ARBN	Lending Office and Notice Details
<b>National Australia Bank Limited</b>	ABN 12 004 044 937	<b>Address:</b> 255 George Street, Sydney NSW 2000 <b>Attention:</b> Katherine Dalton  <b>Facsimile:</b> +61 (2) 9237 1888
<b>Commonwealth of Australia acting through the Department of Education, Employment and Workplace Relations</b> (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	<b>Address:</b> Level 4, 148-180 City Walk, Canberra ACT 2601 <b>Attention:</b> Director of the Office of Early Childhood Education and Child Care Department of Education, Employment and Workplace Relations <b>Facsimile:</b> (02) 6123 5563

## Schedule 3

### Officer's certificate

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#### Clause 3.1(a)

To: [ ] (**Secured Creditor**)

I [**insert name**] am a [**insert capacity – director/secretary**] of each of Goodstart Childcare Limited (Company).

I refer to the common terms deed dated [**insert date**] between Goodstart Childcare Limited (as **Company**), the Commonwealth of Australia and National Australia Bank Limited (as **Senior Agent** and **Security Trustee**) (**Common Terms Deed**).

A term defined in the Common Terms Deed has the same meaning when used in this Certificate.

I have been authorised by the Company to give this certificate.

I certify as follows:

#### 1 Relevant documents

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Attached to this certificate are true, complete and up-to-date copies of each of the following:

- (a) **constitution**: the constitution of the Company;
- (b) **power of attorney**: a duly executed power of attorney granted by the Company authorising execution of the Transaction Documents to which it is a party; and
- (c) **board minutes**: extracts of minutes of a meeting of the directors of the Company approving the execution and performance of its obligations under the Transaction Documents to which it is expressed to be a party and the granting of the power of attorney referred to in paragraph 1(b) of this certificate.

#### 2 No revocation

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Each document, power of attorney[ and resolution referred to in paragraph 1 of this certificate is in full force and effect and has not been amended, modified or revoked.



**3 Officers**

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The following signatures are the true signatures of each of the Officers of the Company as at the date of this certificate:

Name	Position	Signature
[insert name]	[insert details of position]	
[insert name]	[insert details of position]	
[insert name]	[insert details of position]	

**4 Certification**

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I certify that:

- (a) the Company, before entering into any Transaction Document to which it is a party, has, in connection with the execution, delivery and performance of each such Transaction Document, complied with chapter 2E and Part 2J.3 of the Corporations Act; and
- (b) as at the date of execution of each Transaction Document, the Company is solvent and will not become insolvent by entering into and performing its obligations under each Transaction Document to which is a party.

date \_\_\_\_\_

sign here ► \_\_\_\_\_  
 [insert capacity – director/secretary]

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

## Schedule 4

### Childcare Centres

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1. ABC Aberfoyle Park
2. ABC Acacia Gardens
3. ABC Aitkenvale North
4. ABC Albany
5. ABC Albany Creek
6. ABC Albany Creek Central
7. ABC Albany Creek South
8. ABC Albany Forest
9. ABC Albury Central
10. ABC Alexandra Hills
11. ABC Alfred Cove
12. ABC Alfredton
13. ABC Algester East
14. ABC Altona South
15. ABC Andergrove
16. ABC Angle Park
17. ABC Anna Bay
18. ABC Annandale (CC)
19. ABC Annandale East
20. ABC Aranda (CC)
21. ABC Armadale
22. ABC Ashfield
23. ABC Ashgrove
24. ABC Ashmont Central
25. ABC Aspendale Gardens East
26. ABC Aspley
27. ABC Atwell
28. ABC Australind
29. ABC Bairnsdale
30. ABC Bakewell
31. ABC Bald Hills
32. ABC Baldivis
33. ABC Ballajura

34. ABC Banksia Beach
35. ABC Banksia Grove
36. ABC Bankstown
37. ABC Bathurst
38. ABC Bayswater North
39. ABC Beachmere
40. ABC Beaudesert
41. ABC Beaumaris
42. ABC Beenleigh
43. ABC Bees Creek
44. ABC Belair
45. ABC Belgrave Heights
46. ABC Bellbird Park
47. ABC Belmont
48. ABC Bendigo
49. ABC Bendigo Central
50. ABC Benowa
51. ABC Bentleigh East
52. ABC Berowra
53. ABC Berrimah
54. ABC Berry Street
55. ABC Bertram
56. ABC Berwick Central
57. ABC Blackburn
58. ABC Blackburn South
59. ABC Blackmans Bay
60. ABC Blacktown
61. ABC Blackwood
62. ABC Blakeview
63. ABC Blue Haven Central
64. ABC Bondi Junction Juniors 1
65. ABC Bondi Junction Juniors 2
66. ABC Bondi Junction Juniors 3
67. ABC Bongaree
68. ABC Boonah
69. ABC Booval
70. ABC Boronia Heights
71. ABC Boronia Heights North
72. ABC Boronia Heights West

73. ABC Boronia South
74. ABC Bowen
75. ABC Box Hill
76. ABC Bracken Ridge
77. ABC Braddon (CC)
78. ABC Bray Park
79. ABC Bray Park West
80. ABC Braybrook
81. ABC Bridge Street
82. ABC Brighton Central
83. ABC Brighton East
84. ABC Brighton Junction
85. ABC Brighton North
86. ABC Brinsmead
87. ABC Brisbane Central (CC)
88. ABC Broadmeadow
89. ABC Brookvale
90. ABC Brookwater
91. ABC Browns Plains
92. ABC Browns Plains Central
93. ABC Browns Plains East
94. ABC Browns Plains North
95. ABC Buderim
96. ABC Bundaberg and Babyworld
97. ABC Bundaberg West
98. ABC Bundoora
99. ABC Bundoora Central
100. ABC Bundoora South
101. ABC Burleigh
102. ABC Burleigh Waters
103. ABC Burnside
104. ABC Burpengary Central
105. ABC Busselton
106. ABC Byron Bay South
107. ABC Caboolture East
108. ABC Calala
109. ABC Calamvale
110. ABC Caloundra South
111. ABC Cameron Park

112. ABC Campbelltown East
113. ABC Canning Vale
114. ABC Canterbury Road
115. ABC Capalaba Central
116. ABC Carina
117. ABC Carindale
118. ABC Carlisle West
119. ABC Carlton
120. ABC Carman Court
121. ABC Carnegie South
122. ABC Carrara West
123. ABC Carrum Downs Central
124. ABC Carrum Downs North
125. ABC Carrum Downs South
126. ABC Cessnock
127. ABC Chadstone (CC)
128. ABC Chelsea Heights
129. ABC Cheltenham
130. ABC Churchill South
131. ABC Claremont
132. ABC Clarinda
133. ABC Clarkson
134. ABC Clayfield
135. ABC Clayton
136. ABC Clifton Hill
137. ABC Clovelly Park
138. ABC Coburg
139. ABC Coffs Harbour
140. ABC Collina
141. ABC Collingwood Park
142. ABC Coomera
143. ABC Coopers Plains
144. ABC Coorparoo
145. ABC Coorparoo North
146. ABC Cornerstone
147. ABC Corowa
148. ABC Cowra
149. ABC Craigieburn Central
150. ABC Cranbrook

151. ABC Crestmead
152. ABC Creswick Road
153. ABC Cromer
154. ABC Croydon Central
155. ABC Croydon South
156. ABC Currans Hill
157. ABC Currumbin South
158. ABC Currumbin Waters
159. ABC Daisy Hill
160. ABC Dakabin
161. ABC Dalby
162. ABC Dandenong North
163. ABC Dandenong West
164. ABC Dapto
165. ABC Darch
166. ABC Darwin
167. ABC Deer Park
168. ABC Delacombe
169. ABC Delroy Gardens
170. ABC Deniliquin
171. ABC Derrimut East
172. ABC Doncaster East
173. ABC Donvale
174. ABC Doonside (CC)
175. ABC Douglas
176. ABC Drayton
177. ABC Driver
178. ABC Drouin
179. ABC Drysdale
180. ABC Dubbo
181. ABC Dubbo East
182. ABC Dundowran
183. ABC Dunsborough Lakes
184. ABC Eaglesfield St Beaudesert
185. ABC East Ballina
186. ABC East Brisbane
187. ABC East Bunbury
188. ABC Eaton
189. ABC Eatons Hill East 1 and 2

190. ABC Echuca Nthn Highway
191. ABC Edgewater
192. ABC Edmonton
193. ABC Eight Mile Plains Sth (CC)
194. ABC Eimeo
195. ABC Eltham
196. ABC Elwood North
197. ABC Emerald
198. ABC Endeavour Hills
199. ABC Epping
200. ABC Epping South
201. ABC Erina Heights
202. ABC Ermington
203. ABC Estella
204. ABC Eumundi
205. ABC Euroa
206. ABC Evanston Park
207. ABC Fairfield Heights
208. ABC Fairfield Waters
209. ABC Fairway Waters (CC)
210. ABC Ferntree Gully West
211. ABC Flagstone
212. ABC Flemington
213. ABC Forbes
214. ABC Forest Gardens
215. ABC Forest Hill
216. ABC Forest Lake and Babyworld
217. ABC Forest Lake South
218. ABC Fortitude Valley North
219. ABC Frankston
220. ABC Frankston South
221. ABC Galloway Drive
222. ABC Garden City
223. ABC Garran
224. ABC Gateshead
225. ABC Gatton
226. ABC Gaven
227. ABC Gawler South
228. ABC Geaney Lane

- 229. ABC Geelong
- 230. ABC Geelong East
- 231. ABC Geraldton West
- 232. ABC Girrawheen
- 233. ABC Gladstone
- 234. ABC Gladstone South
- 235. ABC Glass House Mountains
- 236. ABC Glen Huntly West
- 237. ABC Glendale
- 238. ABC Glenelg North
- 239. ABC Glenfield Park
- 240. ABC Glenmore Drive, Ashmore
- 241. ABC Glenmore Park
- 242. ABC Glenorchy
- 243. ABC Glenroy
- 244. ABC Glenwood
- 245. ABC Glenwood South
- 246. ABC Gloucester Park
- 247. ABC Golden Square
- 248. ABC Goodna
- 249. ABC Goonellabah
- 250. ABC Goulburn Central
- 251. ABC Gracemere Central
- 252. ABC Grafton
- 253. ABC Green Point
- 254. ABC Greenfields
- 255. ABC Greensborough North
- 256. ABC Greenvale
- 257. ABC Griffith
- 258. ABC Grovedale
- 259. ABC Grovedale South
- 260. ABC Gunnedah
- 261. ABC Gympie
- 262. ABC Haberfield
- 263. ABC Hackham
- 264. ABC Halls Head
- 265. ABC Hampton Park
- 266. ABC Hampton Park South
- 267. ABC Harristown



268. ABC Hassall Grove
269. ABC Hawthorne
270. ABC Heatherton Hills
271. ABC Heatley East
272. ABC Heidelberg
273. ABC Helensvale East
274. ABC Hendra and Babyworld
275. ABC Hercules Street, Tamworth
276. ABC Hermit Park
277. ABC Hervey Bay
278. ABC High Wycombe
279. ABC Highfields
280. ABC Hillside
281. ABC Hobart Central
282. ABC Hope Valley
283. ABC Hoppers Crossing
284. ABC Hoppers Crossing Central
285. ABC Hoppers Crossing North
286. ABC Hoppers Crossing West
287. ABC Horsham
288. ABC Hoxton Park
289. ABC Huntingdale
290. ABC Hurstville
291. ABC Hurstville Central
292. ABC Hurstville East
293. ABC Hyde Park
294. ABC Idalia
295. ABC Indooroopilly
296. ABC Indooroopilly East & Babyworld
297. ABC Ingle Farm
298. ABC Ingle Farm South
299. ABC Innisfail
300. ABC Innisfail East
301. ABC Isaacs
302. ABC Isle Of Capri
303. ABC Ivanhoe
304. ABC Jandakot
305. ABC Jandakot West
306. ABC Jerrabomberra (CC)

- 307. ABC Jindalee
- 308. ABC Jones Hill
- 309. ABC Joondalup
- 310. ABC Junee
- 311. ABC Kalamunda
- 312. ABC Kallangur
- 313. ABC Kallangur West
- 314. ABC Kambah
- 315. ABC Kangaroo Flat
- 316. ABC Kanimbla
- 317. ABC Kawana Waters
- 318. ABC Kealba
- 319. ABC Kedron Central
- 320. ABC Kellyville Ridge
- 321. ABC Kelso West
- 322. ABC Kenmore
- 323. ABC Kenmore North
- 324. ABC Kensington (CC)
- 325. ABC Kilberry OSHC
- 326. ABC Kin Kora
- 327. ABC Kincumber
- 328. ABC Kingaroy
- 329. ABC Kings Meadows (CC)
- 330. ABC Kingsley
- 331. ABC Kingston
- 332. ABC Kinross
- 333. ABC Kirwan South
- 334. ABC Knox
- 335. ABC Koorlingal (CC)
- 336. ABC Kuluin
- 337. ABC Kyneton
- 338. ABC Labrador
- 339. ABC Labrador East
- 340. ABC Lake Munmorah
- 341. ABC Lake Road
- 342. ABC Lakeside
- 343. ABC Lane Cove Central
- 344. ABC Langwarrin East
- 345. ABC Lara

346. ABC Lavington Central
347. ABC Leeton North
348. ABC Lennox Head
349. ABC Linden Park
350. ABC Little Mountain
351. ABC Little Mountain East
352. ABC Little Mountain Centre and Baby World
353. ABC Logan Village
354. ABC Loganlea
355. ABC Lynbrook
356. ABC Mackay
357. ABC Mackay East
358. ABC Macquarie Park North
359. ABC Madora Bay
360. ABC Magill
361. ABC Maida Vale
362. ABC Maleny
363. ABC Mangerton
364. ABC Manunda West
365. ABC Marleston
366. ABC Maroochydore
367. ABC Marrickville
368. ABC Marsden
369. ABC Maryborough Central and Babyworld
370. ABC Mawson Lakes (CC)
371. ABC Mawson Lakes North
372. ABC McDowall
373. ABC McKinnon
374. ABC Meadow Heights
375. ABC Meadow Springs
376. ABC Melbourne Central (CC)
377. ABC Melrose Park
378. ABC Melton Central
379. ABC Melton North
380. ABC Melton West
381. ABC Menai
382. ABC Mentone
383. ABC Merriwa
384. ABC Merrylands Central

- 385. ABC Middle Park
- 386. ABC Middle Ridge
- 387. ABC Mildura
- 388. ABC Mildura South
- 389. ABC Mill Park
- 390. ABC Mill Park East
- 391. ABC Mindarie
- 392. ABC Miranda
- 393. ABC Moama
- 394. ABC Mona Vale South
- 395. ABC Mont Albert (CC)
- 396. ABC Monterey Keys
- 397. ABC Montrose
- 398. ABC Moonee Beach
- 399. ABC Moonee Ponds Central
- 400. ABC Mooroolbool
- 401. ABC Mooroolbark
- 402. ABC Morayfield Central
- 403. ABC Morayfield South
- 404. ABC Moree Plains
- 405. ABC Moreton Downs
- 406. ABC Morningside
- 407. ABC Morningside Central
- 408. ABC Morwell
- 409. ABC Mossman South
- 410. ABC Moulden North
- 411. ABC Moulden South
- 412. ABC Mount Clear
- 413. ABC Mount Gambier Central
- 414. ABC Mount Helen
- 415. ABC Mount Isa
- 416. ABC Mount Louisa
- 417. ABC Mount Martha
- 418. ABC Mount Martha East
- 419. ABC Mount Nasura
- 420. ABC Mount Pleasant
- 421. ABC Mount Warren Boulevard
- 422. ABC Mount Warren Park
- 423. ABC Mount Waverley (CC)

- 424. ABC Mudgeeraba East Centre 1
- 425. ABC Murrumba Downs Central
- 426. ABC Muswellbrook
- 427. ABC Myaree
- 428. ABC Nambour
- 429. ABC Nambour North
- 430. ABC Narangba
- 431. ABC Narellan Vale
- 432. ABC Narre Warren
- 433. ABC Narre Warren North
- 434. ABC Narre Warren South Central
- 435. ABC Narwee
- 436. ABC Nelson Bay East
- 437. ABC Nerang Central 2
- 438. ABC Nerang South
- 439. ABC New Gisborne
- 440. ABC New Lambton
- 441. ABC Newstead
- 442. ABC Newtown
- 443. ABC Newtown South
- 444. ABC Nightcliff
- 445. ABC Noble Park Central (CC)
- 446. ABC Nollamara
- 447. ABC Noosaville West
- 448. ABC Norfolk Village
- 449. ABC North Hobart
- 450. ABC North Lakes Central
- 451. ABC North Lakes South
- 452. ABC North Mackay
- 453. ABC Northcote West
- 454. ABC Numurkah
- 455. ABC Nundah
- 456. ABC Nuriootpa
- 457. ABC Oakbank
- 458. ABC Oakhurst
- 459. ABC Oakleigh
- 460. ABC Oakleigh South
- 461. ABC Ocean Reef
- 462. ABC Old Reynella

- 463. ABC Orange
- 464. ABC Orange North
- 465. ABC Ormeau South
- 466. ABC Oxenford
- 467. ABC Oxenford South
- 468. ABC Oxenford West 1 and 2
- 469. ABC Oxley
- 470. ABC Pacific Paradise
- 471. ABC Pacific Pines
- 472. ABC Pacific Pines Reserve
- 473. ABC Parafield Gardens
- 474. ABC Paralowie
- 475. ABC Paralowie Central
- 476. ABC Paralowie West
- 477. ABC Parkwood
- 478. ABC Parkwood North
- 479. ABC Pascoe Vale Centre 1
- 480. ABC Pascoe Vale Centre 2
- 481. ABC Payneham
- 482. ABC Pendle Hill
- 483. ABC Penfield
- 484. ABC Petrie
- 485. ABC Pialba
- 486. ABC Pimpama North
- 487. ABC Plympton
- 488. ABC Point Cook
- 489. ABC Point Cook Central
- 490. ABC Point Cook West
- 491. ABC Point Vernon
- 492. ABC Pooraka
- 493. ABC Port Macquarie
- 494. ABC Portland
- 495. ABC Pound Road
- 496. ABC Preston North
- 497. ABC Promenades
- 498. ABC Prospect
- 499. ABC Prospect Vale
- 500. ABC Quakers Hill North
- 501. ABC Raceview Central

- 502. ABC Rasmussen West
- 503. ABC Red Hill North
- 504. ABC Redbank Plains
- 505. ABC Redcliffe
- 506. ABC Redcliffe Central
- 507. ABC Redland Bay South
- 508. ABC Regentville
- 509. ABC Regentville Academy
- 510. ABC Reservoir East
- 511. ABC Richlands
- 512. ABC Richmond East
- 513. ABC Riddells Creek
- 514. ABC Ringwood
- 515. ABC Riverside Gardens (CC)
- 516. ABC Robertson
- 517. ABC Robina and Babyland
- 518. ABC Robina Groves
- 519. ABC Rockhampton
- 520. ABC Rockingham South
- 521. ABC Roma
- 522. ABC Rosanna
- 523. ABC Rosebud
- 524. ABC Rosebud West (CC)
- 525. ABC Rothwell
- 526. ABC Rowville
- 527. ABC Rowville North
- 528. ABC Rowville South
- 529. ABC Roxburgh Park
- 530. ABC Roxburgh Park East
- 531. ABC Rural View
- 532. ABC Rutherford
- 533. ABC Salisbury North (CC)
- 534. ABC Science Park (CC)
- 535. ABC Seaford Rise
- 536. ABC Secret Harbour
- 537. ABC Semaphore Park
- 538. ABC Semaphore South
- 539. ABC Seven Hills
- 540. ABC Seymour Central

- 541. ABC Shailer Park
- 542. ABC Sheidow Park
- 543. ABC Sheidow Park North
- 544. ABC Shepparton
- 545. ABC Shepparton South
- 546. ABC Sherwood Road
- 547. ABC Sinagra
- 548. ABC Sinnamon Park
- 549. ABC Smithfield Central (CC)
- 550. ABC Somerville Central
- 551. ABC South Nowra
- 552. ABC South Road
- 553. ABC Spring Street
- 554. ABC Springvale
- 555. ABC St Leonards (CC)
- 556. ABC St Leonards Central
- 557. ABC Stafford
- 558. ABC Stafford Heights
- 559. ABC Station Place
- 560. ABC Strathfieldsaye
- 561. ABC Stratton
- 562. ABC Stuart Park (CC)
- 563. ABC Sunbury Central
- 564. ABC Sunbury East
- 565. ABC Sunbury West
- 566. ABC Swan Hill
- 567. ABC Swan Hill East
- 568. ABC Sydenham West
- 569. ABC Tallai
- 570. ABC Tallebudgera Central
- 571. ABC Tamborine Mountain
- 572. ABC Tamworth Central
- 573. ABC Tamworth South
- 574. ABC Tannum Sands
- 575. ABC Tapping
- 576. ABC Taree West
- 577. ABC Tarneit South (CC)
- 578. ABC Tarragindi East
- 579. ABC Tatton

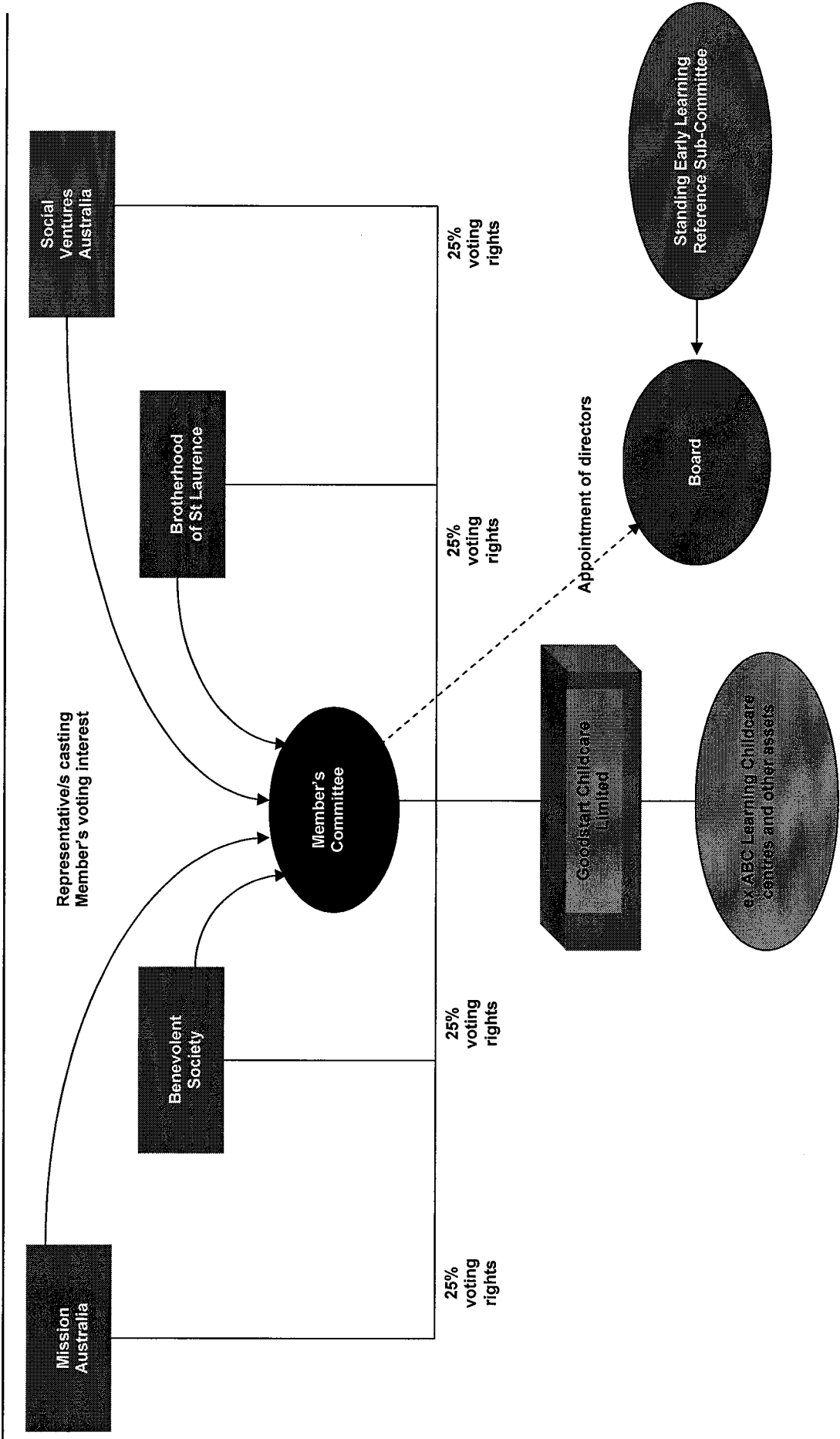


- 580. ABC Taylors Hill
- 581. ABC Thornbury
- 582. ABC Thorneside (CC)
- 583. ABC Thornlie
- 584. ABC Thornton East
- 585. ABC Thurgoona
- 586. ABC Tiwi
- 587. ABC Toongabbie West
- 588. ABC Toormina
- 589. ABC Toowoomba Central
- 590. ABC Toowoomba North
- 591. ABC Torquay
- 592. ABC Townsville and Babyworld (CC)
- 593. ABC Traralgon
- 594. ABC Traralgon North
- 595. ABC Traralgon West
- 596. ABC Treasures Vermont
- 597. ABC Trinity Beach
- 598. ABC Tuggerah
- 599. ABC Tumby Umbi 2
- 600. ABC Turner
- 601. ABC Tweed Heads South
- 602. ABC Varsity Lakes Central
- 603. ABC Vermont Central
- 604. ABC Virginia
- 605. ABC Wagga
- 606. ABC Walkerston
- 607. ABC Wangaratta
- 608. ABC Wangaratta Central
- 609. ABC Wangaratta East
- 610. ABC Wantirna
- 611. ABC Wantirna South
- 612. ABC Warnbro (CC)
- 613. ABC Warner
- 614. ABC Warnervale
- 615. ABC Warragul
- 616. ABC Warragul North
- 617. ABC Warrnambool North
- 618. ABC Warrnambool West

- 619. ABC Warwick
- 620. ABC Warwick West
- 621. ABC Waterford
- 622. ABC Wavell Heights
- 623. ABC Welshpool (CC)
- 624. ABC Wendouree
- 625. ABC Wentworthville Central
- 626. ABC Werribee Central
- 627. ABC West Brunswick
- 628. ABC West Kempsey
- 629. ABC West Mackay and Babyworld
- 630. ABC West Pymble
- 631. ABC West Street (CC)
- 632. ABC Whyalla
- 633. ABC Willoughby
- 634. ABC Willows
- 635. ABC Wishart
- 636. ABC Wodonga Central (CC)
- 637. ABC Wollongong South
- 638. ABC Wondall Road
- 639. ABC Wonthella
- 640. ABC Woodend Central
- 641. ABC Woodford
- 642. ABC Woongarra
- 643. ABC Woongarra Gardens
- 644. ABC Woree
- 645. ABC Woree North
- 646. ABC Woy Woy South
- 647. ABC Wynnum West
- 648. ABC Yamanto
- 649. ABC Yarrowonga Central
- 650. ABC Yass Central
- 651. ABC Young
- 652. HQ Child Care Service Parramatta
- 653. ABC Boondall
- 654. ABC Caboolture
- 655. ABC Cairns North (CC)
- 656. ABC Capalaba
- 657. ABC Deakin

- 658. ABC Fernvale
- 659. ABC Glen Huntly
- 660. ABC Kellyville
- 661. ABC Kellyville East
- 662. ABC Macquarie Park (CC)
- 663. ABC Manoora
- 664. ABC Mosman
- 665. ABC Murarrie
- 666. ABC North Balwyn
- 667. ABC North Ipswich
- 668. ABC Pemberton Street
- 669. ABC Plumpton East
- 670. ABC Port Kennedy
- 671. ABC Prairiewood South 1 & 2
- 672. ABC Proserpine 1
- 673. ABC Pullenvale
- 674. ABC Queens Park
- 675. ABC Redbank Plains North
- 676. ABC Slacks Creek
- 677. ABC Springfield 1 and 2
- 678. ABC Tallebudgera
- 679. ABC Tamarind Gardens
- 680. ABC Williamstown

Group Structure Diagram - Clause 4.1(f) (Group Structure Diagram)



## Compliance Certificate

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### Clause 4.1(d)

To: [ ] (Secured Creditor)

Compliance Certificate as at *[insert date]*

We refer to the common terms deed dated *[insert date]* between Goodstart Childcare Limited (as **Company**), the Commonwealth of Australia and National Australia Bank Limited (as **Senior Agent** and **Security Trustee**) (**Common Terms Deed**).

A term defined in the Common Terms Deed has the same meaning when used in this Compliance Certificate.

**[For the purposes of clauses 4.26 and 4.27 of the Common Terms Deed, we certify on behalf of the Company as follows in relation to the period ending *[insert details]*:**

- (a) **EBITDA as at *[insert date]* was *[insert details]*.**
- (b) **The Interest Cover Ratio as at *[insert date]* was *[insert details]*.**
- (c) **The Leverage Ratio as at *[insert date]* was *[insert details]*.**
- (d) **The Debt Service Cover Ratio as at *[insert date]* was *[insert details]*.**
- (e) **Capital Expenditure of the Group incurred for the current Financial Year as at *[insert date]* was *[insert details]*.**
- (f) **The Average Monthly Occupancy Rate as at *[insert date]* was *[insert details]*.**
- (g) **The Free Cash Flow of the Group as at *[insert date]* was *[insert details]*.**
- (h) **[The ratio of Total Assets of the Guarantor Group to Total Assets of the Group as at *[insert date]* was *[insert percentage]*%.]**
- (i) **[The ratio of EBITDA of the Guarantor Group to EBITDA of the Group for the 12 month period ending on *[insert date]* was *[insert percentage]*%.]**

**We represent and warrant that no Default or Review Event is subsisting except as follows: *[insert details]*, and we have taken/propose the following remedial action *[insert action]*.**

*date* \_\_\_\_\_

*Date* \_\_\_\_\_

*sign here* ► \_\_\_\_\_  
Director

*sign here* ► \_\_\_\_\_  
Director

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

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

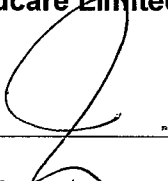
# Signing page

Executed as a deed

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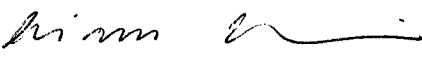
## Company

Signed, sealed and delivered for  
**Goodstart Childcare Limited**  
by its attorney

sign here ►   
Attorney

print name JAMES LEWIS

Palmer, Gilbert & Tobin  
in the presence of

sign here ►   
Witness

print name Liam Williams

---

**Creditor**

Signed, sealed and delivered 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 Brinsell-Jones

---

**Senior Agent**

Signed, sealed and delivered for  
**National Australia Bank Limited**  
by its attorney

sign here ►   
Attorney

print name MATTHEW TURNER

in the presence of

sign here ►   
Witness  
**Liam Williams**


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

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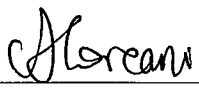


**Security Trustee**

Signed, sealed and delivered 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**  
\_\_\_\_\_