

## Deed

## Contents

EXECUTION VERSION

Project Gold

Intercreditor Deed

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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Signing page

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Intercreditor Deed

This deed witnesses	That in consideration of, among other things, the mutual promises contained in this deed, the parties agree as set out in the Operative part of this 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          (Company)</p>
Senior Agent	<p><b>National Australia Bank Limited</b>          ABN 12 004 044 937 of Level 25, 255 George Street, Sydney NSW 2000          (Senior Agent)</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          (Commonwealth)</p>
Security Trustee	<p><b>National Australia Bank Limited</b>          ABN 12 004 044 937 of Level 25, 255 George Street, Sydney NSW 2000          (Security Trustee)</p>
Background	<ol style="list-style-type: none"> <li>1 The Senior Creditors have made available or will make available to the Company the Senior Secured Moneys.</li> <li>2 The Commonwealth has made available or will make available to the Company the Commonwealth Secured Moneys.</li> <li>3 The Commonwealth and the Company have agreed that the Commonwealth Secured Moneys will be subordinated to, and rank in priority behind, the Senior Secured Moneys on the terms and conditions of this deed.</li> </ol>

## Operative part

## 1 Definitions and interpretation

## 1.1 Definitions

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

Term	Meaning
Acceleration Rights	a Beneficiary's rights under any Transaction Document to which it is a party to declare, or to instruct or request a Representative to declare, by notice to the Company or any other Transaction Party that the Secured Moneys owing to it, or any part of them, are immediately due and payable.
Additional Guarantee Secured Moneys	additional bank guarantee facilities provided to the Company by one or more Secured Creditors and which are required by the Company to meet its obligations under any Childcare Centre Leases or Bank Guarantee Governing Deed to provide bank guarantees in support of its obligations under any Childcare Centre Leases.
Bank Guarantee Cash Collateral Account	has the meaning given to that term in the Senior Facility Agreement.
Business Day	<ol style="list-style-type: none"> <li>for the purposes of clause 10.3, 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>for all other purposes, a day on which banks are open for business in Sydney, New South Wales excluding a Saturday, Sunday or public holiday.</li> </ol>
Common Terms Deed	the deed so entitled between, among others, the parties to this deed, dated on or about the date of this deed.
Commonwealth Administration Fee	the administration fee payable by the Company to the Commonwealth under the Commonwealth Facility Agreement.
Commonwealth Principal	the principal required to be repaid by the Company in accordance with clause 6.2 (Scheduled repayments) of the Commonwealth Facility Agreement.
Enforcement Action	any action of the Security Trustee to appoint a Controller under any Security, to declare any Security enforceable or to otherwise exercise any Power to enforce any Security.

Term	Meaning
Excess Commonwealth Secured Moneys	any Financial Indebtedness that is provided by the Commonwealth knowingly in breach of clause 6.
Excess Senior Secured Moneys	any Financial Indebtedness that is provided by a Senior Creditor knowingly in breach of clause 6.
Financial Covenant	each financial undertaking in clause 4.26 (Financial undertakings) of the Common Terms Deed.
New Senior Debt	has the meaning given to that term in clause 6.1.
Permitted Payment	means a payment which is permitted to be made under clause 4.
Permitted Payment Failure	means the failure by the Company to pay any amount payable under the Commonwealth Finance Documents when due to the extent it is able and entitled to make that payment as a Permitted Payment.
Senior Repayments	<p>until the Senior Discharge Date:</p> <ol style="list-style-type: none"> <li>the payments required to be made in accordance with clauses 8.2 (Scheduled repayments – Facility A) and 8.4 (Mandatory Prepayments – Free Cash Flow) to 8.6 (Mandatory Prepayments – Change of Control, change of business, listing or disposal) (inclusive) of the Senior Facility Agreement; and</li> <li>any repayments of principal required to be made by the Company under any Senior Finance Document.</li> </ol>
Specified Default Action	<ol style="list-style-type: none"> <li>the exercise by any Secured Creditor of any Acceleration Rights (including the provision of an instruction to any other Secured Creditor to exercise those Acceleration Rights); or</li> <li>the giving by any Secured Creditor to the Security Trustee of a direction to take any Enforcement Action,</li> </ol> <p>in each case, where the right to take such action or give such direction arose solely as a consequence of the occurrence or subsistence of one or more Specified Events of Default.</p>
Specified Event of Default	<p>an Event of Default arising under the following clauses of the Common Terms Deed:</p> <ol style="list-style-type: none"> <li>clause 5(b) (financial undertakings);</li> <li>clause 5(c) (non-remediable failure), unless that Event of Default arose as a consequence of a breach of clause 4.12 (Negative pledge) of the Common Terms Deed (in which case it will not be a Specified Event of Default);</li> <li>clause 5(d) (remediable failure), unless that Event of Default arose as a consequence of a breach of clause 4.12 (Negative pledge) of the Common Terms Deed (in which case it will not be a Specified Event of Default);</li> </ol>

Term	Meaning
	4 clause 5(e) (misrepresentation), unless that Event of Default arose as a consequence of a misrepresentation under clause 3.1(o) (no Encumbrances or other interests) of the Common Terms Deed (in which case it will not be a Specified Event of Default);
	5 clause 5(f) (unenforceability), unless that Event of Default arose with respect to a Material Document (in which case it will not be a Specified Event of Default); or
	6 clause 5(l) (ceasing business).

## 1.2 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 1.2(e) implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to a clause, party, annexure or schedule is a reference to a clause of, and a party, annexure and schedule to, this deed and a reference to this deed includes any annexure 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, unless that amendment, supplement, replacement or novation is not permitted under this deed;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) 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;

- (k) a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits;
- (l) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (m) 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;
- (n) 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,
- (o) is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) a Senior Default or Senior Event of Default is subsisting if it has not been remedied or cured in accordance with the relevant Senior Finance Document under which it arose or waived in accordance with the relevant Senior Finance Document under which it arose;
- (q) a Commonwealth Default or Commonwealth Event of Default is subsisting if it has not been remedied or cured in accordance with the relevant Commonwealth Finance Document under which it arose or waived in accordance with the relevant Commonwealth Finance Document under which it arose;
- (r) a Permitted Payment Failure will be taken to be remedied (and no longer subsisting) if the Commonwealth has been paid the amount the subject of the Permitted Payment Failure together with all overdue interest payable under the Commonwealth Facility Agreement (whether by the Company, a Transaction Party, a Senior Creditor or otherwise);
- (s) a reference to time is to Sydney time; and
- (t) 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.

## 1.3 Incorporated definitions

A word or phrase (other than one defined in clause 1.1) defined in the Common Terms Deed or the Security Trust Deed has the same meaning in this deed. If a term is defined in both the Common Terms Deed and the Security Trust Deed then the term as defined in the Security Trust Deed will apply to this deed.

**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**

Subject to any provision to the contrary in any Transaction Document, 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 next Business Day in the same calendar month or, if none, the preceding Business Day.

**1.6 Several obligations and rights of Secured Creditors**

The obligations and rights of the Secured Creditors under this deed are several and:

- (a) failure of a Secured Creditor to perform its obligations does not relieve any other Secured Creditor from any of its obligations;
- (b) no Secured Creditor is responsible for the obligations of any other Secured Creditor or a Representative (unless, in the case of a Secured Creditor that is a Senior Creditor, such Senior Creditor is also a Representative); and
- (c) subject to this deed and each Transaction Document, each Secured Creditor may separately enforce its rights under any Transaction Document.

**1.7 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 the Senior Facility Agreement. Each Senior Financier under the Senior Facility Agreement from time to time 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.

**1.8 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 clauses 1.8(a)(1) and (2).

**1.9 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 1.9, 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 1.9, 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 1.9 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 1.9 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.
- (f) 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.

**1.10 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 1.9;
- (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.

**1.11 Inconsistency**

In the event of any inconsistency between a provision in this deed and a provision in a Transaction Document, the provision in this deed prevails to the extent of the inconsistency.

**1.12 Intercreditor Deed**

Each party acknowledges that this deed is the Intercreditor Deed for the purposes of the Common Terms Deed and the Security Trust Deed.

**2 Priorities and subordination****2.1 Priorities**

- (a) The Commonwealth Secured Moneys are subordinated to the Senior Secured Moneys in the manner set out in this deed.
- (b) The parties acknowledge and agree that the Senior Secured Moneys and the Commonwealth Secured Moneys rank in the following order:
- (1) **First:** the Senior Secured Moneys;
  - (2) **Second:** the Commonwealth Secured Moneys;
  - (3) **Third:** any Excess Senior Secured Moneys; and
  - (4) **Fourth:** any Excess Commonwealth Secured Moneys, on the terms of this deed, including clause 2.2.
- (c) All moneys received by the Security Trustee or any other Secured Creditor or any Controller or Attorney on enforcement of the Security Trust Deed or any Security or paid to the Security Trustee by the Commonwealth under this deed (including under clauses 2.3(a), 2.3(b) or 2.4(a)) will be applied in accordance with clauses 4 and 5 of the Security Trust Deed.

**2.2 Subordination of Commonwealth Secured Moneys**

- (a) Except as expressly set out in this deed, all the Commonwealth Secured Moneys and payment (from whatever source) of, and the rights and claims of the Commonwealth in respect of, any and all the Commonwealth Secured Moneys are subordinated and postponed and made subject in right of payment to all the Senior Secured Moneys and payment (from whatever source) of, and the rights and claims of the Senior Creditors in respect of, all the Senior Secured Moneys.
- (b) Until the Senior Discharge Date:
- (1) the Commonwealth Secured Moneys must not (without the prior written consent of the Senior Agent) be paid or repaid;

- (2) the Commonwealth may not receive, or permit or require the Company or any other Transaction Party, to pay, prepay, redeem, purchase, defease, or otherwise acquire or satisfy in any manner, any Commonwealth Secured Moneys; and
- (3) neither the Company nor any other Transaction Party which is a party to this deed may permit or require the Company or any other Transaction Party to pay, prepay, redeem, purchase, defease or otherwise acquire or satisfy in any manner, any Commonwealth Secured Moneys, to, or at the direction of, the Commonwealth or any person acting or purporting to act, on behalf of the Commonwealth,

except to the extent of (and only to the extent of) any Permitted Payment or otherwise as expressly set out in this deed.

- (c) The subordination effected by this deed applies at all times until the Senior Discharge Date, including if and while the Company or any other Transaction Party is in Liquidation.
- (d) If, on Liquidation of the Company or any other Transaction Party, there is a distribution of any of the assets of the Company or any other Transaction Party, including payment in cash, property or securities, to creditors of the Company or any other Transaction Party on Liquidation, all of the Senior Secured Moneys must be paid in full in cash or by way of permitted set-off (such as under section 553C of the Corporations Act) before a payment is made for or on account of the Commonwealth Secured Moneys.

**2.3 Payment by Commonwealth**

- (a) If any amount is paid to or received or recovered by the Commonwealth in respect of the Commonwealth Secured Moneys (other than a Permitted Payment) whether in the Liquidation of the Company or any other Transaction Party or for any other reason (including by payment, set-off, combination of accounts, counterclaim or abatement) the Commonwealth must immediately and directly pay to the Security Trustee a sum equal to that amount for application in accordance with this deed.
- (b) If, after the commencement of the Liquidation of the Company or any other Transaction Party, the Commonwealth does not actually receive a dividend, payment or other distribution because of the application of any law or rule relating to set-off (including section 553C of the Corporations Act) and the Commonwealth Secured Moneys are reduced by operation of that law or rule, then the Commonwealth must nevertheless pay to the Security Trustee (for application in accordance with this deed) that amount which would otherwise have been payable under any Liquidation had the set-off not applied and had the dividend, payment or other distribution actually been received.

**2.4 Liquidation**

- (a) The Commonwealth may, and must if required by the Security Trustee (provided that such request is made in accordance with, and not in breach of, any laws), prove in any liquidation, winding up, insolvency, dissolution or similar procedure of the Company or any other Transaction Party for all or part of the Commonwealth Secured Moneys and where requested to prove by the Commonwealth, for such Commonwealth Secured Moneys as nominated by the Security Trustee, and any money recovered or received under or in respect of the liquidation, winding up, insolvency, dissolution or similar procedure will be dealt with in accordance with this deed. The Commonwealth must, if required by the Security Trustee (provided that such request is made in accordance with, and not in breach of, any laws), vote as directed by the Security Trustee in any vote in any procedure, meeting or other decision making body in relation to the liquidation,

winding up, insolvency, dissolution or similar procedure of the Company or any other Transaction Party.

- (b) If the Commonwealth proves in any liquidation, winding up, insolvency, dissolution or similar procedure pursuant to clause 2.4(a), it must not withdraw or vary or attempt to withdraw or vary any proof or claim so lodged without the prior written consent of the Security Trustee.
- (c) If the Commonwealth does not comply with clauses 2.4(a) and 2.4(b), the Security Trustee may, and the Commonwealth irrevocably authorises the Security Trustee to, prove in the liquidation, winding up, insolvency, dissolution or similar procedure in accordance with those clauses (without limitation, by filing any claim or proof on behalf of the Commonwealth).

## 2.5 No prejudice

The Powers of the Senior Creditors to enforce subordination under this deed are not affected or prejudiced by any act or omission on the part of the Company, a Transaction Party or the Commonwealth.

## 2.6 Rescission of payment

Whenever a claim that all or part of any payment affecting or relating in any way to the Senior Secured Moneys is void or voidable or subject to recovery is upheld, conceded or compromised:

- (a) each Senior Creditor immediately becomes entitled against the Company and each Transaction Party which is a party to this deed to all respective Powers that it would have had if payment of the amount of the payment which is void or voidable or recoverable or foregone or compromised, had not taken place;
- (b) each Senior Creditor immediately becomes entitled against the Commonwealth to all respective Powers that it would have had under any Transaction Document to which the Commonwealth is expressed to be a party if payment of the amount of the payment which is void or voidable or recoverable or foregone or compromised, had not taken place;
- (c) the Commonwealth must promptly do everything the Security Trustee requests to restore each Senior Creditor to the position it held with respect to the Commonwealth under the Transaction Documents to which the Commonwealth is expressed to be a party immediately before any such payment; and
- (d) the Company and each Transaction Party which is a party to this deed must immediately do everything (including executing any documents) the Security Trustee requests to restore each Senior Creditor to the position it held with respect to the Company and each Transaction Party which is a party to this deed immediately before the payment.

## 2.7 Suspense accounts

- (a) The Security Trustee may apply to the credit of an interest bearing suspense account:
  - (1) any amounts received under and in accordance with this deed, the Security Trust Deed, a Subordination Deed Poll or any Security;

- (2) any dividends, distributions or other amounts received in any Liquidation of the Company or any other Transaction Party in respect of the Senior Secured Moneys or any money due or owing under this deed; and
- (3) any other amounts received from the Company, any other Transaction Party, the Commonwealth or any other person in respect of the Senior Secured Moneys or any money due or owing under this deed.

- (b) The Security Trustee may retain the amounts in a suspense account for as long as it determines is necessary in the circumstances where the Security Trustee, acting on the instructions of the Majority Beneficiaries, considers that there is a risk that it will be required to disgorge the payment because of laws governing voidable preferences or insolvent transactions. The Security Trustee is not obliged to immediately apply such amounts in or towards satisfaction of the Secured Moneys or any money due or owing under this deed, the Security Trust Deed or any Security.

## 2.8 Termination of subordination

The subordination of the Commonwealth Secured Moneys to the Senior Secured Moneys cease to be of any force or effect on the Senior Discharge Date. Subject to clause 2.6, all of the obligations and liabilities (present and future, actual and contingent) owed by the Commonwealth under this deed will be released and discharged on the Senior Discharge Date.

## 2.9 Preservation of Commonwealth Moneys

- (a) Subject to clause 3.6 but otherwise notwithstanding any other term of this deed postponing, subordinating or preventing the payment of the Commonwealth Secured Moneys, as between the Company and the Transaction Parties (on the one hand) and the Commonwealth on the other, the Commonwealth Secured Moneys shall remain owing or payable (and interest or default interest shall continue to accrue) in accordance with the terms of the Commonwealth Finance Documents.
- (b) No delay in exercising rights and remedies under any of the Commonwealth Finance Documents by reason of any term of this deed (other than clause 3.4) shall operate as a permanent waiver of any of those rights and remedies.

## 3 Overall limit on enforcement action and payment

### 3.1 Restrictions on Commonwealth

Except as expressly permitted or required by this deed, until the Senior Discharge Date, the Commonwealth, in its capacity as a Secured Creditor, is not entitled, in respect of the Commonwealth Secured Moneys, to:

- (a) require, demand or accept payment of any Commonwealth Secured Moneys except to the extent of, and only to the extent of, any Permitted Payment;
- (b) take any step to enforce or require the enforcement of any Guarantee or Encumbrance held by it in relation to the Commonwealth Secured Moneys;
- (c) be subrogated to a Senior Creditor;



- (d) permit to exist or take, claim or receive the benefit of:
- (1) any Encumbrance, Guarantee or other document or agreement of which a Senior Creditor has the benefit;
  - (2) any money held by or received or receivable by any Senior Creditor (or the Senior Agent, any trustee or Representative on behalf of one or more Senior Creditors); or
  - (3) any Power of a Senior Creditor;
- except for the rights held by the Commonwealth under the Securities in accordance with this deed and the Security Trust Deed;
- (e) retain the benefit of any distribution, dividend or payment arising out of or relating to the liquidation, winding up, insolvency, dissolution or similar procedure of the Company or any other Transaction Party;
- (f) make a claim or take any action or exercise a right, power or remedy (including under any Commonwealth Finance Document or in respect of any misrepresentation, misleading or deceptive conduct, breach of warranty, undertaking or other obligation or other conduct of the Company or any other Transaction Party under or in relation to the Transaction Documents) against the Company or any other Transaction Party, other than as permitted pursuant to clause 2.4;
- (g) accept, ensure the grant of or permit any Encumbrance or Guarantee (except as expressly provided in the Transaction Documents) from the Company or any other Transaction Party in favour of the Commonwealth;
- (h) take, or attempt to take, any step towards or for the purpose of:
- (1) participating in any liquidation, winding up, insolvency, dissolution or similar procedure of the Company or a Transaction Party, other than as permitted pursuant to clause 2.4;
  - (2) obtaining any judgment or arbitral award or levying any execution or similar process against the Company or any other Transaction Party or any of their respective assets; or
  - (3) the appointment of a liquidator, provisional liquidator, receiver, receiver and manager, administrative receiver, official manager, administrator, trustee in bankruptcy or similar official in respect of the Company or a Transaction Party;
- (i) initiate or support or take any steps with a view to any insolvency, Liquidation or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or any similar proceedings involving the Company or a Transaction Party whether by petition, convening a meeting, voting for a resolution or otherwise, but without limitation to any right of the Commonwealth to participate or prove in any Liquidation as permitted pursuant to clause 2.4;
- (j) challenge (and will not fund or facilitate any challenge by any third party to) the validity or enforceability of any claim by a Senior Creditor against, or any Encumbrance or Guarantee held by a Senior Creditor, from the Company or a Transaction Party under a Senior Finance Document;
- (k) permit any Commonwealth Secured Moneys to be evidenced by a negotiable instrument unless the instrument is expressed on its face to be subject to the subordination established by this deed or is deposited (prior to any negotiation of that instrument) with the Security Trustee for safe keeping;

- (l) permit or require the Company or a Transaction Party to exercise any right or take any other action which would cause any amount other than any Permitted Payment to become payable in connection with any of the Commonwealth Secured Moneys;
- (m) apply any money or assets in discharge or in reduction of the Commonwealth Secured Moneys or otherwise exercise or attempt to exercise any right of set-off, counterclaim, abatement or combination or similar right or procedure against, or realise any Encumbrance from, the Company or a Transaction Party;
- (n) raise any defence or counterclaim in reduction or discharge of any obligation owed by it to the Company or a Transaction Party under a Transaction Document;
- (o) vote in any meeting or other decision making body in relation to the liquidation, winding up, insolvency, dissolution or similar procedure of the Company or a Transaction Party, but without limitation to any right of the Commonwealth to participate or prove as permitted pursuant to clause 2.4; or
- (p) subordinate or otherwise postpone its rights or claims in respect of the Commonwealth Secured Moneys in favour of any person other than under this deed,
- without the prior written consent of the Senior Agent and the Commonwealth must not do, or seek, attempt or purport to do, or permit to be done, anything that it is prohibited from doing by this clause 3.1.

### 3.2 Consultation Process

- (a) Subject to paragraph (b), if a Senior Default subsists, the Security Trustee will invite the Commonwealth to attend any meeting held between the Senior Creditors which is scheduled to involve:
- (1) presentations by experts or the Company or a Transaction Party;
  - (2) decisions as to any enforcement strategy for the Securities;
  - (3) decisions as to the method of realisation or disposal of any Secured Property, other than that part of any meeting where the Security Trustee (on the instructions of the Majority Beneficiaries), or a Senior Creditor reasonably, believes that there is or there is likely to be a conflict of interest between the Senior Creditors and the Commonwealth including as to:
    - (4) matters of priority of the Secured Creditors under the Securities; or
    - (5) considerations of the Commonwealth as a secured class of financiers,
 and the Commonwealth may present the Commonwealth's point of view at any such meeting but will not be entitled to vote or otherwise affect any resolution of that meeting. Subject to clause 3.2(b), nothing in this clause 3.2(a) or clause 3.5 requires a Senior Creditor to call any meeting or to consult with the Commonwealth before accelerating any of the Senior Secured Moneys or enforcing the Securities.
- (b) Each Senior Creditor agrees that, if a Specified Event of Default occurs and for so long as it subsists, before it takes any Specified Default Action or before it gives any instructions to any other Senior Creditor or the Security Trustee to take any Specified Default Action with respect to that Specified Event of Default, it will invite the Commonwealth to consult with it in relation to any proposed Specified Default Action as follows:

- (1) in relation to a Specified Event of Default referred to in paragraph 1 of the definition of Specified Event of Default in clause 1.1, it will invite the Commonwealth to consult with it for a period of not less than 30 days from the earlier of the date that the Commonwealth was advised of the occurrence of that Specified Event of Default (whether by a Transaction Party or a Senior Creditor or otherwise) and the date the Commonwealth became aware of the occurrence of that Specified Event of Default (or such shorter period as the Commonwealth may agree in writing);
- (2) in relation to a Specified Event of Default referred to in paragraphs 2, 3, 4, 5 or 6 of the definition of Specified Event of Default in clause 1.1, it will invite the Commonwealth to consult with it for a period of not less than 30 days from the earlier of the date that the Commonwealth was advised of the occurrence of the Potential Event of Default which ultimately gave rise to that Specified Event of Default or that Specified Event of Default (whether that notice was given by a Transaction Party or a Senior Creditor or otherwise) or the date the Commonwealth became actually aware of the occurrence of that Potential Event of Default or that Specified Event of Default (or such shorter period as the Commonwealth may agree in writing),

(each period of time referred to in the paragraphs (1) and (2) above being the **Consultation Period**).

- (c) Following the end of the Consultation Period referred to in clause 3.2(b) with respect to a Specified Event of Default, the Senior Creditors may exercise or refrain from exercising any right, remedy or Power granted by the Securities in accordance with the Senior Finance Documents or take any Specified Default Action in relation to that Specified Event of Default without regard to the interests of the Commonwealth and as if the Commonwealth Secured Moneys did not exist. Nothing in clause 3.2(b) requires a Senior Creditor to call any further meeting or to consult further with the Commonwealth in respect to any Specified Default Action or Specified Event of Default after the end of the Consultation Period with respect to that Specified Event of Default.
- (d) The Senior Creditors will not be required to call any meeting or consult with the Commonwealth in relation to or before the exercise of or the giving of any notice with respect to:
- (1) any Acceleration Rights (including the provision of an instruction to any other Secured Creditor to exercise those Acceleration Rights) or
  - (2) any Enforcement Action

in each case, where the right to take such action arose as a consequence of the occurrence or subsistence of an Event of Default which is not a Specified Event of Default.

- (e) The Senior Creditors and the Commonwealth agree to notify each other if they become aware of the occurrence of any Specified Event of Default or the occurrence of any Potential Event of Default which would become a Specified Event of Default on the giving of notice, the expiry of time, the satisfaction or non satisfaction of any condition, or any combination of the above as soon as reasonably practicable (but in any event within 2 Business Days after becoming aware of that Specified Event of Default or Potential Event of Default (as applicable)).
- (f) The Senior Creditors, the Commonwealth and the Company agree to consult for a period of not less than 30 days (but without any further obligations on them) if any of the following occur:

- (1) the Company failing to comply with clause 8.3 (Additional General Undertakings) and clause 8.4 (Retention of long day childcare services) of the Commonwealth Facility Agreement;
- (2) the operation of clause 4.2 prevents the Company from making a payment to the Commonwealth as permitted by clause 4.1 for a continuous period of 12 months or more;
- (3) the Company indicates its intention to close 5 or more Childcare Centres in any 6 month period; or
- (4) the Commonwealth reasonably believes, based on the Company's annual and quarterly financial reports and any other information provided to the Commonwealth, that the Company is failing to meet or satisfactorily progress towards meeting key performance indicators and other objectives associated with educational enhancements, early learning quality improvement and strengthening of community involvement and commitment or other agreed outcomes (including, without limitation, where such failure arises from any material reduction in the number of childcare places available in a particular area and/or Childcare Centres or any material increase in the cost of childcare services provided by the Company).

Nothing in this clause 3.2(f) requires a Senior Creditor to call any meeting or to consult with the Commonwealth before accelerating any of the Senior Secured Moneys or enforcing the Securities where the Senior Creditor is permitted to do so under this deed or any Transaction Document.

### 3.3 Enforcement by Senior Creditors

Except as otherwise expressly provided in this deed or the Security Trust Deed and subject to clause 3.2 and clause 3.5:

- (a) the subordination effected by this deed is in addition to and will not prejudice or affect any Encumbrance or any right or remedy of any Senior Creditor in respect of the Senior Secured Moneys and each party agrees that:
- (1) the obligations and liabilities of the Company or any other Transaction Parties, or any other party or parties for or in respect of the Senior Secured Moneys may, from time to time, in whole or in part, be renewed, extended, amended, supplemented, novated, accelerated, compromised, terminated, sold, transferred, exchanged, waived or released by the Senior Creditors in accordance with the Senior Finance Documents as they see fit in their own interests and without reference to the Commonwealth;
  - (2) to the maximum extent permitted by law, the Senior Creditors may exercise or refrain from exercising any right, remedy or Power granted by the Securities in accordance with the Senior Finance Documents without regard to the interests of the Commonwealth and as if the Commonwealth Secured Moneys did not exist (including the right to perfect any Encumbrance created in connection with the Senior Secured Moneys);
  - (3) any and all Encumbrances at any time, present or future, held, given or intended to be given for the Senior Secured Moneys and any rights or remedies of the Senior Creditors in respect of the Senior Secured Moneys may, from time to time, in whole or in part, be exchanged, sold, transferred, released, modified, waived or extended by the Senior Creditors in accordance with the Senior Finance Documents without regard to the interests of the Commonwealth and as if the Commonwealth Secured Moneys did not exist;

- (4) if the Senior Secured Moneys are wholly or partially paid out of any proceeds received in respect of the Commonwealth Secured Moneys, there will be no subrogation to the rights of the Senior Creditors, until the Senior Discharge Date;
- (5) the Senior Creditors and any Controller appointed by them may exercise their rights under the Senior Finance Documents in the manner and at the time they consider fit in accordance with the Senior Finance Documents and free of any constraint in the Commonwealth Finance Documents (other than this deed and the Security Trust Deed) and, subject as required by applicable law, solely having regard to their own interests and, following any enforcement action against the Company or any other Transaction Party or enforcement of the Securities, may cease that enforcement;
- (6) any balance or balances of funds with the Senior Creditors at any time standing to the credit of the Company or any other Transaction Party may, from time to time, in whole or in part, be surrendered or released to another Senior Creditor in accordance with the Senior Finance Documents; and
- (7) the undertakings of the parties to the Transaction Documents (other than the undertakings in this deed and the Security Trust Deed) will not restrict the sale, exchange, transfer or taking of any other action by the Security Trustee or any Controller or Attorney on the enforcement of the Securities,

and that all of the above shall be without impairing, abridging, diminishing, releasing or affecting the subordination of the Commonwealth Secured Moneys to the Senior Secured Moneys provided for in this deed and without any of the Senior Creditors incurring any liability to any of the Commonwealth (other than as expressly provided for in this deed and the Security Trust Deed) or the Company or any other Transaction Party.

(b) until the Senior Discharge Date:

- (1) each of the Senior Creditors and any Receiver or Attorney may exercise all Powers under or in respect of the Senior Finance Documents as though the Commonwealth had no rights or interest in relation to the Company or any other Transaction Party, the Secured Property, any Security or the property or assets subject to Security Trust;
- (2) in enforcing any Senior Finance Document, the Senior Creditors and any Receiver or Attorney are entitled to act entirely in their own interests and are not required to consult with, or take into account in any way the interests of, the Commonwealth;
- (3) the Senior Creditors and any Receiver or Attorney may take any action under or in relation to a Senior Finance Document they see fit in their absolute discretion in accordance with the Senior Finance Documents, even if taking such action would or might constitute a breach of the Commonwealth Finance Documents; and they will not be liable for inducing a breach of contract for taking such action;
- (4) the Commonwealth does not have any rights in respect of any Security or the proceeds of any Security except as set out in this deed and the Security Trust Deed; and
- (5) none of the Senior Creditors nor any Receiver or Attorney owe the Commonwealth any duties, obligations or standard of care except as expressly set out in this deed and the Security Trust Deed. In particular, any obligation or requirement in any Senior Finance Document in relation to reasonableness, good faith or timeliness is not owed to the Commonwealth.

### 3.4 Waivers

- (a) Until the Senior Discharge Date (and subject to paragraph (c) below), the Commonwealth consents to, and will be bound by, any Waiver given at any time by the Security Trustee, the Senior Agent, a Representative, a Senior Creditor or any Receiver or Attorney under any Senior Finance Document or the Common Terms 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) except a Waiver which:
- (1) relates to any obligation, or failure, to pay any Commonwealth Secured Moneys;
- (2) relates to any obligation of the Company or any other Transaction Party or Noteholder under this deed, the Security Trust Deed or a Subordination Deed Pool;
- (3) has the effect of amending, extending, renewing, supplementing or otherwise varying in any manner any Transaction Document in a manner which requires the consent of the Commonwealth under clause 8.5 or under the terms of the Common Terms Deed;
- (4) relates to the provision of business related information, Financial Reports or other financial statements or certificates by or on behalf of the Company or any other Transaction Party;
- (5) has the effect of amending, updating, supplementing or otherwise varying the Business Plan or Financial Model;
- (6) relates to the incurring or the increase of any Subordinated Debt;
- (7) relates to any provision restricting the Company or any other Transaction Party from changing the nature of its business (as a whole);
- (8) relates to any provision if the Waiver is to be given for the purpose of permitting a Change of Control; or
- (9) in the case of the Commonwealth Finance Documents only, any provision if the Waiver is to be given for the purpose of enabling the disposal of all or substantially all of the Company's or a Transaction Party's main assets and undertaking.
- (b) Nothing in this clause 3.4 will affect the Commonwealth's right to determine:
- (1) whether the conditions precedent (or any one or more of them) under the Commonwealth Finance Documents have been satisfied;
- (2) whether a Commonwealth Event of Default has occurred for the purpose of causing interest to accrue at the default interest rate under the Commonwealth Finance Documents; and
- (3) whether a Commonwealth Event of Default subsists on the Senior Discharge Date.
- (c) Any Waiver that, but for the operation of this clause 3.4, the Commonwealth has not consented to will no longer be binding on the Commonwealth following the Senior Discharge Date (provided that, in respect of a Waiver relating to a Default, that Default is still subsisting as at the Senior Discharge Date).

**3.5 Senior Creditors to act in good faith**

- (a) In enforcing the Securities or exercising any Power to enforce a Senior Finance Document, the Security Trustee and the Senior Creditors must place the interests of the Senior Creditors as paramount in all respects, but each Senior Creditor (except the Security Trustee) will act in good faith towards the Commonwealth where that is not inconsistent with the interests of the Senior Creditors.
- (b) Subject to clause 3.2, nothing in clause 3.5(a) requires a Senior Creditor to consult with, or seek the consent of, the Commonwealth before exercising any right or power.
- (c) Without prejudice to any other provisions of the Transaction Documents, the rights of the Commonwealth for any breach of clause 3.5(a) is limited to a claim for damages and does not entitle the Commonwealth to any equitable remedy against a Senior Creditor.

**3.6 Procedure on enforcement**

- (a) Subject to clause 3.2, the Security Trustee will control any enforcement procedures and claims in respect of the Securities, including the receipt and application in accordance with this deed and the Senior Finance Documents of all distributions in relation to the Commonwealth Secured Moneys.
- (b) The Security Trustee will give the Commonwealth a copy of any written notice given to the Senior Agent or any Lessor by the Security Trustee or given by the Senior Agent or any Lessor to the Security Trustee concerning any actual enforcement of a Security by the Security Trustee or concerning any Senior Event of Default, waivers, consents or lock ups as and when that notice is given to, or received from, the Senior Agent.

**3.7 Deemed release of obligations**

- (a) If the Security Trustee (or any person nominated by it) is enforcing any Security (including any share mortgage) against all the share capital of a Transaction Party, any Commonwealth Secured Moneys owed by that Transaction Party and each of its Subsidiaries (and each Guarantee given by that Transaction Party and each of its Subsidiaries in favour of the Commonwealth) will be deemed irrevocably and unconditionally released at the time of the sale of all that share capital without any further action required on the part of the Commonwealth.
- (b) In the circumstances specified in clause 3.7(a), the Commonwealth will not be entitled to take any further action against the Transaction Party or its Subsidiaries from the time of the deemed release and the Commonwealth will, at the request of the Security Trustee, deliver to the Security Trustee an appropriate instrument evidencing such release within 3 Business Days of request.

**3.8 No Encumbrance**

Nothing in this deed creates an Encumbrance over any asset of the Commonwealth or any other party.

**3.9 Information**

- (a) The Commonwealth must provide to the Senior Agent a copy of any notice it gives or receives in respect of a Commonwealth Default as soon as practicable (but in any event within 2 Business Days) after receipt or giving such notice (as applicable).
- (b) The Senior Agent and the Security Trustee must provide to the Commonwealth a copy of any notice it gives or receives notifying of the occurrence of a Senior Event of Default (a **Notified Event of Default**) and any subsequent notice it gives or receives in respect of that Notified Event of Default as soon as practicable (but in any event within 2 Business Days) after receipt or giving such notice (as applicable).

**4 Permitted Payments****4.1 Permitted Payments**

Despite clauses 2.2(b) and 3.1, if, and only if, the conditions set out in clause 4.2 are fully satisfied, the Company may make payments with respect to:

- (a) 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 this clause 4.1);
- (b) Commonwealth Principal (including Commonwealth Principal which would have otherwise been due and payable under the Commonwealth Finance Document but was not permitted to be paid under this clause 4.1); and
- (c) the Commonwealth Administration Fee,

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 as a result of the operation of the terms of this deed).

**4.2 Conditions on Payments**

The conditions referred to in clause 4.1 are:

- (a) that:
  - (1) amounts that are due and payable under the Senior Finance Documents have been made;
  - (2) the payment 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) of the Common Terms Deed in respect of that Financial Year) that is not required to be applied to make a Senior Repayment or to fund the Bank Guarantee Cash Collateral Account as required under the Senior Facility Agreement;
  - (3) all Senior Repayments for that Financial Year has been made as required by clause 8.4 (Mandatory Prepayments – Free Cash Flow) of the Senior Facility Agreement or the relevant Senior Finance Document;

- (4) 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;
  - (5) the Debt Service Cover Ratio as at the most recent Calculation Date (as evidenced by the most recent Compliance Certificate) exceeds, and if the proposed payment was added to the denominator of the Debt Service Coverage Ratio, would exceed, 1.30:1;
  - (6) the payment will not cause the Company to breach any Financial Covenant;
  - (7) the payment will not cause the Company to breach any other legal obligations; and
  - (8) no Default or Review Event is subsisting or will result from the payment; and
- (b) if:
- (1) the payment is with respect to Commonwealth Principal, the payment of Commonwealth Principal does not exceed the amount of any Commonwealth Principal then due and payable under the Commonwealth Finance Documents and any amount of Commonwealth Principal which would have been due and payable in a previous period but which was not permitted to be paid under clause 4.1; and
  - (2) the payment is with respect to the Commonwealth Administration fee, that fee does not exceed \$100,000 per annum.

#### 4.3 Conditions on Payments on Senior Discharge Date

On and from the Senior Discharge Date, the provisions of clauses 4.1 and 4.2 shall no longer apply to payments made by the Company to the Commonwealth and all such payments shall be made unconditionally.

#### 4.4 Upfront fees

Nothing in this deed will, in any way, restrict the payment by the Company or any other Transaction Party of any amount due and payable under any Commonwealth Finance Documents on Financial Close.

## 5 Permitted enforcement and other matters

### 5.1 Permitted enforcement

- (a) Subject to clause 5.1(b) and clause 5.3, nothing contained in clause 3.1 will prohibit the Commonwealth from taking any action otherwise prohibited by clause 3.1 if it is entitled to do so under the Commonwealth Finance Documents and:
  - (1) a Senior Creditor has exercised Acceleration Rights or taken Enforcement Action;

- (2) an Insolvency Event has occurred in respect of the Company or a Transaction Party (but in that case such action may then only be taken against that Transaction Party in respect of which an Insolvency Event has occurred and not against, or in relation to, any other Transaction Party);
  - (3) if the Senior Secured Moneys have not been repaid within 12 months of the latest scheduled maturity date for a facility under the Senior Finance Documents and the Senior Creditors have not instructed the Security Trustee to take Enforcement Action prior to the expiry of that period;
  - (4) there is a breach of clauses 6.1 or 6.2 and the breach has not been remedied within 10 Business Days of the earlier of notice from the Commonwealth to the relevant party and that party becoming aware of that breach and that breach constitutes a Commonwealth Event of Default (but only for so long as that breach continues unremedied);
  - (5) any person disposes of any shares in any Transaction Party in breach of the Commonwealth Finance Documents or a Transaction Party or the Company disposes of all or substantially all of its assets or undertakings in breach of the Commonwealth Finance Documents, and the breach has not been remedied within 10 Business Days of the earlier of notice from the Commonwealth to the relevant party and that party becoming aware of that breach and that breach constitutes a Commonwealth Event of Default, and the Commonwealth has, in accordance with this deed, notified the Company that it objects to the disposal;
  - (6) the Transaction Parties (taken as a whole) cease or materially change their business, or any steps are taken for such purpose in breach of the Commonwealth Finance Documents, and the breach has not been remedied within 10 Business Days of the earlier of notice from the Commonwealth to the relevant party and that party becoming aware of that breach and that breach constitutes a Commonwealth Event of Default and the Commonwealth has, in accordance with this deed, notified the Company that it objects to the cessation or change; or
  - (7) 30 days has expired following receipt by the Senior Agent and the Company of a notice served by the Commonwealth specifying that an amount payable by the Company or a Transaction Party under the Commonwealth Finance Documents and which is permitted to be paid by the Company or that Transaction Party under this deed was not paid when due, payment of the amount due is not restricted under clause 4 and the amount due remains unpaid.
- (b) The Commonwealth will only have the right under clause 5.1(a) to take any action otherwise prohibited under clause 3.1 or instruct the Security Trustee to take Enforcement Action in respect of the Securities (or any one or more of them), and the Security Trustee will only act on such instructions where an event outlined in clause 5.1(a) has occurred and the Senior Creditors have not taken, or have not instructed the Security Trustee to take, any Enforcement Action in respect of the Securities within 20 Business Days of the date of the occurrence of the relevant event.
- (c) The Security Trustee must enforce the Securities, or the relevant Securities, if directed to do so by the Commonwealth as permitted in accordance with clause 5.1(b) but enforcement will then be undertaken in accordance with the remaining provisions of this deed and, until the Senior Discharge Date, in accordance with the instructions of the Majority Senior Creditors. For the avoidance of doubt, the proceeds of such enforcement will be applied in accordance with clause 2.1.

## 5.2 Other steps

The Commonwealth may not take any steps to accelerate the Commonwealth Debt or enforce the Securities except as expressly contemplated in clauses 5.1 without the prior written consent of the Senior Agent.

## 5.3 Declaratory orders and injunctions

The Commonwealth may:

- (a) seek declaratory orders; or
- (b) seek injunctions against breaches of, or specific performance,
- (c) in each case to enforce:
  - (1) this deed; or
  - (2) a covenant to pay an amount the subject of a Permitted Payment Failure where that Permitted Payment Failure is not remedied within 14 days of receipt of written notice by the Company and the Senior Agent of that Permitted Payment Failure,

but otherwise may not seek injunctions or any equitable remedies against the Company and the Transaction Parties.

## 5.4 Notices to Senior Agent

The Commonwealth shall send a copy of any notices served on the Company or a Transaction Party under, or referred to in, clause 5.1 to the Senior Agent at the same time as serving such notice on the Company or the relevant Transaction Party.

# 6 Refinancing and additional Financial Indebtedness

## 6.1 Refinancing Senior Secured Moneys

- (a) Unless otherwise agreed by the Commonwealth, the Company may not refinance all or any part of the Senior Secured Moneys with the proceeds of any Financial Indebtedness (**New Senior Debt**) except where:
  - (1) each provider of the New Senior Debt becomes, in accordance with the Security Trust Deed, a Beneficiary and a Senior Creditor and each document pursuant to which it provides any New Senior Debt (**New Senior Finance Documents**) is a Senior Finance Document;
  - (2) the New Senior Debt is used only to refinance all or any part of the Senior Secured Moneys subsisting at the time of the refinancing (including replacing existing related working capital, capital expenditure and other undrawn commitments in place at the time of the refinancing);
  - (3)

- (A) in respect of the refinancing of Senior Secured Moneys that is fully drawn and for which there is no undrawn commitment available, the New Senior Debt does not exceed an amount equal to the principal amount of those Senior Secured Moneys plus all unpaid interest and fees accrued to the date of the refinancing in respect of those Senior Secured Moneys together with any costs, fees and expenses (including break costs) associated with the refinancing of those Senior Secured Moneys;
- (B) in respect of the refinancing of Senior Secured Moneys that are not fully drawn and for which there is undrawn commitment available, the New Senior Debt does not exceed an amount equal to the amount of the maximum committed amount of the Senior Secured Moneys being refinanced plus all unpaid interest and fees accrued to the date of the refinancing in respect of those Senior Secured Moneys together with any costs, fees and expenses (including break costs) associated with the refinancing of those Senior Secured Moneys; and
- (C) in respect of the incurrence of liabilities under or in respect of Hedging Agreements relating to interest rate exposure in connection with the refinancing, the incurrence of those liabilities relates to a notional principal amount which when combined with the notional principal amount of all continuing liabilities under such Hedging Agreements does not exceed the aggregate of the Financial Indebtedness available to the Group on which interest accrues at a floating interest rate;
- (4) the providers of the New Senior Debt become beneficiaries of the Security Trust but are not otherwise granted any Encumbrance (other than a Security) by the Company or a Transaction Party or any other person and the Commonwealth will remain as a Beneficiary under all Securities;
- (5) the provisions restricting payments in relation to the Commonwealth Secured Moneys and the default regimes in respect of the New Senior Debt are not, in any case, more onerous on the Company or the Transaction Parties than those existing under the Senior Finance Documents immediately prior to the incurrence of the New Senior Debt and will not prejudice (on any reasonable analysis of the most recent Business Plan and/or Financial Model that has been approved by the Commonwealth) any scheduled payments due to the Commonwealth under the Commonwealth Facility Agreement or such amended provisions and default regimes are extended to apply to the Commonwealth Finance Documents by way of being incorporated into the Common Terms Deed;
- (6) the amortisation profile of the New Senior Debt is not materially more onerous on the Company or the Transaction Parties than the amortisation profile of the Senior Secured Moneys which is to be refinanced over the term of the Commonwealth Facility Agreement;
- (7) subject to clause 6.1(b), the latest scheduled maturity date for a facility in respect of the New Senior Debt is no later than the date falling 6 months prior to the final Repayment Date (as defined in the Commonwealth Facility Agreement) of the Commonwealth Secured Moneys as originally set out in the Commonwealth Facility Agreement at Financial Close; and
- (8) the Senior Agent gives the Commonwealth not less than 20 Business Days' prior notice of the proposed date on which the Senior Secured Moneys are to be refinanced.

- (b) To the extent a provision of this deed would restrict the incurrence of Senior Secured Moneys which involves an extension of the latest scheduled maturity date for a facility in respect of those Senior Secured Moneys to a date later than 6 months prior to the final Repayment Date (as defined in the Commonwealth Facility Agreement) of the Commonwealth Secured Moneys (in this clause 6.1, the **Restricted Event**), without otherwise limiting any other provision of this deed, the Commonwealth will permit the refinancing of the Senior Secured Moneys which involves the Restricted Event if, at that time, the other provisions of clause 6.1(a) (as applicable) have been complied with and this deed and any other Transaction Document, as necessary, are amended so that on and from the maturity date of the Commonwealth Secured Moneys, the Commonwealth Secured Moneys will rank *pari passu* with the Senior Secured Moneys (without preference between themselves).

### 6.2 Additional Financial Indebtedness

- (a) Subject to clause 6.1, unless otherwise agreed by the Commonwealth, the Company or a Transaction Party may not incur any additional Financial Indebtedness that is not contemplated by or permitted by the Commonwealth Finance Documents at the date of this deed that ranks senior in priority to, or *pari passu* with, the Commonwealth Secured Moneys other than any Additional Guarantee Secured Moneys.
- (b) Nothing in this clause 6.2 prevents the Security Trustee, a Controller, Receiver, Attorney or agent of the Company or a Transaction Party incurring further Financial Indebtedness following (or as part of) the enforcement of any Security.

### 6.3 Repayment of Commonwealth Debt

Nothing in this clause 6 or the Commonwealth Finance Documents prevents the Company or the Transaction Parties, with the prior written consent of the Senior Agent, incurring additional Financial Indebtedness ranking equally with or ahead of the Commonwealth Debt where the proceeds of that Financial Indebtedness are applied to repay the Commonwealth Debt in full.

### 6.4 Refinancing Commonwealth Secured Moneys

Unless otherwise agreed by the Senior Agent, the Company may not refinance all or any part of the Commonwealth Secured Moneys with the proceeds of any Financial Indebtedness.

### 6.5 Acquisition of Senior Secured Moneys

- (a) The Commonwealth may, but will not be required to, compulsorily acquire all (but not less than all) outstanding Senior Secured Moneys at any time while a Senior Event of Default or Commonwealth Event of Default subsists, or after the Security Trustee has commenced or decided to commence Enforcement Action, at the *par value* of the Senior Secured Moneys at the time of acquisition plus all costs, fees and expenses of the Senior Creditors (including break costs and costs of advisors) associated with that acquisition.
- (b) In this clause 6.5 **par value** means the amount at the time of its acquisition of all principal and accrued but unpaid interest on the Senior Secured Moneys and all other 'Secured Moneys' under the Senior Finance Documents.

### 6.6 Further assurances

The parties to this deed agree to promptly take all steps and execute all documents necessary or required to give effect to this clause 6.

## 7 Representations and warranties

### 7.1 Representations and warranties of Secured Creditors

Each Secured Creditor represents and warrants to each other Secured Creditor (except that the Commonwealth does not make the representations in clauses 7.1(a) and (b)) that:

- (a) **registration:** it is a corporation having limited liability, duly incorporated (or taken to be incorporated) or registered and validly existing in the jurisdiction of its incorporation;
- (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 full power and authority to enter into and perform its obligations under this deed;
- (d) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms; and
- (e) **binding obligations:** this deed constitutes its legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms subject to laws generally affecting creditors' rights and to principles of equity.

### 7.2 Representatives

Each Representative represents and warrants to the other parties to this deed that it has authority to enter into this deed on behalf of and so as to bind:

- (a) in the case of the Senior Agent, itself and each 'Financier' under the Senior Facility Agreement from time to time; and
- (b) in the case of a New Senior Creditor Representative, each New Senior Creditor from time to time.

### 7.3 Survival

The representations and warranties in clause 7 survive the execution of this deed.

## 8 Undertakings, consents, acknowledgments

### 8.1 By the Company and Transaction Parties

- (a) Unless this deed specifically permits, the Company and each Transaction Party which is a party to this deed:
- (1) consents to this deed and confirms that each of its obligations, liabilities and undertakings under or in respect of the Transaction Documents, in accordance with their respective terms, is and will remain in full force and effect despite this deed, and are not discharged, impaired or otherwise affected by any of the provisions of this deed (except as expressly provided in this deed);
  - (2) expressly authorises the enforcement of the Transaction Documents in the manner provided for in this deed;
  - (3) agree to cooperate in the implementation of this deed;
  - (4) undertakes to each Senior Creditor and the Commonwealth that, until the Senior Discharge Date, the Company must not and no other Transaction Party may take or omit any action whereby the ranking of the Senior Secured Moneys or the subordination of the Commonwealth Secured Moneys contemplated by this deed may be impaired;
  - (5) must not petition or apply for or vote in favour of any resolution for the Liquidation of the Company or a Transaction Party other than as contemplated under this deed;
  - (6) must not exercise any right of set-off, counterclaim, abatement, combination or similar right or procedure against the Commonwealth or agree to a set-off with the Commonwealth or merge or combine any accounts so as directly or indirectly to reduce any Commonwealth Secured Moneys;
  - (7) must not exercise any right or take any other action which would cause any amount to become payable in connection with any Commonwealth Finance Document other than in relation to the provision of the Funding Portion under and in accordance with the Commonwealth Finance Documents; and
  - (8) irrevocably waives any rights to challenge or have set aside any arrangement relating to the placing of the proceeds of the enforcement of the Transaction Documents in a suspense account in a manner contemplated by the Senior Finance Documents.
- (b) Nothing in clause 8 limits the ability of the directors of the Company or a Transaction Party to cause the Company or that Transaction Party to enter into voluntary administration (or any similar regime in Australia or another jurisdiction) for the sole purpose of protecting the directors of the Company or that Transaction Party from personal liability for the debts of the Company or that Transaction Party.
- (c) Notwithstanding any other clause of this deed, the Company and the Transaction Parties which are a party to this deed may enforce clause 4.1, clause 6.1, clause 6.2 and clause 6.3 of this deed and any other agreement, arrangement or understanding expressly stated to be in favour of the Company or that Transaction Party, but may not otherwise enforce any other clause of this deed.

### 8.2 Rights of Senior Creditors

Nothing in this deed affects or limits any rights or obligations of a Senior Creditor regarding the appropriation or application of money received by it in respect of the Senior Secured Moneys, unless done in breach of this deed.

### 8.3 Amendments of Transaction Documents

Subject to clauses 8.4 and 8.5, any Transaction Document may be amended or varied in any manner as the parties to that document agree.

### 8.4 Commonwealth Finance Documents

- (a) Subject to clause 8.4(b), during the Senior Period, the Commonwealth and the Company and each Transaction Party must not, without the prior written consent of the Senior Agent, amend or vary or consent to any amendment or variation of, or avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of, any of or any term of any of the Commonwealth Finance Documents in any manner, or enter into any additional Commonwealth Finance Document.

#### (b) If:

- (1) any Senior Finance Document is amended as a result of a Review Event, the corresponding amendments may be made to the Commonwealth Finance Documents, without the need for any further consent of the Senior Creditors; and
- (2) less than 650 Childcare Centres are acquired by the Sunset Date and the purchase price for the Acquisition Assets is less than \$90,000,000 for the Childcare Centres acquired and each Group Member and the Commonwealth agree to accelerate the repayment dates and/or amounts set out in the schedule contained in clause 6.2 of the Commonwealth Facility Agreement (**Commonwealth Repayment Schedule**) based on revised cashflow forecasts which reflect the actual number of Childcare Centres acquired, then the Senior Creditors hereby consent to any amendment to the Commonwealth Repayment Schedule and any other consequential amendment made to the Commonwealth Facility Agreement as a result of this clause 8.4(b)(2).

### 8.5 Senior Finance Documents

- (a) Any Senior Finance Document may be amended, extended, renewed, supplemented or otherwise varied in any manner as the parties to that document agree, except that no amendment, extension, renewal, supplement or variation may be made by the Company, a Transaction Party or a Senior Creditor to any of the following without the prior written consent of the Commonwealth:
- (1) this deed;
  - (2) the Security Trust Deed;
  - (3) the Subordination Deed Poll;
  - (4) the amortisation profile of the Senior Secured Moneys (including mandatory prepayment obligations) where the effect of the amendment, extension, renewal, supplement or other variation is that the amortisation profile of the



Senior Secured Moneys is more onerous on the Company or a Transaction Party over the term of the Commonwealth Debt than the amortisation profile set out in the Senior Facility Agreement as at the date of this deed;

- (5) (subject to clauses 6.1 and 6.2) the amount of the Senior Secured Moneys or of any commitment or facility limit under a Senior Finance Document where the effect of the amendment, extension, renewal, supplement or other variation is that the amount of the Senior Secured Moneys or any commitment or facility limit is increased;
  - (6) the final maturity date of all or any of the Senior Secured Moneys where the effect of the amendment, extension, renewal, supplement or other variation is that the final maturity date of all or any of the Senior Secured Moneys occurs after the date falling 6 months prior to the final Repayment Date (as originally set out in the Commonwealth Facility Agreement at Financial Close) for the Commonwealth Debt;
  - (7) (subject to clauses 6.1 and 6.2) the base interest rate, margin or spread that form part of the interest rate applying to any drawing under the Senior Finance Documents, to the extent that the effect of the amendment, extension, renewal, supplement or other variation would be to increase any of those amounts;
  - (8) subject to clause 8.5(c), the Common Terms Deed.
- (b) Nothing in clause 8.5(a) restricts the ability of any Senior Creditor to give such waivers or concessions under the Senior Finance Documents as it may consider appropriate from time to time.
- (c) Clause 8.5(a)(9) will not prevent the Senior Creditors and the Company and/or Transaction Parties from separately agreeing to what extent the provisions of the Common Terms Deed are incorporated by reference into other Senior Finance Documents and whether and to what extent any provisions of the Common Terms Deed are overridden by the provisions of those Senior Finance Documents, provided that any such amendment does not have the effect of contravening this clause 8.5.

### 8.6 Restriction on Security Trustee

The Security Trustee will not, without the prior written consent of the Commonwealth:

- (a) amend or vary any Security or Guarantee if it would cause the Commonwealth to cease to be a beneficiary under the Security Trust Deed or to be unsecured in respect of all or any part of its Commonwealth Secured Moneys (other than as a result of a release permitted under clause 8.6(c)); or
- (b) amend or vary any provision of the Security Trust Deed; or
- (c) release any assets from a Security other than releases consequent upon:
  - (1) disposals which are permitted by the Senior Finance Documents; or
  - (2) enforcement of Security.

### 8.7 Disclosure

The Company and each Transaction Party which is a party to this deed consents to the disclosure by any of the Senior Creditors or the Commonwealth to each other or amongst

each other of such information concerning the Company and the Transaction Parties as they see fit.

### 8.8 Work Out

- (a) If:
    - (1) any Senior Secured Moneys have not been fully and finally repaid on its agreed maturity date; or
    - (2) the Company is in breach of the Financial Covenants,

the Senior Creditors may propose a rescheduling or restructuring or a rescheduling and restructuring of the Senior Secured Moneys (a **Proposed Restructure**), including to do any one or more of the following:

    - (3) to change the repayment or amortisation profile of the Senior Secured Moneys;
    - (4) to extend the maturity date of the Senior Secured Moneys beyond the maturity date of the Commonwealth Secured Moneys;
    - (5) to raise additional Financial indebtedness for the purpose of the businesses operated by the Group which would not otherwise be permitted under clause 6; or
    - (6) to make any other amendment to the Senior Finance Documents which would not otherwise be permitted under clause 8.5.
  - (b) Prior to commencing any Proposed Restructure, the Senior Creditors will invite the Commonwealth to consult with it in relation to any Proposed Restructure for a period of not less than 10 Business Days (or such shorter period as the Commonwealth may agree in writing) (**Restructure Consultation Period**).
  - (c) At the end of the Restructure Consultation Period, the Commonwealth will be taken to have consented to Proposed Restructure (including for the purposes of clauses 6.1, 8.1, 8.2 and 8.5, as appropriate) to any Proposed Restructure if evidence satisfactory to the Commonwealth (acting reasonably) is provided (including on the advice of an independent insolvency expert) that the Proposed Restructure is reasonably likely to result in a higher return to the Commonwealth than a Liquidation of the Company and the Transaction Parties.
- ### 8.9 Benefit of Security
- (a) Subject to paragraph (b), each Secured Creditor undertakes not to hold any Security for its own benefit and acknowledges that all Security and Encumbrances held in connection with its respective Facility will be held by the Security Trustee for the benefit of the Beneficiaries under the Security Trust Deed.
  - (b) Clause 8.9(a) will not apply to:
    - (1) any Encumbrance or right of set off in favour of a Senior Secured Creditor with respect to the Bank Guarantee Cash Collateral Account or any amount paid to the Senior Agent in respect of Continuing Bank Guarantees in the manner contemplated by the first bullet point in clause 1.4(b)(1) of the Senior Facility Agreement; or

- (2) any bank guarantee or letters of credit held by the Fronting Bank to support the Company's obligation with respect to the Continuing Bank Guarantee,

(with capitalised terms not otherwise defined in this clause 8.9(b) having the meaning given to them in the Senior Facility Agreement).

## 9 Savings provisions

### 9.1 No impairment

- (a) No Power of a Senior Creditor or the Security Trustee is at any time or in any way prejudiced or impaired by any act or omission of the Company or a Transaction Party or the Commonwealth under any Transaction Document or otherwise in respect of the Senior Secured Moneys or the Commonwealth Secured Moneys.
- (b) This clause 9.1 applies regardless of any actual or constructive knowledge of any fact or circumstance of a Senior Creditors or the Security Trustee.

### 9.2 Non-avoidance

- (a) Other than pursuant to an express release or discharge or as expressly provided otherwise in this deed, the Powers of the Senior Creditors or the Security Trustee will not be prejudiced, impaired or adversely affected by, and the obligations and liabilities of the Company and each Transaction Party and the Commonwealth under the Transaction Documents will not be released, discharged or otherwise affected by the provisions of this deed or anything which but for this provision might have that effect, including:
- (1) the grant to the Company or any other Transaction Party, the Commonwealth or any other person of any time, waiver, covenant not to sue or other indulgence or any consent or waiver given or not given under or in respect of any Transaction Document;
  - (2) the release (including without limitation a release as part of any novation) or discharge of the Company or any other Transaction Party, the Commonwealth or any other person of its obligations under this deed, any other Transaction Document or any other agreement or arrangement or of any property from any Encumbrance or Guarantee;
  - (3) the cessation of the obligations, in whole or in part, of the Company or any other Transaction Party, the Commonwealth or any other person under any Transaction Document or any other document or agreement;
  - (4) the Liquidation of the Company or any other Transaction Party or any other person or the appointment of a liquidator, receiver, receiver and manager, official manager or other similar officer to the Company or any other Transaction Party or any other person or to all or any part of the assets of or any other person;
  - (5) any arrangement, composition or compromise entered into by a Senior Creditor, the Company or any other Transaction Party, the Commonwealth or any other person;

- (6) any Transaction Document or any other document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
- (7) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compound, composition or compromise, in whole or in part of any Transaction Document or any other document or agreement;
- (8) any Encumbrance or Guarantee being given to a Senior Creditor by the Company or any other Transaction Party or any other person;
- (9) any alteration, amendment, variation, modification, supplement, renewal or replacement of any Transaction Document or any other document or agreement;
- (10) any moratorium or other suspension of any Power;
- (11) any Secured Creditor exercising or enforcing, attempting to exercise or enforce, delaying, failing or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce, any Power;
- (12) any Secured Creditor obtaining a judgment against the Company or any other Transaction Party, the Commonwealth or any other person for the payment of any of the Senior Secured Moneys or the Commonwealth Secured Moneys;
- (13) any transaction, agreement or arrangement that may take place with any Secured Creditor, the Company or any other Transaction Party, or any other person;
- (14) any payment to any Secured Creditor including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (15) any failure to give effective notice to the Company or any other Transaction Party, the Commonwealth or any other person of any default under any Transaction Document or any other document or agreement;
- (16) any legal limitation, disability or incapacity of the Company or any other Transaction Party, the Commonwealth or of any other person;
- (17) anything contained in any of the Transaction Documents;
- (18) any breach of any Transaction Document or any other document or agreement;
- (19) the acceptance of the repudiation of, or termination of, any Transaction Document or any other document or agreement;
- (20) any part of the Senior Secured Moneys or the Commonwealth Secured Moneys being irrecoverable for any reason;
- (21) any disclaimer by the Company or any other Transaction Party, the Commonwealth or any other person of any Transaction Document or any other document or agreement;
- (22) any assignment, novation, assumption or transfer of, or other dealing with, any Powers or any other rights or obligations under any Transaction Document or any other document or agreement;

- (23) a person becoming or ceasing to be a Beneficiary or a Transaction Party;
- (24) the opening of a new account of the Company or any other Transaction Party (whether alone or with others) with any Secured Creditor or any transaction on or relating to the new account;
- (25) any prejudice (including, but not limited to, material prejudice) to any person as a result of:
- (A) any thing done, or omitted to be done by any Secured Creditor, the Company or any other Transaction Party or any other person;
  - (B) any Secured Creditor or any other person selling or realising any property the subject of an Encumbrance at less than the best price;
  - (C) any failure or neglect by any Secured Creditor or any other person to recover the Senior Secured Moneys or the Commonwealth Secured Moneys from the Company or any other Transaction Party or any other person or by the realisation of any property the subject of an Encumbrance; or
  - (D) any other thing;
- (26) the receipt by any Secured Creditor of any dividend, distribution or other payment in respect of any Liquidation;
- (27) the respective times and dates on which, or the order in which, any of the Transaction Documents were executed, delivered or registered;
- (28) the capacity in which a party executed a Transaction Document not being the capacity disclosed to any other party to that Transaction Document before the execution of that Transaction Document;
- (29) the respective times and dates on which, or the order in which, the debts and monetary liabilities comprising all or any part of any of the Senior Secured Moneys or the Commonwealth Secured Moneys are incurred or become due;
- (30) the fluctuation (including, but not limited to, any reduction and subsequent increase) from time to time of all or any part of any of the Senior Secured Moneys or the Commonwealth Secured Moneys, whether by the advance or re-advance of any money, the provision or re-provision of financial accommodation or otherwise;
- (31) a Secured Creditor being, or not being, from time to time obliged to:
- (A) make any advance or provide any other financial accommodation to, at the request of, or for the benefit of the Company or any other Transaction Party or any other person;
  - (B) do anything which may cause money to become due by the Company or any other Transaction Party or any other person to a Secured Creditor;
- (32) all or any part of any of the Senior Secured Moneys or the Commonwealth Secured Moneys being contingent or prospective; or
- (33) any other act, omission, matter or thing whatsoever, whether negligent or not.
- (b) Clause 9.2(a) applies irrespective of:

- (1) the consent or knowledge or lack of consent or knowledge, of any Secured Creditor, the Company or any other Transaction Party or any other person of any event described in clause 9.2(a); or
- (2) any rule of law or equity to the contrary.

### 9.3 Default by a Secured Creditor

A breach of, or default under, this deed by a Secured Creditor does not affect any obligation of the Company or any other Transaction Party or any other Secured Creditor to that Secured Creditor.

### 9.4 Further assurance

Each party must, upon request by the Security Trustee, a Representative, a Senior Creditor or the Commonwealth do or cause to be done anything which more satisfactorily secures the rights of each Secured Creditor under this deed in a manner consistent with any provision of this deed including the execution of any document.

### 9.5 Conflict

Where any Power of a Secured Creditor under any Transaction Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, the powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

### 9.6 Continuing indemnities

- (a) Each indemnity contained in this deed and each other Transaction Document is a continuing obligation despite:
- (1) any settlement of account; or
  - (2) the occurrence of any other thing, and remains in full force and effect until:
  - (3) all money owing, contingently or otherwise, under any Transaction Document has been paid in full; and
  - (4) each Transaction Document has been finally discharged.
- (b) Each indemnity in this deed and each other Transaction Document is an additional, separate and independent obligation and no one indemnity limits the general application of any other indemnity.

### 9.7 Exclusion of moratorium

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

- (a) lessens or otherwise varies or affects in favour of a Secured Creditor any obligations under this deed or any Collateral Security; or

- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by the Security Trustee or any Beneficiary, any Receiver or any Attorney of any Power, is negated and excluded from this deed and all relief and protection conferred on the Security Trustee or any Beneficiary, Receiver or Attorney by or under that legislation is also negated and excluded.

### 9.8 Principal obligations

This deed is:

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

## 10 General

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### 10.1 Company to bear cost

Except as otherwise expressly provided in a Transaction Document, any thing which must be done by the Company or a Transaction Party under any Transaction Document, whether or not at the request of the Security Trustee, is to be done at the cost of the Company.

### 10.2 GST

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

### 10.3 Notices

- (a) Any notice or other communication including any request, demand, consent or approval, to or by a party to any Transaction Document:
- (1) must be in legible writing and in English addressed as set out in Schedule 1 or as specified to the sender by any part by notice;

- (2) is regarded as being given by the sender and received by the addressee:
- if by delivery in person, when delivered to the addressee;
  - if by post, on delivery to the addressee; or
  - 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; and
- (3) 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.
- (b) 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 10.3(a)(2) and informs the sender that it is not legible.

### 10.4 Assignment

- (a) Clause 8 of the Security Trust Deed applies to this deed as if set out in full in this deed.

### 10.5 Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) The Company and each Transaction Party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) The Company and each Transaction Party 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.

### 10.6 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.

**10.7 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 a 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 by writing.

**10.8 Variation**

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

**10.9 Cumulative rights**

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

**10.10 Consents of Security Trustee**

Despite the terms of any other Transaction Document, to be binding or effective a consent or approval given by the Security Trustee must be in writing signed by a director, secretary or Officer of the Security Trustee.

**10.11 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.

**10.12 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.

**Part A: Senior Agent**

Name	ABN/ACN/ARBN	Lending Office and Notice Details
National Australia Bank Limited	ABN 12 004 044 937	Address: Level 25, 255 George Street, Sydney NSW 2000 Attention: Katherine Dalton Facsimile: +61 2 9237 1888

**Part B: Commonwealth**

Name	ABN/ACN/ARBN	Lending Office and Notice Details
Commonwealth of Australia 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 63 578 115 294	Address: Level 4, 148-180 City Walk, Canberra ACT 2801 Attention: Director of the Office of Early Childhood Education and Child Care / Department of Education, Employment and Workplace Relations Facsimile: (02) 6123 5563

Part C: Security Trustee

Signing page

Name	ABN/ACN/ARBN	Notice Details
National Australia Bank Limited	ABN-12 004 044 937	Address: Level 25, 255 George Street, Sydney NSW 2000 Attention: Head of Agency Facsimile: +61 2 9237 1634

Part D: Company

Name	ABN/ACN/ARBN	Notice Details
Goodstart Childcare Limited	ABN 69 139 967 794	Address: 43 Metroplex Avenue, Murarrie QLD 4172 Attention: Gavin Bartlett Facsimile: (07) 3908 2524

Executed as a deed

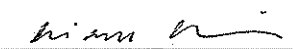
Company

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

sign here   
Attorney

print name JAMES LEWIS


Partner, Gilbert & Tobin  
in the presence of

sign here   
Witness

print name Liam Williams


**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

print name Paul Gatward  
Solicitor  
Sydney

**Commonwealth**


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

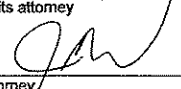
in the presence of

sign here ▶   
Witness

print name Allan Grinsell Jones

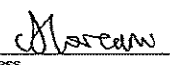
**Security Trustee**

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