

Minister for Education (**Licensor**)

As identified in Item 13 (**Licensee**)

As identified, if applicable, in Item 12 (**Guarantor**)

OOSH Licence Agreement

(occupying existing rooms at a School on a non-exclusive basis to conduct an OOSH)

November 2013 (1)

133034078v6_ESB

Contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	2
1.3	Exclusion of statutes	3
2.	Term.....	3
3.	Licence Fee.....	3
3.1	Payment	3
3.2	Instalments	3
3.3	Where paid	3
3.4	Licence Fee increase	3
4.	GST.....	3
4.1	Definition.....	3
4.2	Licensee to pay GST.....	4
5.	Conduct of OOSH and care of Premises	4
5.1	Use of premises	4
5.2	Licensee obligations in conduct of OOSH.....	4
5.3	Further Licensee obligations in conduct of OOSH	4
5.4	Release of information	5
5.5	Priority of enrolments	5
5.6	Comply with documented programs.....	5
5.7	Work health and safety.....	5
5.8	Electrical equipment.....	6
5.9	First aid.....	6
5.10	Infectious diseases	6
5.11	Fire and emergency procedures	6
5.12	Premises evacuation	7
5.13	No dangerous conduct	7
5.14	Not interfere with services	7
5.15	No exterior signs, etc.....	7
5.16	Fully maintain	7
5.17	No alterations	8
5.18	Licensee not to damage	8
5.19	Licensee's conduct.....	8
5.20	Not liable for service failure	9
5.21	Rectify damage	9
5.22	No warranty as to use	9
5.23	Cancellation of Approval	9
6.	Cleaning	9
6.1	Leave tidy	9
6.2	Licensors to clean	9
6.3	Cleaning costs for Vacation Care.....	9
6.4	Unusual cleaning.....	9
7.	Utilities	10
7.1	Electricity connection.....	10
7.2	Water, sewerage and electricity costs.....	10
7.3	Telephone and computer connections	10
8.	Toilet facilities	10

8.1	Toilets to be used	10
8.2	Leave clean and tidy	10
8.3	Licensors to clean	10
8.4	Vacation Care arrangements	10
9.	Air conditioning	10
9.1	Supply of air conditioning	10
9.2	Use of heating/air conditioning	11
9.3	Additional electricity charges	11
9.4	Restriction on use of air conditioning	11
10.	Security and access	11
10.1	Access through School	11
10.2	No unnecessary access of School	11
10.3	Comply with School requirements	11
10.4	Premises to be locked	11
10.5	Indemnity if failure to lock and secure	11
10.6	Provision of key	11
10.7	Identity badges	12
10.8	Display of names and titles	12
11.	Playground	12
11.1	Use by Licensee	12
11.2	Licensee to control use	12
12.	Annual meeting	12
12.1	Calling of meetings	12
12.2	School attendance at meeting	12
12.3	Parents and Citizens Committee attendance	12
12.4	Licensee attendance	12
12.5	Minutes of annual meetings	13
12.6	Chairing of annual meetings	13
12.7	Agenda for annual meetings	13
12.8	Licence prevails	13
12.9	Additional meetings requested by the Principal	13
12.10	Additional meetings requested by the Licensee	13
13.	Not for profit Licensee	13
14.	Child safety, welfare and wellbeing	14
14.1	Comply with CP Act	14
14.2	Extent of obligation	14
14.3	Notify Police	14
14.4	Notification to Principal	14
14.5	Further Notification to Principal	14
14.6	Acknowledgments in relation to child protection	15
14.7	Verification of compliance	16
14.8	Persons to be excluded	16
14.9	Other notification requirements	16
14.10	Change in Licensor requirements	17
14.11	Application of clause	17
15.	Equipment	17
15.1	Supplied by Licensor	17
15.2	Damage to equipment	18
15.3	Licensee to supply other equipment	18
16.	No assignment	18

16.1	Assignment prohibited.....	18
16.2	Change to shareholders.....	18
17.	Not interfere with others.....	18
17.1	Licensee not to interfere with School.....	18
17.2	Licensor not to interfere with OOSH.....	18
18.	Holding over.....	18
18.1	Term.....	18
18.2	Licence Fee.....	18
19.	Option to renew.....	19
19.1	Grant of further term.....	19
19.2	Terms and conditions of further term.....	19
19.3	Right of Licensor to not grant further term.....	19
20.	No exclusive rights.....	19
20.1	No right to exclude Licensor.....	19
20.2	Reservations.....	19
20.3	No interference by Licensor.....	20
21.	Licensor's covenants.....	20
22.	Accidents.....	20
23.	Licensee insurance and indemnities.....	20
23.1	Policies to be maintained.....	20
23.2	Requirements for public risk policy.....	21
23.3	Indemnity.....	21
23.4	Release.....	21
24.	Damage to Premises.....	21
24.1	Licence Fee abatement.....	21
24.2	Entitlement to terminate.....	22
25.	Consent of Licensor.....	22
26.	Responsible person.....	22
27.	Termination and make good.....	22
27.1	Make good.....	22
27.2	Return of keys.....	23
27.3	Disposal of the property of the Licensee.....	23
28.	Essential terms.....	23
29.	Default.....	23
29.1	Events of default.....	23
29.2	Consequences of default.....	24
29.3	Licence Fee payable for entire term.....	24
29.4	Conversion to monthly licence.....	24
29.5	No waiver.....	24
29.6	Interest on overdue payments.....	24
29.7	Failure of Guarantor to sign.....	25
30.	Car parking.....	25
30.1	Licence to park.....	25
30.2	Term of licence.....	25
30.3	Covenants as to parking.....	25
30.4	Damage.....	25

30.5	Theft	25
30.6	Injury	25
30.7	Removal of motor vehicles	25
31.	Notices	26
31.1	In writing	26
31.2	Served on Licensor	26
31.3	Served on Licensee	26
31.4	Change of address	26
31.5	Contact details of Licensee	26
32.	Costs	26
33.	Security Deposit	27
33.1	Provide deposit	27
33.2	No waiver if used	27
33.3	Use on termination	27
33.4	Replenishment	27
33.5	Refund	27
33.6	Bank guarantee	27
34.	Guarantee and indemnity	28
34.1	Provision of guarantee and indemnity	28
34.2	Not affected	28
34.3	No set-off	28
34.4	No guarantee if not for profit Licensee	28
34.5	Guarantee covers all tenure	28
35.	Rules	29
Schedule 1		30
Schedule 2		33
Schedule 3		34

Licence agreement

Parties

Minister for Education

Bridge Street, Sydney on behalf of the School ("Licensor")

As identified in Item 13 ("Licensee")

As identified, if applicable, in Item 12 ("Guarantor")

Background

- A. The Licensor is the beneficial owner of an estate in fee simple in the land on which the School is located.
- B. The Licensor has agreed to grant to the Licensee and the Licensee has agreed to accept a licence to occupy the Premises on the terms and conditions of this agreement.

This agreement witnesses

1. Definitions and interpretation

1.1 Definitions

In this agreement the following terms shall have the following meanings:

"**Access Hours**" means the time commencing 15 minutes before and concluding 15 minutes after each session of the Business Hours.

"**Building**" means any building included in the Premises.

"**Business Day**" means a day specified in Item 7(a) which is not a public holiday.

"**Business Hours**" means the hours specified in Item 7(b) and 7(c) in either case on a Business Day.

"**Children's Education and Care National Law**" means the *Children (Education and Care Services) National Law (NSW)* and the *Children (Education and Care Services) National Regulations*.

"**Commencement Date**" means the commencement of this licence as specified in Item 3.

"**Common Areas**" means those parts of the School excluding the Premises which are reasonably necessary for access to the Premises.

"**GST**" means goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999*.

"**Guarantor**" means the person or people specified in Item 12 and where applicable includes any administrator, executor, trustee or assigns of the Guarantor.

"**Item**" means an item in Schedule 1 to this licence.

"**Licence Fee**" means the amount per annum specified in Item 4 for each year of the Term.

"**Licensee**" is the party specified in Item 13(a), the Australian Business Number of which is specified in Item 13(b) and which trades under the name specified in Item 13(c).

"**OOSH**" means the conduct of a children's service centre for children from kindergarten to year 6 (or for such additional children as may be approved from time to time by the Licensor by a Rule) and commonly known as an out of school hours service.

"**Premises**" means that part of the School as identified in the plan attached to this agreement and/or as disclosed in Item 5.

"**Principal**" means the person occupying the position of, or acting as, principal of the School except for the purposes of clause 14 where "Principal" is defined as set out in clause 14.11.

"**Provider Approval**" means approval obtained by the Licensee under Part 2 of the *Children (Education and Care Services) National Law*.

"**Rules**" means the rules for the management of the Premises, access to the Premises and the relationship of the OOSH to the School as published by the Licensor from time to time.

"**School**" is the school identified in Item 1 except for the purposes of clause 14 where "School" is defined as set out in clause 14.11.

"**Security Deposit**" means the amount specified in Item 6 or as otherwise determined as specified in Item 6.

"**Service Approval**" means approval obtained by the Licensee under Part 3 of the *Children (Education and Care Services) National Law*.

"**Staff Development Day**" means a day during a School term which the Licensor has prescribed as a pupil free day.

"**Supervisor Certificate**" means a certificate obtained by the Licensee or the Licensee's employee, subcontractor or volunteer as required under Part 4 of the *Children (Education and Care Services) National Law*.

"**Term**" means the term referred to in Item 2 together with any period of holding over.

"**Vacation Care**" means the conduct of children's services for children from kindergarten to year 6 (or for such additional children as may be approved from time to time by the Licensor by a Rule) during School vacations and on Staff Development Days.

1.2 Interpretation

In this licence:

- (a) "month" means calendar month;

- (b) references to the Licensor and Licensee include their administrators, trustees, successors and permitted assigns, and where applicable, their employees, customers, contractors and invitees;
- (c) if more than one person or company is named as Licensee and/or Guarantor, then they are jointly and separately liable;
- (d) if a notice is required it must be in writing and served on a Business Day;
- (e) words importing the singular or plural include the plural and singular number respectively and words importing a gender include each other gender; and
- (f) a reference to any legislation includes any legislation in substitution for that legislation.

1.3 Exclusion of statutes

The covenants implied into licences by legislation are excluded.

2. Term

The Licensor grants to the Licensee a licence to occupy the Premises for the Term during the Access Hours.

3. Licence Fee

3.1 Payment

The Licensee must pay to the Licensor the Licence Fee.

3.2 Instalments

The Licence Fee must be paid free of deductions, set off or counter claims by calendar monthly instalments in advance calculated and payable from the Commencement Date.

3.3 Where paid

The Licence Fee and other amounts payable under this licence must be paid to the School, or if the Licensor so directs, direct to a bank account nominated by the Principal.

3.4 Licence Fee increase

On each anniversary of the commencement of the Term the Licence Fee shall increase by 4% per annum.

4. GST

4.1 Definition

In this clause terms used are as defined in the *A New Tax System (Goods and Services Tax) Act 1999*.

4.2 Licensee to pay GST

All sums payable to the Licensor under this agreement are calculated on an amount that is exclusive of the GST and any GST applicable to such payments shall be made by the Licensee within 14 days of the receipt by the Licensee of a tax invoice from the Licensor.

5. Conduct of OOSH and care of Premises

5.1 Use of premises

The Licensee:

- (a) must use the Premises during the Business Hours for the OOSH;
- (b) must not without the consent of the Licensor permit the Premises to be used for any other purpose; and
- (c) during the Access Hours may undertake such administrative tasks as are required in relation to the conduct by the Licensee of the OOSH.

5.2 Licensee obligations in conduct of OOSH

The Licensee must conduct the OOSH:

- (a) in good faith;
- (b) in a reputable manner;
- (c) in accordance with the best methods having regard to industry quality standards; and
- (d) subject to subclauses (a), (b) and (c) of this clause, in accordance with written statements of the Licensee in response to any last tender process that preceded the granting by the Licensor of this licence to the Licensee and/or in accordance with any agreement between the Licensor and the Licensee evidenced by correspondence or electronic mail between the parties that preceded the granting of this licence.

5.3 Further Licensee obligations in conduct of OOSH

The Licensee must:

- (a) not breach any law or requirement of any competent authority for the time being in force with regard to the conduct of the OOSH from the Premises;
- (b) maintain any applicable government licences for the conduct of the OOSH including but not limited to:
 - (1) Provider Approval;
 - (2) Service Approval; and
 - (3) Supervisor Certificates for any employee, subcontractor, or volunteer as required under the Children's Education and Care National Law;

- (c) produce to the Licensor when reasonably requested evidence of compliance with clause 5.3(b);
- (d) not enrol students in any session of the conduct of the OOSH greater than the maximum number specified in Item 8;
- (e) provide a copy to the Principal within 7 days of its receipt of any notice received from any competent authority in relation to the conduct of the OOSH; and
- (f) not charge an enrolment fee in the first year of the Term greater than the enrolment fee specified by the Licensee in any tender process that preceded the granting of this licence and/or in accordance with any agreement between the Licensor and the Licensee evidenced by correspondence or electronic mail between the parties that preceded the granting of this licence.

5.4 Release of information

The Licensee authorises the Licensor to contact any competent authority in relation to the conduct of the OOSH and for that competent authority to release to the Licensor, without any other approval, any information held by the competent authority in relation to the Licensee.

5.5 Priority of enrolments

In the enrolment of students for the OOSH the Licensee must give priority to:

- (a) children who attend the School whose parents or sole parent or primary carers work or are enrolled in a course of study;
- (b) other children who attend the School;
- (c) siblings of children who attend the School; and
- (d) children (who do not attend the School) of any member of staff of the School

before other enrolments are accepted.

5.6 Comply with documented programs

The Licensee must conduct the OOSH generally in accordance with any documented program produced to the Licensor prior to entering into this agreement. The Licensor will not object to any change in that program provided that any change complies with clause 5.2(c).

5.7 Work health and safety

The Licensee must:

- (a) at its expense comply with work health and safety legislation in relation to the conduct of the OOSH from the Premises;
- (b) where required by the Licensor produce evidence to the Licensor of its compliance with any applicable work health and safety legislation; and
- (c) promptly advise the Principal or the person from time to time holding the position (or acting in such positions) of general manager and manager of the

Asset Management Directorate of the Licensor applicable to the School of any issues of which it becomes aware as to the Premises which reasonably might not comply with any work health and safety legislation in relation to the conduct of the OOSH at the Premises.

5.8 Electrical equipment

The Licensee must:

- (a) for all electrical equipment brought onto the Premises by the Licensee make that equipment available to the Licensor so that the same tests as to the operational effectiveness of that equipment may be undertaken in the same manner and at the same time that all electrical equipment of the Licensor at the School is tested from time to time; and
- (b) replace any equipment of the Licensee which does not meet the requirements of the Licensor as disclosed in these tests or otherwise remove such equipment from the Premises.

5.9 First aid

The Licensee must

- (a) provide and maintain and keep readily available for use upon the Premises adequate and sufficient first aid equipment;
- (b) ensure at all times that an adequate number of suitably trained and equipped personnel are available at the Premises including staff with advanced first aid training incorporating CPR and anaphylaxis training which includes the use of an Epi-Pen to render first aid to any person in need of that aid.

5.10 Infectious diseases

The Licensee must if for any enrolled child or any employee or invitee of the Licensee an infectious disease or incidence of hair lice occurs and those affected are within the Premises when ill or shortly prior to becoming ill immediately upon becoming aware of the illness or the incidence of hair lice:

- (a) give notice of it to the Principal; and
- (b) comply with any direction of the Principal in relation to such illness including any requirement to exclude any person from the Premises.

If the circumstances specified in this clause as to an infectious disease and/or head lice should apply in the School the Licensor through the Principal must give notice of it to the Licensee.

5.11 Fire and emergency procedures

The Licensee must:

- (a) ensure that its employees at the Premises are familiar with any safety and emergency procedures of the School which are advised to the Licensee from time to time by the Principal;
- (b) ensure that its employees at the Premises comply with all fire and other safety drills and procedures, which the Licensor reasonably requires;

- (c) nominate an employee from time to time to be a warden for the Premises for fire safety requirements;
- (d) ensure that the warden who is nominated attends all training exercises as reasonably nominated from time to time by the Licensor;
- (e) maintain an evacuation plan to be implemented if there is a fire or other emergency in the Premises or at the School and make a copy of this plan available to the Principal;
- (f) provide and maintain in good order and condition and keep readily available for use upon the Premises adequate and sufficient devices and appliances to prevent or retard the spread of fire to the satisfaction in all respects of the Licensor and in this regard comply with all reasonable requirements of the Licensor and any competent authority excluding any need to install fire sprinklers; and
- (g) ensure that at all times when the OOSH is being conducted that an adequate number of suitably trained and equipped people are available at the Premises to give effect to the fire management control plan.

5.12 Premises evacuation

The Licensor may close the Premises and require its evacuation in an emergency.

5.13 No dangerous conduct

The Licensee must not:

- (a) bring any dangerous or inflammable substances on to the Premises; and
- (b) breach any fire safety regulations.

5.14 Not interfere with services

The Licensee must not interfere with or overload any of the services that pass through, under or over the Premises and must pay the cost of rectifying any damage which it causes to those services.

5.15 No exterior signs, etc

The Licensee must not erect signage or other structures or place anything else on the exterior surfaces of the Building or on the grounds of the School without the prior written consent of the Licensor and such consent will not be unreasonably withheld. Consent will be given for such reasonable sign or signs required to enable invitees to readily locate the Premises. The Licensee must maintain such signs and remove them on the termination of this licence.

5.16 Fully maintain

The Licensee must subject to fair wear and tear and damage caused by fire, flood, lightning, storm and tempest keep the internal part of the Premises including the Licensee's plant, fixtures and fittings in good and substantial repair, working order and condition. This covenant does not include damage caused by the Licensor in its use of the Premises.

5.17 No alterations

The Licensee must not

- (a) make any alterations or additions to the Premises;
- (b) erect any partitions; or
- (c) paint any part of the Premises without the consent of the Principal which may be given in the absolute discretion of the Principal but if given will require that the painting meet the maintenance performance standards of the Licensor from time to time.

5.18 Licensee not to damage

The Licensee must:

- (a) take all steps necessary to ensure that the floors of the Premises and all walls or other parts of the Premises are not damaged by the conduct of the OOSH or from any other cause; and
- (b) immediately at its own expense make good any such damage so caused.

5.19 Licensee's conduct

(a) The Licensee must:

- (1) ensure that invitees to the Premises and the receipt of deliveries:
 - (A) do not interfere with the School; and
 - (B) are effected in accordance with the reasonable requirements and directions of the Licensor;
- (2) give notice promptly to the Licensor of any damage, accident or defect in the Premises; and
- (3) comply with the Rules.

(b) The Licensee must not:

- (1) commit any nuisance or annoyance and ensure that its operations do not interfere with or disrupt the use and enjoyment of the School;
- (2) permit smoking in the Premises or where under its control in the School;
- (3) permit intoxicating liquor to be consumed in the Premises or permit anyone under the control of the Licensee to bring alcohol onto the School or consume alcohol in the School;
- (4) install any window coverings on the exterior windows of the Building without the Licensor's consent, such consent not to be unreasonably withheld;
- (5) obstruct Common Areas; and

- (6) interfere with the conduct of the School or with any student of the School using any part of the School excluding the Premises.

5.20 Not liable for service failure

The Licensor is not liable for any loss, injury or damage sustained by the Licensee or any other person as a result of the failure of the electricity, water supply, sewerage, any air conditioning or any other services or facilities provided by the Licensor or enjoyed by the Licensee in the Premises.

5.21 Rectify damage

If any part of the School is damaged due to the bringing upon or removal from the Premises by or on behalf of the Licensee of plant, equipment, machinery or any other things the Licensee must promptly rectify at its expense the damage.

5.22 No warranty as to use

The Licensor gives no warranty as to the use to which the Premises may be put. The Licensee has entered into this licence with full knowledge of, and subject to, any restriction on the use of the Premises.

5.23 Cancellation of Approval

If at any time during the Term the Provider Approval or Service Approval of the Licensee is cancelled or suspended the Licensee must immediately notify the Licensor and cease the operation of the OOSH.

6. Cleaning

6.1 Leave tidy

The Licensee must at the end of each session of use leave the Premises in a tidy state.

6.2 Licensor to clean

The Licensor will arrange for the Premises to be cleaned at the expense of the Licensor at the same time and in the same manner as other parts of the School are cleaned unless the Licensee requests that it be entitled to clean the Premises at its expense in which event the Licensor will consent on such conditions as the Licensor may stipulate in a Rule.

6.3 Cleaning costs for Vacation Care

Where this licence includes Vacation Care the Licensee must pay to the Licensor upon receipt of an invoice such additional costs as may be incurred by the Licensor in cleaning the Premises during the vacation.

6.4 Unusual cleaning

If as a result of the conduct of the OOSH at the conclusion of the Access Hours on any day the Premises or any part of the School requires cleaning greater than is usually undertaken, the Principal can require the Licensee to pay such amount as is advised by the Principal as incurred by the Licensor for such additional cleaning.

7. Utilities

7.1 Electricity connection

The Licensor will provide any electricity connection to be used in the conduct of the OOSH.

7.2 Water, sewerage and electricity costs

Normally the cost of water, sewerage and electricity is included in the Licence Fee but the Licensor reserves the right at any time during the Term to charge the Licensee, from the date of notice to the Licensee, the percentage specified in Item 11 of the charges to the School for any one or more of electricity, water and sewerage costs which in this event must be paid in addition to the Licence Fee.

7.3 Telephone and computer connections

The Licensee must arrange for its own telephone and computer connections (including any necessary cabling) to the Premises and must pay all charges in relation to that service.

8. Toilet facilities

8.1 Toilets to be used

The employees of the Licensee and children under its care may use toilet facilities in the School as may be specified in Item 5, or if not specified, which will be nominated from time to time by the Principal.

8.2 Leave clean and tidy

The Licensee must use its best endeavours to ensure that its employees and children under its care always leave the toilet facilities clean and tidy and do not deposit in those facilities any items not intended for those facilities.

8.3 Licensor to clean

The Licensor shall maintain the toilet facilities and shall clean the toilet facilities during the Term.

8.4 Vacation Care arrangements

Where this Licence includes Vacation Care the Licensee must pay to the Licensor upon receipt of an invoice such additional costs as may be incurred by the Licensor in cleaning the toilets and maintaining soap and paper supplies in those toilets during the vacation.

9. Air conditioning

9.1 Supply of air conditioning

The air conditioning units, if any, existing in the Premises at the date of the commencement of this licence are the property of the Licensor. The Licensor warrants that these units are in working order at the commencement of the licence but the Licensor has no obligation to maintain, repair or replace these units. The Licensor may only supply and maintain air conditioning to the Premises if it is in accordance with the

policy from time to time of the Licensor for the supply and maintenance of air conditioning units in its schools but is under no obligation to supply air conditioning.

9.2 Use of heating/air conditioning

The Licensee must not permit any other method of heating to be used in the Premises without the prior consent of the Licensor and must only use air conditioning when reasonably necessary.

9.3 Additional electricity charges

If the Licensee brings onto the Premises any air conditioning equipment the Licensee must pay for any increase in electricity charges incurred by the School as reasonably assessed by the Principal arising from the use of such equipment.

9.4 Restriction on use of air conditioning

The Licensor may introduce a policy that the use of air conditioning at the School, including the Premises, be restricted to certain hours in which event the Licensor may make a Rule in that regard.

10. Security and access

10.1 Access through School

The employees and invitees of the Licensee may pass and repass over Common Areas as is reasonably necessary to gain access to the Premises.

10.2 No unnecessary access of School

The Licensee must use its best endeavours to ensure that its employees and invitees do not unnecessarily access other parts of the School.

10.3 Comply with School requirements

The Licensee must observe all reasonable security requirements that may be stipulated from time to time by the Licensor with regard to the use of the Premises and access to the Premises.

10.4 Premises to be locked

The Licensee must ensure that at all times when the Premises are unattended that they are securely locked.

10.5 Indemnity if failure to lock and secure

Where the conclusion of Access Hours is outside normal School hours and the Licensee fails to properly lock doors and windows to the Premises or fails to set any security alarm (that may have been supplied by the Licensor) when leaving the Premises, the Licensee must indemnify the Licensor for all costs incurred by the Licensor or damages suffered by the Licensor as a result of the failure of the Licensee to lock doors and windows and set any such alarm.

10.6 Provision of key

The Licensee must always provide the Licensor with keys to enable the Licensor to access the Premises at all times.

10.7 Identity badges

Each employee of the Licensee must when in the grounds of the School or in the Premises wear an identity badge disclosing the name of the employee.

10.8 Display of names and titles

The Licensee must place in a prominent position in the Premises the names and job titles of staff of the Licensee working in the Premises for each session of that day.

11. Playground

11.1 Use by Licensee

The Licensee may have access for children attending the OOSH to the playground of the School and to use any playground equipment.

11.2 Licensee to control use

The Licensee must:

- (a) exercise effective control at all times over children of the OOSH who are in the playground; and
- (b) comply with all directions given by the Principal that relate to the use of the playground and any playground equipment.

12. Annual meeting

12.1 Calling of meetings

The Licensor may cause the Principal to call a meeting ("annual meeting") on or about each anniversary of the commencement of the Term. The Principal shall fix the time of the annual meeting which will be held at the School and will extend an invitation to the meeting to all members of the School community as determined by the Principal. The calling of an annual meeting is at the sole discretion of the Licensor but if an annual meeting is held the balance of clause 12 will apply.

12.2 School attendance at meeting

The Principal will attend the annual meeting with such other members of staff of the School as nominated by the Principal.

12.3 Parents and Citizens Committee attendance

The Principal must extend an invitation to the Parents and Citizens Committee applicable to the School to attend the annual meeting.

12.4 Licensee attendance

The Licensee must ensure that at least a nominee of the management of the Licensee and the person in charge of the conduct of the OOSH for the Licensee attend the annual meeting.

12.5 Minutes of annual meetings

The Principal shall cause minutes of the annual meeting to be taken and will distribute a copy to the representative of the Licensee present at the annual meeting.

12.6 Chairing of annual meetings

The annual meeting will be chaired by the Principal or by some other staff member of the School as is nominated by the Principal.

12.7 Agenda for annual meetings

The agenda for the annual meeting will be to discuss generally the conduct of the OOSH, to receive and discuss any suggestions from those present as to the conduct of the OOSH and to generally provide a forum for all stakeholders in the conduct of the OOSH to communicate and discuss issues properly concerning the conduct of the OOSH.

12.8 Licence prevails

No resolution of the annual meeting will alter the provisions of this licence unless this licence is altered in writing by agreement between the Licensor and Licensee.

12.9 Additional meetings requested by the Principal

The Principal may in the absolute discretion of the Principal call an additional meeting or meetings other than the annual meeting and in particular may require a meeting to be held each School term. For any such meetings the balance of the provisions of clause 12 shall apply except that an invitation shall not be extended to members of the School community but will be extended to up to 3 parent representatives of children enrolled in the OOSH.

12.10 Additional meetings requested by the Licensee

In addition if the Licensee requests a meeting at any time being in addition to the annual meeting the Principal will upon receiving a written request from the Licensee cause a meeting to be held. For any such meeting the balance of the provisions of clause 12.9 shall also apply.

13. Not for profit Licensee

If the Licensee is a not for profit organisation it must:

- (a) provide to the Licensor a copy of its annual financial statements during the term of this Licence within 28 days after those statements have been adopted by the Licensee;
- (b) not change its status to a for profit organisation;
- (c) not pay salaries to its employees that exceed market salaries for the duties performed;
- (d) not engage the services of any for profit organisation, other than for minor management services in conducting the OOSH at the Premises and not engage the services of any for profit organisation for any services if an office bearer of the Licensee is an employee, officer or shareholder of the for profit

organisation or if any office bearer of the Licensee is related to any such employee, officer or shareholder; and

- (e) in relation to any profit made by the Licensee from the conduct of the OOSH from the Premises apply that profit to the benefit of the OOSH by
- (1) the acquisition of additional equipment to be used in the conduct of the OOSH at the Premises;
 - (2) the provision of additional staff in the conduct of the OOSH at the Premises; or
 - (3) in applying a discount to enrolment fees for students attending the OOSH at the Premises

and provide evidence to the Licensor of its compliance with this sub-clause.

14. Child safety, welfare and wellbeing

14.1 Comply with CP Act

The Licensee must be aware of and comply with the requirements of the *Child Protection (Working with Children) Act 2012* and the *Child Protection (Working with Children) Regulation 2013* and the *Children (Education and Care Services) National Law (NSW)* (collectively **the CP Act**) and any other ancillary legislation and the policies of the Licensor on child protection.

14.2 Extent of obligation

The Licensee must ensure that all persons who are engaged in child related work in relation to the Permitted Use, as defined in the CP Act, which include subcontractors and volunteers, comply with the requirements of the CP Act.

14.3 Notify Police

The Licensee must notify the Police if an allegation is made against one of its workers or invitees of disqualifying offences within the meaning of Schedule 2 of the CP Act.

14.4 Notification to Principal

The Licensee must notify the Principal within 1 working day when it becomes aware that one of its workers or invitees:

- (a) has been referred to the Police in relation to a disqualifying offence within the meaning of Schedule 2 of the CP Act;
- (b) has been charged by the Police in relation to a disqualifying offence within the meaning of Schedule 2 of the CP Act; or
- (c) has been found guilty of a disqualifying offence within the meaning of Schedule 2 of the CP Act.

14.5 Further Notification to Principal

The Licensee must provide the Principal with information it receives relating to the safety, welfare or wellbeing of a particular child or a class of children who the Licensee knows is enrolled in and/or attends a School where the Licensee reasonably believes

this information would assist the Principal to make any decision, assessment or plan, or conduct any investigation or provide any service, relating to the safety, welfare or wellbeing of the child or a class of children. This obligation may include but is not restricted to the following information:

- (a) educational records, assessments, welfare reports and counselling records;
- (b) reports of health-related incidents where:
 - (1) medication, such as asthma reliever medication, was administered to the child;
 - (2) the child was transported to a hospital or the parents of the child were advised to take the child to a health care professional or to a hospital; and
 - (3) medical attention was provided at the Premises by an ambulance officer or health care professional;
- (c) apprehended personal violence orders or apprehended domestic violence orders or information that a child attending the School may have been exposed to domestic violence; and
- (d) allegations that a child has been or is at risk of being physically or sexually abused or ill-treated unless the Licensee is specifically advised by NSW Police not to provide this information to the Principal or by the Joint Investigation Response Team and in those circumstances the Licensee must write to NSW Police or the Joint Investigation Response Team to provide this advice and request that NSW Police inform the Principal as soon as they deem it appropriate to do so.

14.6 Acknowledgments in relation to child protection

The Licensee acknowledges that:

- (a) if the child is enrolled in a government school, the Principal must advise the Director of Public Schools, or such other departmental authority as identified from time to time by the Licensor, of any information provided under clause 14.4;
- (b) the safety, welfare and wellbeing of children and in particular protecting them from child abuse, is the paramount consideration when the Director of Public Schools considers what further use or disclosure will be made of the information received. This will include informing various other persons in compliance with the Licensor's requirements and may include informing members of the School community of the information provided under clause 14.4 where those community members may be directly affected by the information;
- (c) it is responsible after consulting with the Police and/or the Department of Community Services for advising the parents of any children who use their service of the matters set out in clause 14.4;
- (d) it must provide the Principal with evidence of the contact it has made with such parents; and

- (e) no obligation placed on the Licensee to inform any person should be regarded as removing the right of the Principal to take any additional action considered necessary to contact the Police or other appropriate authority or inform members of the School community.

14.7 Verification of compliance

The Licensee must complete and sign the Child Protection Declarations as required under the CP Act or by the Licensor.

14.8 Persons to be excluded

The Licensee must not employ, or continue to employ as a worker a person in child related work if the Licensee knows or has reasonable cause to believe that:

- (a) the worker is not the holder of a working with children check clearance under the CP Act that authorises that work or contact with children and that there is no current application by the worker to the Children's Guardian for a clearance of a class applicable to that work; or
- (b) the worker is subject to an interim bar.

14.9 Other notification requirements

The Licensee must provide the Principal with information it obtains relating to the safety, welfare or well-being of a particular child or class of children the Licensee knows to attend a School where it reasonably believes this information would assist the Principal to make any decision, assessment or plan or conduct any investigation or provide any service relating to the safety, welfare or well-being of the child or a class of children. This may include but is not restricted to the following information:

- (a) educational records, assessments, welfare reports and counselling records;
- (b) reports of health-related incidents where:
 - (1) medication (for example, asthma reliever medication) was administered to the child;
 - (2) the child was transported to a hospital or his or her parents were advised to take the child to a health care professional to a hospital; and
 - (3) medical attention was provided on site by an ambulance officer or health care professional;
- (c) apprehended personal violence orders or apprehended domestic violence orders or information that a child may have been exposed to domestic violence;
- (d) allegations that a child has been or is at risk of being physically or sexually abused or ill-treated unless the Licensee is specifically advised not to provide this information to the Principal by the Police or a Joint Investigation Response Team. In such circumstances the Licensee must write to the Police or the Joint Investigation Response Team and request that the Police inform the Principal as soon as the Police deem it appropriate to do so.

14.10 Change in Licensor requirements

The Licensor may in his absolute discretion at any time change the provisions of this agreement in relation to child protection. Upon notification of any change, the Licensee must comply with the changes as notified within such reasonable time as is specified in the notice.

14.11 Application of clause

For the purposes of this clause:

- (a) "child" means a person under the age of 18 years;
- (b) "Children's Guardian" means the Children's Guardian appointed under section 178 of the *Children and Young Persons (Care and Protection) Act 1998*;
- (c) "Joint Investigation Response Team" is a team of representatives of NSW Police, Department of Community Services and NSW Health formed to undertake a joint investigation of child protection matters where there is a possibility the abuse of a child is a criminal offence;
- (d) "Principal" means the person occupying the position of, or acting as, principal of the School in which a child is enrolled and/or is known to attend;
- (e) "School" means a government school or registered non-government school within the meaning of the *Education Act 1990*;
- (f) "worker" includes a person who is engaged in work in any of the following capacities:
 - (1) employee;
 - (2) self-employed person or is a contractor or subcontractor;
 - (3) volunteer;
 - (4) undertaking practical training as part of an educational or vocational course (other than as a school student undertaking work experience);
and
 - (5) as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of a religion or other member of a religious organisation.

15. Equipment

15.1 Supplied by Licensor

The parties acknowledge that the Licensor has provided in the Premises the equipment, if any, specified in Item 14(a). The Licensee may use these items without additional cost but the Licensor is under no obligation to maintain, repair or replace any such item that may be damaged or become worn out.

15.2 Damage to equipment

If any of the items specified in Item 14(a) should be damaged or destroyed as a result of the conduct of the OOSH the Licensee must at the expense of the Licensee repair or where appropriate replace such items.

15.3 Licensee to supply other equipment

At the Commencement Date the parties acknowledge that the Licensee has supplied the equipment specified in Item 14(b). The Licensee must supply at its own expense any other equipment reasonably necessary for the conduct of the OOSH.

16. No assignment

16.1 Assignment prohibited

The Licensee is not entitled to assign, transfer, sub-licence or part with possession of the Premises or any part.

16.2 Change to shareholders

If the Licensee is a for profit organisation and is a company, if there is a change in the shareholders of the Licensee which the Licensor in its reasonable opinion deems to be a change in the control of the Licensee, this will be deemed to be an assignment of this licence.

17. Not interfere with others

17.1 Licensee not to interfere with School

The Licensee subject to the proper conduct of the OOSH must not permit the Premises to be used in a manner which is noxious, noisome or offensive to the Licensor or any other occupier of any other part of the School.

17.2 Licensor not to interfere with OOSH

The Licensor subject to its rights reserved under this licence must not interfere with the conduct by the Licensee of the OOSH.

18. Holding over

18.1 Term

If the Licensee with the consent of the Licensor continues to occupy the Premises after the termination of this agreement, the Licensee shall be a monthly licensee only and either party shall be able to terminate such licence by 1 month's notice in writing to the other.

18.2 Licence Fee

The licence fee to be paid for each month during any holding over period shall be an amount equal to the monthly Licence Fee current at the date of termination increased by 4% per annum.

19. Option to renew

19.1 Grant of further term

The Licensee may subject to clause 19.3 require the Licensor to enter into a further licence of the Premises for the period specified in Item 9 commencing from the last day of the Term provided that:

- (a) the Licensee serves a notice in writing upon the Licensor requiring the Licensor to enter into the further licence;
- (b) the Licensor receives the notice not less than 6 months prior to the last day of the Term; and
- (c) the Licensee is not in default under this Licence as at the date of giving the notice and on the last day of the Term and this Licence has not been terminated before the last day of the Term.

19.2 Terms and conditions of further term

The further licence shall contain identical provisions as are contained in this licence except:

- (a) this clause will be deleted and Item 9 will disclose no further option to renew;
- (b) the Term will be amended to reflect the provisions of this clause; and
- (c) the annual Licence Fee in Item 4:
 - (1) for the first year of the further term will be 4% greater than the Licence Fee applicable immediately prior to the commencement of the new term; and
 - (2) for each subsequent year in Item 4 will be 4% greater than the Licence Fee in the preceding year.

19.3 Right of Licensor to not grant further term

Upon the receipt of the notice under clause 19.1 the Licensor may within 2 months calculated from the date of service serve a notice on the Licensee advising that the Licensor will not grant a further licence. The Licensor will not be required to give any reasons. If this notice is given there will be no further term, this licence will terminate at the expiry of the Term and the holding over provisions in clause 18 will not apply.

20. No exclusive rights

20.1 No right to exclude Licensor

The Licensee acknowledges that the rights granted under this agreement are a licence and not a lease and that of consequence the Licensee is not entitled to exclude the Licensor from the Premises or any part.

20.2 Reservations

The Licensor reserves the right to:

- (a) regulate the use of the Common Areas;

- (b) alter any Common Areas and the means of access to the Premises;
- (c) run cables, pipes and other services and utilities through, under or over the Premises and to enter to repair such services;
- (d) repair, renovate or refurbish any part of the School including Common Areas;
- (e) erect additional premises or other structures on the School including Common Areas;
- (f) enter the Premises at all reasonable times after giving reasonable notice (except in the case of an emergency when no notice is required) to:
 - (1) view the state of repair;
 - (2) carry out installations, repairs, renovations or maintenance to the Premises or its services, causing as little inconvenience as possible to the Licensee;
- (g) grant easements and other rights over or affecting the Premises.

20.3 No interference by Licensor

Subject to clause 20.2 the Licensor will not interfere with the rights granted to the Licensee under this licence so as to interfere with the capacity of the Licensee to conduct the OOSH.

21. Licensor's covenants

The Licensor shall reasonably maintain the Building.

22. Accidents

If any accident should occur at the Premises or within the grounds of the School involving the Licensee or any employee or invitee of the Licensee or any child enrolled in the OOSH, the Licensee must promptly provide to the Principal a written report of the accident with sufficient details to enable the Licensor to respond to any claim that may be made against the Licensor for damages arising from such accident.

23. Licensee insurance and indemnities

23.1 Policies to be maintained

The Licensee must

- (a) maintain an insurance policy for public risk for the Premises and the OOSH at the Premises;
- (b) maintain an insurance policy for workers' compensation;
- (c) provide a certificate of such insurances to the Licensor upon the signing of this licence or when otherwise reasonably requested; and
- (d) promptly after the renewal of any such insurances provide a copy of such renewals to the Principal.

23.2 Requirements for public risk policy

The insurance policy for public risk must:

- (a) provide insurance for an amount which may be payable arising out of any one single accident or event of not less than \$20,000,000 or such other sum as in the reasonable opinion of the Licensor as advised from time to time is adequate cover;
- (b) extend to cover death or injury to any person and damage to property of any person, sustained when such person is at the Premises or using or entering or near any entrance, passage, vestibule into or of the Premises or any part of the School;
- (c) name as the insured the Licensee and extend cover under the policy to the Licensor.

23.3 Indemnity

- (a) The Licensee indemnifies the Licensor against all claims made on the Licensor that relate to the conduct by the Licensee of the OOSH at the Premises.
- (b) If the Licensee breaches the use covenant and the Licensor suffers any loss as a result, the Licensee indemnifies the Licensor from all loss arising from or incidental to the Licensee's breach.
- (c) The Licensee indemnifies the Licensor from and against all actions, claims, damages and expenses arising from or in consequence of the following:
 - (1) the negligent use by the Licensee of any utility or other services and facilities of the Premises or at the School;
 - (2) overflow or leakage of water including rainwater in or from the Premises or any building of which the Premises is part;
 - (3) loss, damage or injury from any cause to property or person caused or contributed to by the use of the Premises by the Licensee; or
 - (4) loss damage or injury from any cause to the property or person within or without the Premises or at the School occasioned or contributed to by any act, omission, neglect, breach or default by the Licensee.

23.4 Release

The Licensee occupies and uses the Premises at its own risk and releases the Licensor from any action, demand, cost, liability or loss due to any damage, loss, injury or death occurring in the Premises except to the extent that it is caused by the Licensor's negligent act or negligent omission.

24. Damage to Premises

24.1 Licence Fee abatement

If the Premises are damaged so that in the reasonable opinion of the Licensor the Licensee is not able to conduct the OOSH from the Premises, payment of the Licence Fee shall abate until the Premises are restored by the Licensor.

24.2 Entitlement to terminate

If the Licensor elects not to reinstate the Premises within a reasonable time either the Licensee or the Licensor may terminate this licence by giving 7 days' notice to the other.

25. Consent of Licensor

The Licensor delegates to any person from time to time holding the position (or acting in such position) of director of the Regional Asset Management Directorate applicable to the School the authority to consent on behalf of the Licensor wherever in this licence the consent of the Licensor was required to be obtained by the Licensee.

26. Responsible person

The Licensee must at all times advise the Principal of the person in charge of the OOSH at the Premises together with an after-hours telephone contact number.

27. Termination and make good

27.1 Make good

- (a) Before the last day of the Term or upon the earlier determination of this licence the Licensee must:
 - (1) not remove, unless otherwise directed by the Licensor, any improvements it has made to the Premises but otherwise must at its own cost remove all of its property, plant, equipment, signage, fixtures and fittings from the Premises;
 - (2) subject to clause 27.1(a)(1) at its own cost make good the Premises to their condition at the commencement of the first occupancy of the Premises pursuant to this licence or any prior licence subject to fair wear and tear and damage caused by fire, flood, lightning, storm, tempest or other similar event and subject to any damage caused to the Premises by the occupancy of the Licensor.
- (b) If required by the Licensor:
 - (1) the Licensee must wash down all walls of the Premises and if reasonably required by the Licensor repaint all surfaces that are painted; and
 - (2) the work must be undertaken in a proper and workmanlike manner and where the walls are painted must be to a colour nominated by the Principal and be of 1 undercoat and of 2 top coats.
- (c) Any improvements required by the Licensor under clause 27.1(a)(1) to be left at the Premises will become the property of the Licensor.
- (d) If the Licensee does not comply with this clause 27, the Licensor may carry out the Licensee's obligations and recover the cost from the Licensee.

27.2 Return of keys

The Licensee must return all keys by the last day of the Term or on the earlier determination of this licence. If the Licensee loses any key it must reimburse the cost to the Licensor of replacing the key. If the key is a master key for locks at the School the cost may include the replacement of all locks at the School.

27.3 Disposal of the property of the Licensee

If, following the determination of this licence, any of the Licensee's equipment, plant, fixtures or fittings are left at the Premises the Licensor may deal with such property as it thinks fit as if it was the Licensor's property without being liable to the Licensee. The Licensee indemnifies the Licensor against all damages sustained by the Licensor due to its reasonable actions under this clause.

28. Essential terms

The parties acknowledge that the following are essential terms of this licence:

- (a) clause 3.2;
- (b) clause 4;
- (c) clause 5.3(a), (b), (c), (d) and (e);
- (d) clause 5.5;
- (e) clause 13(a), (b) and (c).
- (f) clause 14; and
- (g) clause 16.

29. Default

29.1 Events of default

If the Licensee:

- (a) fails to pay the Licence Fee within 14 days of a respective due date;
- (b) fails to pay other moneys due to the Licensor according to the terms of this licence within 14 days of the due date;
- (c) receives a notice from any competent authority of a breach of any requirement of that competent authority for the conduct of the OOSH;
- (d) fails to comply, where applicable, with clause 13(b);
- (e) breaches any other covenant of the Licensee under this licence and does not rectify such failure within 1 calendar month of being notified of the omission by the Licensor or such shorter period as the Licensor may reasonably specify;
- (f) is an individual, is declared bankrupt;
- (g) is a company or incorporated association, enters into liquidation (other than for the purpose of amalgamation or reconstruction) or is wound up or dissolved or

enters into a scheme of arrangement for creditors or is placed under official management or a receiver and/or manager and/or controller of any of its assets is appointed; or

(h) has cancelled or suspended its Provider Approval or Service Approval,

the Licensor is entitled at any time thereafter without further notice to take any of the action referred to in clause 29.2.

29.2 Consequences of default

If clause 29.1 applies, the Licensor may do any one or more of the following:

- (a) determine the licence by re-entry, by notice or by any other action available to it;
- (b) by notice to the Licensee convert the Term into a monthly occupancy as if the Licensee was holding over at the end of the Term at the monthly Licence Fee on receipt of the notice;
- (c) take any action it considers necessary or desirable in order to give effect to its rights under this licence;
- (d) elect to treat the conduct or failure to perform as a repudiation of the licence by the Licensee; and
- (e) recover from the Licensee an amount equal to the damages or loss it sustains.

29.3 Licence Fee payable for entire term

If the Licensor re-enters the Premises or determines the licence or accepts a repudiation, the Licensor (in addition to any other of its rights and remedies) is entitled to recover as damages the Licence Fee, outgoings and other money it would have been entitled to receive for the balance of the Term had the re-entry, determination or acceptance of repudiation not occurred, subject to its obligation to mitigate.

29.4 Conversion to monthly licence

If the Licensor converts the Term of the licence to a monthly licence which is subsequently determined, the Licensor is entitled to recover damages for the unexpired Term of this licence as if the conversion had not occurred.

29.5 No waiver

Acceptance by the Licensor of arrears of Licence Fee or other money or of any breach of the licence by the Licensee does not constitute a waiver of the Licensor's rights.

29.6 Interest on overdue payments

If the Licensee fails to pay any money by the due date the Licensee must pay interest calculated on a daily basis from the due date until the date of payment at the rate of 10% per annum. The Licensor may capitalise interest on monthly rests.

29.7 Failure of Guarantor to sign

If the Licensee fails to secure the execution by any Guarantor of the guarantee contained in this licence the Licensor at any time thereafter without notice may at its option terminate this licence.

30. Car parking

30.1 Licence to park

In addition to the rights as Licensee of the Premises the Licensor grants to the Licensee a non-exclusive licence to park motor vehicles in the car park of the School during the Access Hours in the number specified in Item 10.

30.2 Term of licence

The right to park motor vehicles under this clause expires when this licence terminates.

30.3 Covenants as to parking

The Licensee covenants with the Licensor:

- (a) to cause motor vehicles to be parked in the position in the car park of the School as designated from time to time by or on behalf of the Principal;
- (b) not to permit any motor vehicle to be cleaned or repaired whilst in the car park area; and
- (c) to indemnify the Licensor against all claims made on the Licensor arising from the use of the car park area by the Licensee and its invitees.

30.4 Damage

The Licensor is not liable for any damage to motor vehicles entering or leaving the car park area or whilst they are in the car park area.

30.5 Theft

The Licensor is not liable for the theft of any motor vehicle or any parts, equipment, personal property or contents of any motor vehicle whilst parked in the car park area.

30.6 Injury

The Licensor is not liable for any injury to a person in the car park area.

30.7 Removal of motor vehicles

No motor vehicle may be parked in the car park area outside the Access Hours. If there is a breach of this provision the Licensor will be entitled to remove the motor vehicles and the Licensee releases the Licensor from all liability incurred as a result of its actions taken in good faith under this clause.

31. Notices

31.1 In writing

All notices under this licence must be in writing and must be given to or served upon a party as provided in this clause.

31.2 Served on Licensor

All notices served on the Licensor must be:

- (a) directed to the Principal; and
- (b) sent to the School.

31.3 Served on Licensee

All notices served on the Licensee must be:

- (a) sent to the address specified in Item 13(d) or if no address is specified, to the Premises;
- (b) signed by a person occupying a position identified in clause 25 or by a lawyer acting for the Licensor.

31.4 Change of address

Each party may notify the other party of a change of address for service of notices or change of person to receive notices.

31.5 Contact details of Licensee

The Licensee must furnish the information required for Item 13(e), (f) and (g) and notify throughout the Term any changes to that information.

32. Costs

The Licensee must pay:

- (a) an administrative charge of the Licensor for the establishment of this licence to be paid on or before the Commencement Date;
- (b) the Licensor's legal costs and disbursements, if any, concerning the preparation of this licence;
- (c) any other costs incurred by the Licensor in considering or acting on a request by the Licensee; and
- (d) all costs of the Licensor including the legal costs and disbursements of the Licensor arising out of any default by the Licensee under this licence.

33. Security Deposit

33.1 Provide deposit

The Licensee must upon signing this agreement pay the Security Deposit which must be held by the Licensor and may be applied against amounts owing by the Licensee to the Licensor.

33.2 No waiver if used

If the Licensor applies the Security Deposit or any part as permitted by this clause it shall not waive the obligation of the Licensee to make the payment nor prejudice any other right of the Licensor arising from such failure.

33.3 Use on termination

On the termination of this licence the Security Deposit may be applied by the Licensor towards satisfying other sums which may be payable by the Licensee to the Licensor due to any breach of any provision of this licence by the Licensee.

33.4 Replenishment

If the Security Deposit or any part is applied by the Licensor during the Term to rectify a default by the Licensee the Licensee must within 5 business days pay the Licensor a further sum sufficient to restore the Security Deposit.

33.5 Refund

Upon the Licensee vacating the Premises on the expiration of the Term or sooner termination of this licence the balance of the Security Deposit, if any, shall be refunded to the Licensee.

33.6 Bank guarantee

The Security Deposit may be satisfied by a bank guarantee rather than a cash deposit. If a bank guarantee is furnished:

- (a) it must be issued by a bank authorized under the *Banking Act 1959* on terms reasonably satisfactory to the Licensor;
- (b) if the Licensee defaults under the Licence the Licensor may demand payment under the bank guarantee for the amount necessary to remedy the default and to indemnify the Licensor for all loss it sustains as a consequence of the default;
- (c) if the Licensor calls up any money under the bank guarantee the Licensee must within 14 days of notice from the Licensor of the amount called up forward to the Licensor a bank guarantee in identical terms for the amount of the initial bank guarantee that was called up;
- (d) the bank guarantee must not have an expiry date; and
- (e) if not utilised beforehand need not be released to the Licensee until 6 months after the termination of this licence.

34. Guarantee and indemnity

34.1 Provision of guarantee and indemnity

The Guarantor acknowledges that this licence has been granted to the Licensee at its request and in consideration of the grant covenants with the Licensor as follows:

- (a) to unconditionally guarantee to the Licensor the payment, when demanded from the Guarantor, of every sum payable by the Licensee to the Licensor under this licence;
- (b) if the Licensee breaches any of the covenants of the Licensee in this licence to indemnify the Licensor from and against all actions claims costs and damages arising out of the breach.

34.2 Not affected

This guarantee and indemnity is not affected by any of the following:

- (a) any variation with or without the consent or knowledge of the Guarantor of any of the covenants in this licence;
- (b) any breach of the obligations of the Licensee with or without the consent or knowledge of the Guarantor or the Licensor;
- (c) the granting by the Licensor of any time or indulgence to the Licensee for the performance of any of the obligations of the Licensee;
- (d) the insolvency or bankruptcy of the Licensee or the appointment of a trustee, liquidator, receiver and manager or other "controller" or the disclaimer of any obligation of the Licensee by a liquidator or similar person;
- (e) the termination, surrender or other determination of the licence consequent on a default by the Licensee;
- (f) the absence of any notice to the Guarantor of default by the Licensee in respect of this licence; or
- (g) any other circumstance or thing which but for this provision might determine or impair this guarantee and indemnity.

34.3 No set-off

The liability of the Guarantor is not affected by any claim or right to set-off or cross action which the Licensee may have or claim to have against the Licensor on any account nor is the Guarantor entitled to set-off against the Licensor.

34.4 No guarantee if not for profit Licensee

If the Licensee is a not for profit organisation the Licensor will not require any personal guarantees.

34.5 Guarantee covers all tenure

The Guarantor acknowledges that the obligations of the Guarantor contained in this guarantee and indemnity include payments and obligations for which the Licensee is

liable under any equitable lease or licence or common law lease or licence of the Premises between the Licensor and the Licensee.

35. Rules

The Licensor may from time to time impose Rules as it sees fit provided that any Rule does not conflict with any specific provision of this licence. The initial Rules are those, if any, specified in Schedule 2.