

CB 9

Caringbah Public School (**Licensor**)

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

# Community Use Agreement

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

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# Community Use agreement

## Parties

**Principal, Caringbah Public School**  
Port Hacking Rd, Caringbah NSW Australia 2229 (**Licensor**)

**YMCA of Sydney.**  
PO Box 1433, Parramatta NSW 2124  
ABN: 28 067 150 010 (**Licensee**)

## Background

- A. The Licensor, through its Minister for Education, is the Licensor of 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 30 minutes before and after each session of the Business Hours

"**Business Day**" means a weekday where banks are open for business in the State of New South Wales.

"**Business Hours**" means the hours specified in Item 7 and where applicable the hours specified in Item 8 in either case on the days of the week specified in Item 9.

"**Commencement Date**" means the commencement of this licence as specified in Item 5.

"**Competent Authority**" includes the WorkCover Authority of NSW, and a council as defined in the *Local Government Act 1993*.

"**Guarantors**" means the person or people specified in Item 13.

"**Item**" means an item in schedule 1 to this agreement.

"**Licence Fee**" means the amount per annum specified in Item 6.

"**OSHC**" means the conduct on the Premises within the Business Hours of a child care centre for children from kindergarten to year 6 and commonly known as an out of school hours care service.

"Premises" means that part of the School as identified in the plan attached to this agreement and/or as disclosed in Item 2.

"Principal" means the person occupying the position of, or acting as, principal of the School.

"School" is the school identified in Item 1.

"Security Deposit" means the amount specified in Item 12.

"Term" means the term referred to in Item 3 calculated from the Commencement Date together with any period of holding over.

## 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.

## 2. Grant of Licence

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

## 3. Licence Fee

- 3.1 The Licensee must pay to the Licensor the Licence Fee.
- 3.2 The Licence Fee must be paid by calendar monthly instalments in advance.
- 3.3 The Licence Fee and other amounts payable under this Licence must be paid to the School bank account as identified in Item 15 or as identified in a subsequent notice from the Licensor to the Licensee that complies with clause 43 of this Agreement.

## 4. Review of Licence Fee

The Licence Fee shall be increased on each anniversary of the commencement of the Term by 4%.

## 5. Use of Premises

The Licensee must use the Premises for the OSHC and must not without the consent of the Licensor permit the Premises to be used for any other purpose.

## 6. Conduct of OSHC

6.1 The Licensee must conduct the OSHC:

- (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 sub clauses (a), (b) and (c) of this clause, in accordance with written statements of the Licensee in response to any tender process that preceded the granting by the Licensor of this licence to the Licensee

6.2 The Licensee must:

- (a) not bring upon the Premises or permit to be done any act, matter or thing which may be a nuisance or inconvenience or cause damage or annoyance to the Licensor, its students or invitees on the School;
- (b) not breach any law or requirement of any Competent Authority for the time being in force with regard to the conduct of the OSHC from the Premises;
- (c) maintain any applicable government licences;
- (d) produce to the Licensor when reasonably requested evidence of compliance with clause 6.2(c);
- (e) not enrol students in any session of the conduct of the OSHC greater than the maximum number specified in Item 10; and
- (f) 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 OSHC.

6.3 The Licensee authorises the Licensor to contact any competent authority in relation to the conduct of the OSHC 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.

6.4 In the enrolment of students for the OSHC the Licensee will give priority to:

- (a) children with the greatest need as identified by the Australian Government's *Priority of Access Guidelines*; then
- (b) children who attend the School; then
- (c) children who attend another government school in the same or adjoining intake area to that of the School (with "government school" and "intake area" being terms used in section 34 of the *Education Act 1990*); then
- (d) children of any member of staff of the School; then

- (e) any other children.

The Licensee is, however, entitled to decline an enrolment of a child, including children in categories (b), (c) and (d) above, on the grounds that they pose an Occupational Health and Safety risk.

- 6.5 The Licensee must conduct the OSHC 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 such change complies with clause 6.1(c).

## **7. Review of Performance**

- 7.1 Representatives of the Licensor and the Licensee will meet regularly, and in any case once per school term, to give consideration to matters arising from the conduct of the OSHC at the school. The School Principal will convene the meetings. These meetings will provide an opportunity for school staff and OSHC staff to raise issues requiring consideration and resolution. The meetings will also give consideration to matters of concern raised by either users of the OSHC or members of the school community where the matters have implications for the effective operation of both the school and the OSHC.
- 7.2 The School Principal will refer to the OSHC Coordinator for resolution matters of concern raised with the school which relate solely to the operation of the OSHC.
- 7.3 The OSHC Coordinator will refer to the School Principal for resolution matters of concern raised with the OSHC which relate solely to the operation of the school.
- 7.4 Notwithstanding arrangements in 7.1 above, once per year and within 30 days of the anniversary of the signing of this licence agreement, there will be a review of the performance of the OSHC which will take account of the views of the school administration, the Licensee as service provider, the clients of the service and the broader school community. The School Principal will facilitate the review.
- 7.5 The objective of the review of performance will be to improve performance and the satisfaction of the parties involved, and if necessary, identify possible amendments to the terms and provisions of the licence agreement.

## **8. Not for Profit Licensee**

As 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 14 days after those statements have been adopted by the Licensee;
- (b) not change its status to a for profit organization;
- (c) not engage the services of any for profit organisation to deliver any part of the OSHC at the Premises (with the exception of ancillary type services such as by visiting entertainers and sports providers but not so as to have more than 25% of the OHSC delivered by persons engaged through for profit organisations); and
- (d) in relation to any surplus made by the Licensee from the conduct of the OSHC at the Premises apply that surplus to the benefit of the OSHC at the premises

or another not for profit OSHC operated by the Licensee by the acquisition of additional equipment to be used in the conduct of the OSHC, or the provision of additional staff or in applying a discount to enrolment fees for students attending the OSHC and provide evidence to the Licensor of its compliance with this sub-clause.

## **9. Occupational Health and Safety**

9.1 The Licensee must promptly advise the Principal of any issues of which it becomes aware as to the Premises which reasonably might not comply with any occupational health and safety legislation in relation to the students and staff at the Premises.

9.2 The Licensee must at its expense:

- (a) comply with any occupational health and safety legislation in relation to the conduct of the OSHC from the Premises, and
- (b) where required by the Licensor produce evidence to the Licensor of its compliance with any applicable occupational health and safety legislation.

## **10. First Aid and Illness**

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; and
- (c) if any infectious illness occurs within the Premises immediately give notice of it to the Principal and comply with any direction of the Principal in relation to such illness including any requirement to exclude any person from the Premises.

## **11. Holding over**

11.1 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.

11.2 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%.

## **12. Option to Renew**

12.1 The Licensee may subject to clause 12.3 require the Licensor to enter into a further licence of the Premises for the period specified in Item 4 commencing from the last day of the Term provided that:

- (a) the Licensee serves 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.

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

- (a) where this licence is first granted there are 2 options to renew specified in Item 4, in the agreement for the second term Item 4 will be amended to reflect only 1 further term;
- (b) where the licence arises from the last option to renew this clause will be deleted and Item 4 will disclose no further option to renew;
- (c) the Term will be amended to reflect the provisions of this clause; and
- (d) the annual Licence Fee in Item 6 will be 4% greater than the Licence Fee applicable immediately prior to the commencement of the new term.

12.3 Right of Licensor not to grant further term

Upon receipt of the notice under clause 12.1 the Licensor may within 2 months calculated from the date of service of the notice exercising the option, serve notice on the Licensee that the Licensor will not grant a further licence. The Licensor will not be required to give any reasons. If this notice is given then there will be no further term, the licence will terminate on the expiry of the term and the holding over provisions in clause 11 will not apply.

### **13. Goods and Services Tax**

- 13.1 In this clause terms used are as defined in the *A New Tax System (Goods and Services Tax) Act 1999*.
- 13.2 All sums payable to the Licensor under this agreement are calculated on an amount that is exclusive of the goods and services tax and any goods and services tax 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.

### **14. Interest**

The Licensee must pay interest to the Licensor on any money which is or becomes due and payable under this agreement from when it fell due to be paid until the date it is actually paid at the rate of 10% per annum. Such interest shall accrue and be calculated on a daily basis.

### **15. Utility Charges**

- 15.1 The Licensor will provide any electricity connection to be used in the conduct of the OSHC.
- 15.2 Included in the Licence Fee is the cost for the use of electricity and water provided by the Licensor for each day of the conduct of the OSHC under this agreement.



- 15.3 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 telephone service.

## 16. Cleaning

- 16.1 The Licensee must at the end of each session of use leave the Premises in a tidy state.
- 16.2 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 and, as far as possible, not during Access Hours or Business Hours.
- 16.3 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.
- 16.4 If as a result of the conduct of the OSHC at the conclusion of the Access Hours on any day the Premises or any part of the School requires a degree of 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.

## 17. Child Protection

- 17.1 The Licensee must observe and comply with the provisions of the *Child Protection (working with Children) Act 2012* ("the Act") and all related legislation and regulations including but not limited to:
- (a) acknowledging that all the children attending the OSHC are minors;
  - (b) compliance with the Act by Licensee's employees, subcontractors and any volunteers performing any task on behalf of the Licensee at the Premises;
  - (c) carrying out Working with Children Checks;
  - (d) notifying the Commission for Children and Young People of any relevant disciplinary proceedings against any employee or if any applicant is rejected for child related employment; and
  - (e) not employing, or continuing the employment of a person who fails the Check process.
- 17.2 The Checking process specified in clause 17.1(c) will be carried out by the Licensee. The Licensee must promptly provide to the Licensor the results of each background check.
- 17.3 In this clause words and phrases that are defined in the Act shall be interpreted as specified in that Act.
- 17.4 The Licensee must when reasonably required by the Licensor furnish a statutory declaration of a principal employee of the Licensee that the Licensee has complied with clause 17.1 and has caused each of its employees to comply with clause 17.1.
- 17.5 In circumstances where there is an unacceptable risk to the safety of children, the Licensor may in its absolute discretion advise the Licensee that:
- (a) any employee of the Licensee must not work in the Premises;

- (b) any person otherwise engaged in the conduct of the OSHC may not be so engaged; and
- (c) if either of subparagraph (a) or (b) apply the Licensee must not further permit that person to remain at the Premises or to be employed or otherwise engaged in the conduct of a child care centre by the Licensee at any other site of the Licensor.

## **18. Security and Access**

- 18.1 The employees and invitees of the Licensee may pass and re-pass over such parts of the School as is reasonably necessary to gain access to the Premises.
- 18.2 Each employee of the Licensee must wear an identity badge disclosing the name of the employee.
- 18.3 The Licensee must use its best endeavours to ensure that its employees and invitees do not unnecessarily access other parts of the School.
- 18.4 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.
- 18.5 The Licensee must ensure that at all times when the Premises are unattended that they are securely locked.
- 18.6 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 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 alarm.
- 18.7 The Licensee must always provide the Licensor with keys to enable the Licensor to access the Premises at all times.
- 18.8 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.
- 18.9 The Licensor must provide the Licensee with keys to enable the Licensee to access the Premises during Access Hours and Business Hours.
- 18.10 The Licensor must provide the Licensee with contact details for the Principal and other appropriate personnel of the School and the Department's *School Security* and *School Safety and Response* 24 hour Hotlines.

## **19. Toilet Facilities**

- 19.1 The employees of the Licensee and children under its care may use toilet facilities in the School as may be specified in Item 2, or if not specified, which will be nominated from time to time by the Principal.
- 19.2 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.
- 19.3 The Licensor shall maintain the toilet facilities (including providing adequate soap and paper supplies) and shall clean the toilet facilities during the Term.

- 19.4 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.

## **20. No Exclusive Rights**

- 20.1 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 The Licensor will not interfere with the rights granted to the Licensee under this agreement so as to interfere with the capacity of the Licensee to conduct the OSHC.

## **21. No Assignment**

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

## **22. Car Park**

The employees of the Licensee and its invitees must:

- (a) not park any motor vehicle on the land of the School in any unmarked and non-designated car spaces;
- (b) only use to park motor vehicles any specific car space allocated to the Licensee as may be identified in Item 2; and
- (c) comply with any rule specified from time to time by the Principal with regard to the use of any car park.

## **23. Playground**

- 23.1 The Licensee may have access for children attending the OSHC to the playground of the School and to use any playground equipment.
- 23.2 The Licensee must:
- (a) exercise effective supervision of children of the OSHC 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.

## **24. Equipment**

- 24.1 The parties acknowledge that the Licensor has provided in the Premises the equipment, if any, specified in Item 14. The Licensee may use these items without additional cost but the Licensor is under no obligation to repair or replace any such item that may be damaged or become worn out.
- 24.2 If any of the items specified in Item 14 should be damaged or destroyed as a result of the conduct of the OSHC the Licensee must at the expense of the Licensee repair or where appropriate replace such items.

24.3 The Licensee must supply at its own expense any other equipment reasonably necessary for the conduct of the OSHC.

## **25. Maintenance obligations during the Term**

25.1 The Licensee must:

- (a) keep the Premises in good repair and condition, with damage by fire, flood, lightning, storm and tempest, fair wear and tear, building structure repairs and damage caused by any use by the Licensor only excepted;
- (b) comply with all requirements of any competent authority relating to the conduct of the OSHC in the Premises;
- (c) keep the Premises in a neat and clean condition and not allow any accumulation of rubbish.

25.2 If the Licensee breaches any of the provisions of this clause it must promptly rectify such omission and if it fails to do so the Licensor may undertake such work as is necessary and recover the cost from the Licensee.

## **26. Not interfere with others**

26.1 The Licensee subject to the proper conduct of the OSHC 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.

26.2 The Licensor subject to its rights reserved under this agreement must not interfere with the conduct by the Licensee of the OSHC.

## **27. Signs**

The Licensee must not erect any signs on the Premises or the School without the prior consent in writing of the Principal. Consent will not be unreasonably withheld 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 agreement.

## **28. No alterations**

The Licensee must not

- (a) make any alterations or additions to the Premises; or
- (b) 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.

## **29. Fixtures and Fittings**

29.1 The Licensee must:

- (a) take all reasonable 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 OSHC or from any other cause, and
- (b) immediately at its own expense make good any such damage so caused.

29.2 The Licensee must not erect any partitions without permission from the Licensor.

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

29.4 All electrical equipment brought on the Premises by the Licensee must be subject to the same tests as to its operational effectiveness as the equipment of the Licensor is tested from time to time.

### **30. Combustible Substances**

The Licensee must:

- (a) not bring upon the Premises any combustible substances except such as may be reasonably required in connection with the proper conduct of the OSHC;
- (b) advise the Licensor of the identity and quantity of such substances and comply with all reasonable rules stipulated by the Licensor as to their storage; and
- (c) pay any increase in the premium applicable to the fire policy held by the Licensor for the buildings at the School arising from the presence of such substances.

### **31. Fire Safety**

31.1 The Licensee must ensure that its employees and invitees comply with any fire drills or other similar exercises as may be carried out by the Licensor for the School.

31.2 The Licensee must:

- (a) nominate an employee who will from time to time be a warden for the Premises for fire safety requirements; and
- (b) ensure that the warden that is nominated attends all training exercises as reasonably nominated from time to time by the Licensor.

31.3 The Licensee must:

- (a) maintain an evacuation plan to be implemented if there is a fire or other emergency in the Premises; and
- (b) make a copy of this plan available to the Principal.

### **32. Responsible person**

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

### **33. Air conditioning**

- 33.1 The air conditioning units, if any, existing in the Premises at the date of the commencement of this agreement are the property of the Licensor and will be maintained during the term by the Licensor.
- 33.2 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.
- 33.3 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.

### **34. Insurance**

- 34.1 The Licensee must
- (a) maintain a policy of public risk insurance for the Premises and the business carried on at the Premises; and
  - (b) maintain in respect of any employees of the Licensee who are employed in connection with the OSHC conducted at the Premises, a workers compensation insurance policy required under the provisions of the *Workers Compensation Act 1987* or any other relevant legislation; and
  - (c) provide a certificates of such insurances to the Licensor upon the signing of this agreement; and
  - (d) promptly after the renewal of any such insurances provide a copy of such renewals to the Principal.
- 34.2 The policy of public risk insurance 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 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.

### **35. 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 with the Licensee for the Premises, the Licensee must within one (1) Business Day 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 there from.

### **36. Disclaimers, Indemnities and Releases**

- 36.1 The Licensor does not warrant that the Premises are now or will remain suitable for the OSHC
- 36.2 The Licensee agrees to occupy and use the Premises at its own risk and releases to the full extent permitted by law the Licensor from all claims and demands resulting from any accident, damage or injury occurring at the Premises and the Licensor shall have no responsibility or liability for any loss of or damage to the fixtures, plant, equipment and machinery of the Licensee at the Premises.
- 36.3 The Licensee indemnifies the Licensor from and against all actions, claims, damages and expenses arising from or in consequence of the following:
- (a) the negligent use by the Licensee of any utility or other services and facilities of the Premises or at the School;
  - (b) overflow or leakage of water excluding rainwater in or from the Premises or any building of which the Premises is part;
  - (c) 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
  - (d) 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.
- 36.4 The Licensor shall incur no liability for any failure of any part of the equipment or machinery for the time being at the Premises or the School.

### **37. Licensor's Covenants**

The Licensor shall reasonably maintain the building of which the Premises is part and pay any statutory charges or taxes applicable to the land of the School.

### **38. Termination and make good**

- 38.1 **Make good**
- (a) Before the last day of the Term or upon the earlier determination of this agreement the Licensee must:
    - (1) not remove unless requested by the Licensor any improvements it has made to the Premises (including but not limited to any improvements made to the kitchen) but otherwise must remove all of its property, plant, equipment, signage, fixtures and fittings from the Premises;
    - (2) at its own cost make good the Premises to their condition at the commencement of the first occupancy of the Premises pursuant to this agreement or any prior agreement 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) Any improvements required by the Licensor under clause 38.1(a)(1) to be left at the Premises will become the property of the Licensor.

### 38.2 Return of keys

The Licensee must return all keys by the last day of the Term or on the earlier determination of this agreement. 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.

### 38.3 Disposal of the property of the Licensee

If following the determination of this agreement any of the property of the Licensee is left at the Premises the Licensor may deal with that property as it thinks fit as if it was the property of the Licensor 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.

## 39. Damage to Premises

If the Premises are damaged so that in the reasonable opinion of the Licensor the Licensee is not able to conduct the OSHC from the Premises payment of the Licence Fee shall abate until the Premises are restored by the Licensor. If the Licensor elects not to reinstate the Premises within a reasonable time either the Licensee or the Licensor may terminate this agreement by giving 7 days notice to the other.

## 40. Default

If the Licensee:

- (a) fails to pay the licence fee within 14 days of a respective due date; or
- (b) fails to pay other moneys due to the Licensor according to the terms of this agreement within 14 days of the due date; or
- (c) receives a notice from any competent authority of a breach of any requirement of that competent authority for the conduct of the OSHC; or
- (d) fails to comply, where applicable, with clause 8(b); or
- (e) fails to carry out any other covenant of the Licensee under this agreement 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 reasonable specify;

the Licensor at any time thereafter without notice may at its option terminate this agreement.

## 41. Essential terms

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

- (a) the covenant to pay the Licence Fee and GST;
- (b) the provisions of clause 6.2(b), (c), (d) and (e);
- (c) the provisions of clause 6.4;



- (d) the provisions of clause 17;
- (e) the provisions of clause 21; and
- (f) the provisions of clause 8(a), (b) and (c).

## **42. Principal**

The Licensor delegates to the Principal the authority to consent on behalf of the Licensor wherever in this agreement the consent of the Licensor is required to be obtained by the Licensee.

## **43. Notices**

- 43.1 All notices under this agreement must be in writing and must be given to or served upon a party as provided in this clause.
- 43.2 All notices served on the Licensor must be:
- (a) directed to the Principal; and
  - (b) sent to the School.
- 43.3 All notices served on the Licensee must be:
- (a) directed to the nominated person in Item 11;
  - (b) sent to the address specified in Item 11.
- 43.4 Each party may notify the other party of a change of address for service of notices or change of person to receive notices.

## **44. Costs**

- 44.1 The Licensee must pay its own legal costs and disbursements applicable to the preparation of this agreement.
- 44.2 The Licensor must pay its own legal costs and disbursements applicable to the preparation of this agreement.
- 44.3 The Licensee must pay the legal costs and disbursements of the Licensor arising out of any default by the Licensee under this agreement.

## **45. Security Bond**

- 45.1 As security for the performance of its obligations under the Licence, the Licensee must upon signing this Licence give to the Licensor for the Security Bond either a bank guarantee or a cash bond by way of cheque.
- 45.2 If the Security Bond is satisfied by a bank guarantee:
- (a) it must be issued by a bank authorised 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.

45.3 If the Security Bond is satisfied by a cash bond:

- (a) the Licensor must provide a receipt to the Licensee, in the manner prescribed by the *Retail Lease Act 1994*, at the time of receiving the cash bond;
- (b) it must be lodged by the Licensor with the NSW Retail Bond Scheme, Retail Tenancy Unit of the Office of the Small Business Commissioner ("RTU") within the time required by the *Retail Leases Act*;
- (c) if the Licensee defaults under the Licence the Licensor is entitled to make application to the RTU to pay all or part of the Security Bond as it may be entitled under the *Retail Leases Act* and this Licence to rectify the default and to indemnify the Licensor for all loss it sustains as a consequence of the default;
- (d) if the Licensor is paid by the RTU any part of the Security Bond the Licensee must within 5 business days of receipt of a notice from the Licensor specifying in reasonable detail the amount received, forward further money to the Licensor to be lodged with the RTU to make up the Security Bond; and
- (e) any interest earned on the Security Bond arising from its lodgement with the RTU will accrue to the benefit of the Licensee and unless prohibited by any law will not be paid to the Licensee until the return of the Security Bond from the RTU upon the expiration or sooner termination of this Licence and will be included as part of the Security Bond available to the Licensor under the Licence.

45.4 Any appropriation of the Security Bond to the Licensor shall not waive any unsatisfied obligation of the Licensee nor prejudice any other right of the Licensor arising from the default of the Licensee.

45.5 Upon the Licensee vacating the Premises on the expiration of the Term or sooner termination of this Licence subject to any claim on the Security Bond if a cash bond it will, or any applicable balance, be refunded to the Licensee or if a bank guarantee will be returned to the Licensee.

#### **46. Guarantee [ Delete if not applicable]**

46.1 The Guarantors acknowledge that this Licence has been granted to the Licensee at their request and in consideration of this request they covenant for themselves, their executors, administrators and assigns with the Licensor as follows:

- (a) they unconditionally guarantee jointly and severally to the Licensor the payment when demanded from the Guarantor of every sum of whatever nature payable by the Licensee to the Licensor under this Licence;
- (b) if the Licensee fails to perform any of the covenants in this Licence between the Licensee and the Licensor the Guarantor indemnifies and keeps

indemnified the Licensor from and against all actions claims costs and damages arising out of any such non-performance.

- 46.2 This guarantee and indemnity shall not be affected in any way 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 Licensee being wound up or passing a resolution for its liquidation or entering into voluntary administration or any other arrangement with its creditors;
  - (e) the giving of any notice of termination of this Licence;
  - (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 the operation of the guarantee or indemnity given in this clause by each Guarantor.

#### **47. Rules**

The Licensor may from time to time impose such rules in relation to the conduct of the OSHC as it sees fit provided that any such rule does not conflict with any specific provision of this agreement or State and Federal requirements for the conduct of an OHSC. The initial rules are those, if any, specified in Schedule 2.

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## Schedule 1

- Item 1 School**  
Caringbah Public School
- Item 2 Term**  
1 Year commencing on the Commencement Date
- Item 3 Commencement Date of Licence**  
29 January, 2013
- Item 4 Licence Fee (per annum) – after applying the Licence Fee increase as required in clause 3.4**

Year	Date commencing	Licence Fee	GST	Total
1	29 January, 2013	\$ 3,229.98	\$ 323.00	\$ 3,552.98

- Item 5 Description of Premises**
- Building:** E, G, A
- Rooms:** ER0006, ER0007, ER0008, ER0009, ER0010  
GR0004, GR0005  
AR0028

- Item 6 Security Bond**  
\$500.00

- Item 7 (a) Days of the week**  
Monday to Friday
- (b) Hours of the week during School term**

<b>Morning session</b>	7:00am	to	9:00am
<b>Afternoon session</b>	3:00pm	to	6:00pm
<b>Staff Development Days</b>	Nil	to	Nil
<b>Vacation Days</b>	Nil	to	Nil

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**Item 8 Maximum number of children**

<b>Morning session</b>	30
<b>Afternoon session</b>	30
<b>Staff Development Days</b>	Nil
<b>Vacation Days</b>	Nil

**Item 9 Number of years for Licence arising from exercise of option to renew**

Nil

**Item 10 Number of car park spaces**

Nil

**Item 11 Percentage to be paid by Licensee for electricity, water and sewerage rates and water usage (Clause 7.2)**

0 %

**Item 12 Guarantor (full name and address)**

Not applicable

**Item 13 (a) Name of Licensee**

Young Men's Christian Association of Sydney, a statutory corporation conducted under the Young Men's Christian Association of Sydney Incorporation Act 1906

**(b) Australian Business Number of Licensee**

28 067 150 010

**(c) Trading name, if any, of the Licensee**

YMCA

**(d) Street address for service of Notices on the Licensee**

Level 5, 91 George Street, Parramatta NSW 2150

**(e) Post Office Box address, if any, of the Licensee**

PO Box 1433, Parramatta NSW 2124

**(f) Registered office, if applicable, of the Licensee**

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Level 5, 91 George Street, Parramatta NSW 2150

(g) **Telephone number of the Licensee**

9687 6233

**Item 14 (a) Equipment of Licensor (Clause 15.1)**

Not applicable

**(b) Equipment of Licensee (Clause 15.3)**

Not applicable

## **Schedule 2**

### **Initial Rules**

1. School OOSH Committee to meet with the Licensee at least once a term to discuss the operation and table information/issues for action.
2. OOSH Operator to provide school community with a regular (at least once a term) newsletter.
3. OOSH Operator is required to document any non-conformance issues in writing to the school principal for future reference within 7 days of any notice.
4. Parental complaints lodged in writing with the OOSH operator are to be reported to the Committee.
5. A staff member of the Licensee must accompany the kindergarten students enrolled in the OOSH for the first 5 weeks of Term 1 to their classroom(s) each morning.
6. A staff member of the Licensee must collect kindergarten students enrolled in the OOSH from their classrooms before each after school session and escort them to the OOSH.
7. Any classroom furniture that is moved during the sessions when the OOSH is conducted must be repositioned by the staff of the Licensee immediately following the conclusion of the particular session.
8. Both parties are required to inform each other of any infectious diseases within their operations
9. The Licensee must request minor repair and maintenance works via the School Principal
10. The air conditioning units, in the Premises at the date of the commencement of this agreement are the property of the Licensee and will be maintained during the term by the Licensee.
11. The Licensee's staff may access the premises 30 minutes prior to morning sessions and 30 minutes after each afternoon session.
12. Where the Licensee's Co-coordinator or committee members need be on site outside of these hours undertaking administrative tasks the Licensee representative will provide the school with written notice at least 1 day prior to the event.