

Licence Agreement for Pre-schools, Kindergartens, Long Day Care Centres and Before and After School Child Care Centres

Notice to Churchwardens

(this page does not comprise part of the attached form of licence agreement)

1. Clause 20A of the Church Administration Ordinance 1990 gives churchwardens a limited power to enter into licence agreements (not leases) as principals rather than as agents of the Property Trust. The limits which apply to the churchwardens power to licence are -
 - (a) the use of the property by the licensee must not be prohibited by law or by the trusts on which the property is held;
 - (b) the terms upon which the licensee is to be permitted to use the property must be documented in a form last approved by the Property Trust;
 - (c) the period during which the licensee is permitted to use the property must not exceed 5 years;
 - (d) the amount payable by or on behalf of the licensee for the licence must be not more than \$20,000 per annum, or such other amount as may be determined by the Standing Committee by resolution from time to time;
 - (e) the granting of the licence must be approved in writing by the archdeacon of the region in which the church is situated, and the majority of the parish council of the parish.
2. Attached is the standard form licence agreement which has been approved by the Property Trust as generally suitable for use by churchwardens **for Pre-schools, Kindergartens, Long Day Care Centres and Before and After School Child Care Centres**. This form of agreement was approved by the Property Trust as at **20 September 2002**. The churchwardens should ensure they use the form of agreement last approved by the Property Trust. This can be checked by obtaining a copy of the appropriate form from the diocesan web page www.sydney.anglican.asn.au or by contacting the Property Trust on 9265 1579.
3. The form of agreement will cease to be in an approved form if the churchwardens make any amendment to the agreement (other than the completion of the necessary details in the schedule to the agreement) which has not been specifically authorised by the Property Trust. As a general policy the Property Trust will not agree to amendments which have the effect of reducing the insurance or indemnity requirements or the application of the social covenants. If the churchwardens intend to use the approved form of licence without amendment, the agreement does not have to be submitted to the Property Trust for approval.
4. Before exercising the power to grant a licence under clause 20A, the churchwardens should -
 - (a) consider whether additional provisions should be included in the agreement to meet the specific requirements of the licence and/or to further protect the interests of the churchwardens as licensor; and
 - (b) ensure that the power is exercised subject to the following provisions:
 - (i) clause 18 of the Church Administration Ordinance 1990 relating to the minister's role in sanctioning the use of church property; and
 - (ii) part 3 of the Church Grounds and Buildings Ordinance 1990 relating to the persons who are permitted to officiate in churches and the rules about the use of churches; and
 - (iii) the Use of Church Property Ordinance 1995 setting out the specific rules which apply before a licensed or consecrated church building can be used by a church of another denomination; and
 - (c) ensure the matters referred to in paragraphs 1(a), (c), (d) and (e) above are complied with (for more details see Property Trust's *Guidelines for Leases and Licence Agreements*).
5. If the churchwardens choose to enter into a licence agreement using their powers under clause 20A, they will assume the legal obligations of the licensor under the agreement. Part of those obligations include ensuring stamp duty and GST are paid on the agreement as necessary.

Licence Agreement

**for Pre-schools, Kindergartens, Long Day Care Centres and
Before and After School Child Care Centres**

Licensor: Churchwardens

Schedule to the Licence Agreement made on the date specified in Item 1 between Churchwardens of the Church specified in Item 2(a) and the Licensee specified in Item 3(a)

Item 1	<i>date of agreement:</i>
Item 2 (a) (b)	<i>name and suburb/town of Church:</i> <i>Churchwarden's address and facsimile number for service of notices:</i>
Item 3 (a) (b) (c)	<i>Licensee's name, ABN and, if a company, ACN:</i> <i>Licensee's address:</i> <i>Licensee's address and fax number for service of notices:</i>
Item 4 (a) (b)	<i>Commencement Date:</i> <i>Expiry Date:</i>
Item 5 (a) (b)	<i>address of Property on which the Premises are situated:</i> <i>details of the building or room(s) comprising the Premises excluding the Access Way and Storage Space:</i>
Item 6 (a) (b)	<i>commencing time each Weekday:</i> <i>finishing time each Weekday:</i>
Item 7 (a) (b)	<i>Licence Fee for each period:</i> <i>relevant period for Licence Fee: Month/Quarter (delete one but if neither deleted then "Month")</i>
Item 8	<i>notice period after Expiry Date: 1 Month/3 Months (delete one but if neither deleted then "1 Month")</i>

Licence Agreement for Pre-schools, Kindergartens, Long Day Care Centres and Before and After School Child Care Centres

This Agreement is made on the date specified in **Item 1** between the following parties -

1. The Churchwardens of the Anglican Church specified in **Item 2(a)** of the address specified in **Item 2(b)** (the "Churchwardens"); and
2. The person or corporation specified in **Item 3(a)** of the address specified in **Item 3(b)** (the "Licensee").

Recitals

- A. The Churchwardens may grant licences for the use of the Premises situated on the Property pursuant to clause 20A of the Church Administration Ordinance 1990.
- B. The Licensee has requested that the Churchwardens grant a licence to the Licensee to permit the Licensee to use the Premises, the Access Way and the Storage Space.
- C. The Churchwardens have agreed to grant a licence on the terms set out in this agreement.

In consideration of, among other things, the mutual promises contained in this agreement, it is agreed between the parties as follows -

Definitions

1. (1) In this agreement unless the context otherwise requires -
 - "Access Way" means the pathway designated by the Churchwardens as the route by which the Licensee and the Licensee's Employees and Visitors may have access to the Premises.
 - "ACPT" means the Anglican Church Property Trust Diocese of Sydney or other registered proprietor of the Property.
 - "Commencement Date" is the date specified in **Item 4(a)**.
 - "Excluded Day" means each Saturday, Sunday, Good Friday, Christmas Day and polling day for any Federal, State or municipal election.
 - "Expiry Date" is the date specified in **Item 4(b)** or such earlier date as the Licence may be terminated under this agreement.
 - "GST" has the meaning given in A New Tax System (Goods and Services Tax) Act 1999.
 - "Index Number" means the Consumer Price Index published by the Australian Bureau of Statistics, or if the calculation of the Consumer Price Index ceases, such other index published at the relevant time which, in the opinion of the Churchwardens, reflects changes in the cost of living in Sydney.
 - "Licensee's Employees and Visitors" means each and every of the Licensee's employees, agents, contractors, customers, clients, visitors and invitees who may at any time be in or upon the Premises or upon the Property.
 - "Licence" means the licence granted by the Churchwardens to the Licensee under clause 2.
 - "Licence Fee" means the fee payable under clause 4 inclusive of GST.
 - "Licence Term" means the period commencing on the Commencement Date and expiring on the Expiry Date.
 - "Month" means calendar month.
 - "Permitted Use" means preschool, kindergarten, long day care centre or before and after school child care centre.

“Property” means the property located at the address specified in **Item 5(a)**.

“Premises” means the building or room(s) specified in **Item 5(b)** erected on the Property.

“Quarter” means each period of 3 months commencing on 1 January, 1 April, 1 July and 1 October in each year.

“Review Date” means 1 January.

“Rules” mean the Memorandum and Articles of Association, constitution or rules by which the Licensee is constituted as at the date of this Agreement or as last approved by the Churchwardens, whichever is the later.

“Storage Space” means that area which is designated by the Churchwardens as the storage space for the purposes of this Agreement.

“Supply” means the supply of goods, services or other items.

“Weekday” means Monday, Tuesday, Wednesday, Thursday and Friday.

- (2) In this agreement a reference to an Item means an Item of the schedule attached to this agreement.

Grant of licence

2. (1) The Churchwardens grant to the Licensee and the Licensee accepts from the Churchwardens a licence to enter and use the Premises from the time specified in **Item 6(a)** to the time specified in **Item 6(b)** on each Weekday, other than an Excluded Day, during the Licence Term on the terms set out in this agreement.
- (2) The Churchwardens agree to permit the Licensee and the Licensee's Employees and Visitors to use the Access Way for the purpose only of ingress and egress from the Premises.
- (3) The Churchwardens grant to the Licensee a licence to use the Storage Space for purpose only of the storage of the Licensee's equipment used on the Premises.

Licence constitutes personal right only

3. The Licensee has a personal right of use of the Premises, the Access Way and the Storage Space on the terms specified in this agreement and has no interest in the Property, the Access Way or the Storage Space. The legal right to possession and control over the Premises, the Access Way and the Storage Space remains vested in the Churchwardens and ACPT throughout the Licence Term.

Licence Fee

4. (1) The Licensee agrees to pay by way of Licence Fee the amount specified in **Item 7(a)** in respect of each period referred to in **Item 7(b)** or part thereof during the Licence Term, or such other amount as is determined under subclause (2), in advance on or before-
- (a) the Commencement Date in relation to the period referred to in **Item 7(b)** then current; and
- (b) the first day of each succeeding period referred to in **Item 7(b)**.
- Unless otherwise directed by the Churchwardens, the Licensee must pay the amount of the Licence Fee to the Churchwardens.

(2) On each Review Date which occurs during the Licence Term, or as soon as possible thereafter, the Licence Fee shall be reviewed with effect from that Review Date. The Licence Fee payable for each period referred to in **Item 7(b)** after the Review Date shall be the greater of the amount payable immediately before the Review Date and the amount determined in accordance with the following formula -

$$A \times \frac{B}{C}$$

where -

- A is the Licence Fee payable immediately before the Review Date;
- B is the Index Number for the September quarter in the year before the year in which the Review Date falls ; and
- C is the Index Number for the September quarter in the year which is 2 years before the year in which the Review Date falls.

Contribution to Expenses

- 5. The Licensee must pay to the Churchwardens, within 14 days of request by the Churchwardens, such amounts as the Churchwardens may determine as being the Licensee's reasonable contribution toward -
 - (a) the costs of and relating to electricity consumed on the Premises and the Storage Space; and
 - (b) the costs of and relating to water used on the Premises.

GST

- 6. (1) The parties acknowledged and agree that:
 - (a) it is intended that the Licence Fee payable by the Licensee under this agreement will remain inclusive of GST; and
 - (b) if during the Licence Term (or any period of holding over under this agreement) the rate at which GST is payable is varied, the Licence Fee payable from the date of such variation shall be the Licence Fee payable immediately before the date of the variation subject to any adjustment (whether up or down) necessary to take into account the variation.
- (2) If the Churchwardens or ACPT is liable to pay GST in respect of any amount paid or payable by the Licensee under this agreement by way of contribution to or indemnification against any action, claim, demand, loss, damages, cost, or expense which the Churchwardens or ACPT is or may be liable to pay, the amount payable by the Licensee is to be increased to include the GST payable by the Churchwardens or ACPT to the extent the Churchwardens or ACPT is not entitled to claim an input tax credit in respect of any GST included in such action, claim, demand, loss, damages, cost, or expense.

Bond

- 7. On or before the Commencement Date the Licensee will pay to the Churchwardens by way of bond, the sum equal to 3 times the Licence Fee specified in **Item 7(a)**. If the Licensee is in breach of its obligations under this agreement the Churchwardens will be entitled to apply all or part of the amount of such bond to rectify such breach or to compensate the Churchwardens for the loss suffered as a result of that breach.

Undertakings by Licensee

- 8. The Licensee agrees and undertakes that -
 - (a) the Licensee will use the Premises for the Permitted Use only and for no other purpose and will use the Storage Space only for the purpose specified in clause 2(3);

- (b) the Licensee will not use the Premises in any noisy, noxious, immoral or offensive manner or do on the Premises or in the Storage Space anything which in the opinion of the Churchwardens may be or become a nuisance, disturbance or cause of damage to other persons using the Property or which offends or may offend the religious susceptibilities of members of the Anglican Church of Australia;
- (c) the Licensee will not use or cause to be used for any purposes other than those for which they were constructed the tearooms, washrooms, toilets and other services (if any) in the Premises;
- (d) the Licensee will not use or permit the Premises to be used for the purposes of "public entertainment" within the meaning of the Local Government Act 1993;
- (e) the Licensee will not do anything which may imperil any insurance effected in respect of the Premises or any building of which the Premises or the Storage Space may form part;
- (f) the Licensee will not damage or alter the Premises in any way and will at the Licensee's own cost make good any defect or damage to the Premises or any other building on the Property caused by the misconduct, neglect, default or breach by the Licensee or the Licensee's Employees and Visitors; and
- (g) the Licensee will not permit or suffer any of the Licensee's Employees or Visitors to do any act, matter or thing which would be in breach of paragraphs 8(a) to (f).

9. The Licensee further agrees and undertakes that -

- (a) the Licensee will cause the Premises and the Storage Space to be cleaned in a proper manner and kept clean and free from dirt and rubbish and will remove such rubbish from the Premises and the Storage Space at the Licensee's cost;
- (b) the Licensee shall cause all doors and other means of access to the Premises to be securely fastened on all occasions when the Premises are not being used by the Licensee;
- (c) the Licensee will obtain and maintain all licenses and permits required for the Permitted Use;
- (d) the Licensee will remove to the Storage Space any property belonging to the Licensee leaving the Premises clear and available for use by other persons on days or times when the Premises are not permitted to be used by the Licensee;
- (e) the Licensee will promptly give notice to the Churchwardens of any accident to or defect or want of repair in any services to or fittings in the Premises and of any other circumstances likely to cause any danger, risk or hazard to the Premises or any person;
- (f) the Licensee will, on or before the Expiry Date, return all keys which it may have to the Premises and the Storage Space to the Churchwardens; and
- (g) the Licensee will not alter or amend its Rules without the prior written consent of the Churchwardens.

10. If by reason of the Licensee's use of the Premises, the Property or any part thereof becomes liable to rating under the provisions of the Local Government Act 1993 or any Act replacing the same, the Licensee will within 7 days of notice from the Churchwardens, pay to the Churchwardens an amount equal to the rates assessed on the Premises, the Property or part thereof in any rating year or part thereof during the Licence Term.

Child Protection

11. (1) The Licensee agrees and undertakes that the Licensee will comply with all laws and other obligations relating to persons engaged or to be engaged by the Licensee to work with children on the Premises.

- (2) Without limiting the generality of subclause (1), the Licensee:
- (a) warrants that the Licensee has obtained and will obtain a declaration from each person engaged or to be engaged by the Licensee in child-related employment on the Premises in terms of the Child Protection (Prohibited Employment) Act 1998;
 - (b) warrants that the Licensee has undertaken and will undertake all mandatory employment screening of persons engaged or to be engaged by the Licensee in primary child-related employment on the Premises in terms of Part 7 of the Commission for Children and Young People Act 1998;
 - (c) agrees and undertakes not to engage or continue in child-related employment on the Premises any person the Licensee knows is a prohibited person in terms of the Child Protection (Prohibited Employment) Act 1998; and
 - (d) agrees and undertakes to comply with the provisions of the Ombudsman Amendment (Child Protection and Community Services) Act 1998 as applicable.

Release and Indemnity

12. (1) The Licensee agrees to use the Premises, the Access Way and the Storage Space at the risk of the Licensee and releases the Churchwardens and ACPT, to the full extent permitted by law, from all claims and demands of every kind in respect of, or resulting from, any accident, damage, theft, injury or death occurring in or on the Premises, the Access Way or the Storage Space for which the Churchwardens or ACPT is or could become legally liable. The Licensee indemnifies the Churchwardens and ACPT against all actions, claims, demands, losses, damages, costs and expenses for which the Churchwardens or ACPT shall or may be liable in respect of or arising from the use by the Licensee or the Licensee's Employers and Visitors of the Premises, the Access Way and the Storage Space.

- (2) Without limiting the generality of subclause (1) the Licensee acknowledges that any property in the Storage Space from time to time is stored at the risk of the Licensee, and the Churchwardens and ACPT are not liable for any damage, theft, loss or destruction thereof.

Licensee to effect insurances

13. (1) The Licensee must obtain and keep current during the Licence Term the following insurance policies -
- (a) a public liability insurance policy for an amount in respect of any single accident or event of not less than \$5,000,000 or such greater amount as the Churchwardens may require relating to the Premises, the Access Way, and the Storage Space indemnifying the Licensee in respect of the indemnity given by the Licensee to the Churchwardens and ACPT under clause 12 of this agreement; and
 - (b) a professional indemnity insurance policy for an amount in respect of any single claim of at least \$2,000,000 or such greater amount as the Churchwardens may require in respect of any advice given by the Licensee or activities directed by the Licensee on the Premises.
- (2) The policies shall be with a reputable insurance office or company. The Licensee must provide to the Churchwardens, within 7 days of request, a copy of the policies effected pursuant to this clause and a certificate of currency in relation thereto.

Termination of agreement

14. (1) If the Licence Fee or any other moneys payable by the Licensee to the Churchwardens under this agreement remain unpaid for more than 14 days after the date on which such moneys ought to have been paid, or if the Licensee commits, permits or suffers to occur any breach or default in the due and punctual performance of any other provision of this agreement and, where such breach or default is capable of rectification such breach or default is not rectified within 28 days of notice from the

Churchwardens requiring such rectification, the Churchwardens may at any time thereafter terminate the Licence by giving notice of termination to the Licensee.

(2) If ACPT or the Churchwardens receive any notice or other communication from a local government authority that the Permitted Use is prohibited or requires development consent under an environmental planning instrument or as a result of a changed existing use in terms of Part 5 of the Environmental Planning and Assessment Regulations 2000, the Churchwardens or ACPT may terminate this agreement by notice given to the Licensee.

15. If, with the consent of the Churchwardens, the Licensee remains in occupation of the Premises after the Expiry Date it will do so under licence on the terms set out in this agreement except that -
 - (a) the Licence Fee payable from the Expiry Date shall be that amount determined by the Churchwardens; and
 - (b) the licence may be terminated on the period of notice specified in **Item 8** in writing from either party to the other.

No Liability

16. No liability shall attach to a party by reason of the termination of the Licence pursuant to clause 14 but such termination is without prejudice to the rights of a party in respect of any breach or non-observance of any provision of this agreement by the other party occurring before such termination.

Notices

17. Any notice required or authorised to be given or served upon a party must be in writing and be signed by the party giving the notice. Such notice may be given by facsimile, post or hand to that party at its address or facsimile number appearing or referred to below or such other address or facsimile number as that party may notify to the other in writing -
 - (a) if to the Churchwardens, at the address or facsimile number specified in **Item 2(b)**,
 - (b) if to the Licensee, at the address or facsimile number specified in **Item 3(c)**.
18. Any notice will be deemed, in the absence of proof to the contrary, to have been received by the party to whom it was sent -
 - (a) in the case of hand delivery, upon such delivery;
 - (b) in the case of prepaid post, 2 business days after the date of posting; and
 - (c) in the case of facsimile transmission, at the time of dispatch provided that the recipient confirms in writing that the notice has been received.
19. A notice shall be deemed to have been duly signed by the Churchwardens if signed by any 2 of the Churchwardens.

Entire Agreement

20. This agreement contains the entire agreement between the parties and will not be amended or supplemented except in writing signed by each of the parties.

Assignment

21. The Licensee may not assign its rights under this agreement without the prior written consent of the Churchwardens.

Costs, Taxes and Duties

22. The Licensee will pay the reasonable costs of the Churchwardens in the preparation and execution of this agreement (including all reasonable legal costs) and will pay all taxes and duties to which this agreement may be subject

Change of Churchwardens

23. (1) The parties agree that if during the Licence Term or any period of holding over under this agreement -

- (a) 1 or more persons (“outgoing churchwardens”) cease to act as Churchwardens of the Anglican Church specified in **Item 2(a)**; and
- (b) 1 or more persons (“incoming churchwardens”) are duly elected or appointed to act as Churchwardens in place of the outgoing churchwardens; and
- (c) a notice signed by the Churchwardens and the incoming churchwardens is given to the Licensee advising the matters referred to in paragraphs (a) and (b),

then subject to subclause (2) the incoming churchwardens shall from the date of the notice be taken to have entered into this agreement as Churchwardens in place of the outgoing churchwardens.

(2) The parties acknowledge and agree that upon a notice under subclause (1) being given:

- (a) any rights exercisable by or benefits arising or that have arisen for the benefit of the outgoing churchwardens under or in respect of this agreement shall from the date of the notice be exercisable by and shall arise and be taken to have arisen for the benefit of the incoming churchwardens; and
- (b) the outgoing churchwardens remain liable for, and the incoming churchwardens have no liability for, any claim or demand of any kind arising under or in respect of this agreement as a consequence of any act or omission by the outgoing churchwardens prior to the date of the notice.

Executed by the parties as an agreement -

Signed by the Churchwardens in the presence of -

Churchwarden

Witness

Churchwarden

Name (Please Print)

Churchwarden

Signed for and on behalf of the Licensee by its attorney in the presence of -

Witness

Attorney

Name (please print)

Name (please print)

The common seal of the Licensee was
affixed by authority in the presence of -

Director/Secretary (cross out which is not applicable)

Director

Name (please print)

Name (please print)