

Newpin Performance Based Contract

Parties

**The Crown in Right of the State of New South Wales acting through
the Department of Communities and Justice**
ABN 36 433 875 185

The Uniting Church in Australia Property Trust (N.S.W.)
ABN 77 005 284 605

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Agreement dated

2020

Parties **The Crown in Right of the State of New South Wales acting through the Department of Communities and Justice** ABN 36 433 875 185 of 2 Cavill Avenue, Ashfield, NSW 2131 (**Department**)

The Uniting Church in Australia Property Trust (N.S.W.) ABN 77 005 284 605 of Level 9, 222 Pitt Street, Sydney, NSW 2000 (**Property Trust**)

Recitals

- A** This Agreement sets out the terms upon which Funds may be granted to the Property Trust for the purpose of delivering the Services.
- B** The parties have a shared goal to ensure the delivery of quality and effective Services, to work collaboratively and constructively, in a spirit of goodwill, while acknowledging the requirement for accountable, responsible and effective expenditure of public monies.
- C** The Uniting Church in Australia (**Church**) was inaugurated under Part 2 of the *Uniting Church in Australia Act 1977* (NSW) (**Uniting Church Act**).
- D** The Property Trust is constituted as a statutory corporation under section 12 of the Uniting Church Act with the requisite power to enter into contracts for the institutions or bodies established by the Church in Australia.
- E** The Church's Synod for New South Wales and the Australian Capital Territory (**Synod**) has oversight of the Church and directs the functions of the Property Trust, within its geographical boundaries.
- F** Uniting is an institution (or body) of the Church established, by the Synod, pursuant to the Church's constitution, regulations (made under that constitution) and the by-laws (made by the Synod).
- G** Uniting is the part of the Church with responsibility for its social responsibility and community service programs in New South Wales.
- H** The purposes of the Property Trust are, in all material respects, the purposes of the Church.
- I** The Property Trust has been empowered, under section 13 of the Uniting Church Act, to hold property in trust for the Church (**Trust**) and represents and warrants that it also holds the assets (in and of NSW) of Uniting in this Trust.
- J** The parties have agreed that, as at the Commencement Date, the Property Trust has delegated the supply of the Services to Uniting on the terms of this Agreement.
- K** The parties have agreed that the Property Trust may delegate the supply of the Services to any Other Delegated Entity on the terms of this Agreement.

Operative provisions

Part A – Interpretation and Newpin parameters

1 Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

Act means the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

Acceptance Date means the date on which a CYP is accepted into Newpin, as agreed by the parties in writing.

Agency means any government or non-government agency, other than the Department, having involvement with Families in New South Wales.

Agreed Closure Costs means such amount up to the maximum amount set out in the Payment Schedule as the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) is able to reasonably satisfy the Department it has incurred, or will incur, as a direct result of the closure of an Organisation Service Centre during the Term.

Agreed CYP means a CYP referred under the SBB who parties agree will continue to be monitored and/or transition into this Agreement to continue receiving Services. An Agreed CYP will be in one of two groups of CYP's:

[REDACTED]

Agreement means this agreement which includes the schedules and any other attachments that are incorporated into this Agreement by reference, as amended from time to time in accordance with the terms of this Agreement.

Agreement Details means the details specified in Schedule 1.

Agreement Material means Material which the Property Trust creates in connection with this Agreement.

Alleged Misconduct means an allegation which raises a reasonable suspicion of misconduct which may have a serious impediment to the provision or performance of the Services, including any serious or persistent harassment or bullying, or a criminal offence such as theft, fraud or assault.

Annual Review has the meaning given in clause 17.6.

Assessment Date means the date at which an individual CYP's Outcome is determined. Under this Agreement, a CYP's Outcome will be measured 18 Months after that CYP's acceptance into Newpin. For the avoidance of doubt, 18 Months is calculated for the purposes of the Assessment Date as the same date of the Referral in 18 Months' time. For example, if a CYP is referred on 2 January 2020, their Assessment Date will be 2 July 2022.

Assessment Period means the 18 Month period of measurement for each CYP in an Intake Group, which commences on the CYP's Acceptance Date and ends on the CYP's Assessment Date.

Asset means any non-consumable item of tangible property (including equipment, furniture, vehicles and buildings) that has a service life of more than 1 year purchased, leased, hired, financed, created (except in the case of Intellectual Property Rights) or otherwise brought into

existence either wholly or in part with use of the Funds, which has a value over \$2,000 inclusive of GST, or such other value as notified by the Department to the Property Trust from time to time.

Assets Register means a written register kept in accordance with Australian Accounting Standards and audited annually which contains details of all Assets purchased or leased wholly or in part by or behalf of the Property Trust using the Funds, including:

- (1) the date of purchase or lease of each Asset;
- (2) a description of each Asset;
- (3) the address at which each Asset is located;
- (4) the purchase or lease price of the Asset, exclusive of GST;
- (5) the amount of the Funds used to purchase or lease the Asset; and
- (6) where relevant, the details of Asset disposals including sale price.

Australian Accounting Standards means the standards issued by the Australian Accounting Standards Board as in force for the time being.

Authorised Representative of a party means the person specified as such in the Agreement Details or such other person, or person holding any position, as may be advised by that party as being an Authorised Representative of that party for the purposes of this Agreement to the other party in writing from time to time.

Authority means any government, semi-government, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity and includes a person who, under a Law, has a right to impose a requirement, or whose consent is required, in connection with the Services, delivery of the Outcomes or Newpin.

Business Day means a day other than a Saturday, Sunday or a public holiday in Sydney.

Capital Works means that part of the Services which relates to the design, construction and fit out (construction and fit out may include site preparation, modification, expansion, refurbishment, furnishing and equipping as applicable), and related activities.

Change in Control means, in respect of an entity, any event such that a change occurs in the Control of that entity.

Child means a person who is under the age of 16 years.

Church has the meaning given to that term in Recital C.

Claim includes any suit, claim, action, demand, proceeding, penalty, fine, order or adverse judgment (at law or in equity) under, arising out of, or in any way in connection with this Agreement.

Committed means:

- (1) being contractually obliged to pay a third party in respect of any part of the Services;
- (2) that can be identified in written contractual arrangement with that third party; and
- (3) that has been reasonably incurred in accordance with this Agreement.

Commencement Date means 1 January 2020.

Confidential Information means the information referred to in clause 36.1(1).

Consequential Loss means any Loss recoverable at Law (other than Loss arising in the usual course of things) which is consequential upon other Loss, including:

- (1) a Loss of income or revenue;
- (2) a Loss of opportunity or goodwill;
- (3) a Loss of profits;
- (4) a Loss of anticipated savings or business; and
- (5) a Loss of value of any equipment.

Control means with respect to an entity, the ability or capacity to determine the outcome of decisions about that entity's financial and operating policies and procedures.

Copyright Act means the *Copyright Act 1968* (Cth).

Corporations Act means the *Corporations Act 2001* (Cth).

CYP means Child or Young Person.

Department's Material means any Material the Department owns or in which the Department has any Intellectual Property Rights (other than Materials licensed to the Department by the Property Trust under this Agreement) and which the Property Trust may use in performing this Agreement.

Excluded CYP means a CYP (including their Families) referred to Newpin who are excluded from Newpin in accordance with the exclusion criteria (as specified in the Operations Manual) and are not included in the relevant Intake Group for the Performance Calculation.

Family includes siblings, birth Parents, grandparents, extended family and other persons significant to the CYP.

Financial Year means the period commencing 1 July in any year and ending on 30 June in the following year.

Force Majeure Event means:

- (1) an act of God, lightning strike, meteor strike, earthquake, storm, flood, water damage, landslide, extreme heat conditions, explosion, fire, gas leak, power failure, power surges on any sites, unexpected electromagnetic interference caused by unlicensed or illegal transmission of electromagnetic energy or interference which is not reasonably foreseeable, or collapse of structures;
- (2) disruption of facilities or systems caused by the impact of an aircraft, vessel or vehicle;
- (3) strikes or other industrial actions, other than strikes or other industrial action primarily involving some or all of the party's employees;
- (4) war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or disorder, rebellion, illegal acts or epidemic; or
- (5) embargo, power shortage or water shortage,

the consequence of which:

- (6) is beyond the control of and was not caused or contributed to by the party which is seeking to rely on the event;
- (7) could not have been reasonably prevented or remedied by expenditure by the party which is seeking to rely on the event; and
- (8) cannot be circumvented by the party which is seeking to rely on the event through the use of other practicable means including alternate sources and work-around plans which provide a viable solution for the other party, as determined by that other party acting reasonably,

but does not include third party non-performance or the failure of an individual component or group of components (including hardware and software) used in the performance of the Services and/or delivery of the Outcomes.

Funds means the money payable by the Department to the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) in consideration of the provision of the Services, as stated in the Payment Schedule.

General Infrastructure means the basic physical systems of the Property Trust, including communication, sewerage, water and electric systems.

GST Law means *A New Tax System (Goods & Services Tax) Act 1999* (Cth), related legislation and any delegated legislation made pursuant to such legislation.

Health Information has the same meaning as in the *Health Records and Information Privacy Act 2002* (NSW).

Insolvency Event means the occurrence of any one or more of the following events in relation to the Property Trust:

- (1) application is made to a court for an order, or an order is made, that it be wound up,
- (2) declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed and, in the case of an application, the application is not withdrawn, struck out or dismissed within 21 days of it being made;
- (3) a liquidator or provisional liquidator is appointed and the appointment is not terminated within 21 days of it being made;
- (4) an administrator (as defined in section 9 of the Corporations Act) or a controller (as defined in section 9 of the Corporations Act) is appointed to any of its assets and the appointment is not terminated within 21 days of it being made;
- (5) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (6) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (7) it is insolvent as disclosed in its accounts or otherwise states that it is insolvent, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;

- (8) it becomes, or states that it is, an insolvent under administration (as defined in section 9 of the Corporations Act) or action is taken which could result in that event and the proceeding is not dismissed within 21 days of the date action is taken;
- (9) an order is made, a resolution is passed, proposal put forward or any other action taken, in each case which is preparatory to or could result in any of the matters referred to in paragraphs (1) to (8) inclusive;
- (10) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (11) a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;
- (12) a writ of execution is levied against it or a material part of its property which is not dismissed within 21 days;
- (13) any step is taken by a mortgagee to enter into possession of or dispose of the whole or any part of the other party's assets or business; or
- (14) anything that occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

Intake Group means the following 3 annual periods where the Department will refer Families to Newpin:

- (1) 1 January 2020 to 31 December 2020 (**Intake Group 1**);
- (2) 1 January 2021 to 31 December 2021 (**Intake Group 2**); and
- (3) 1 January 2022 to 31 December 2022 (**Intake Group 3**).

For the avoidance of doubt, all CYP's referred into an Intake Group will be included in the Performance Calculation on the relevant Measurement Date for the relevant Intake Group, unless otherwise recorded as an Excluded CYP.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in, or in relation to, copyright, trademarks, patents, designs and inventions and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic fields, whether non-registrable, registrable or patentable, but does not include Moral Rights.

Joint Working Group means the joint working group comprising representatives from the NSW Office of Social Impact Investment, the Department and the Property Trust, and is responsible for overseeing and monitoring Newpin and providing a forum to discuss any issues relating to the effective integration of the Department and the Property Trust. This includes roles and responsibilities under this Agreement and key issues such as Referrals, Outcomes, payments, projections, operational issues, dispute resolution and the opening and closure of Organisation Service Centres.

Law means all statutes, rules, regulations, proclamations, ordinances, by-laws, and applicable standards, policies and guidelines of an Authority whether federal, state or local or otherwise.

Loss includes any cost, expense (including legal expenses on an indemnity basis), loss, charges, fees, payments (including payments made under indemnities), damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent.

Material includes documents, Records, software (including source code and object code), goods, images, information and data stored by any means, including all copies and extracts of same.

Measurement Date means the date at which the overall Restoration Rate for each Intake Group is determined, which, for the purposes of this Agreement, is as follows:

Intake Group	Measurement Date
Intake Group 1	30 June 2022
Intake Group 2	30 June 2023
Intake Group 3	30 June 2024

Measurement Period means the Measurement Period for each relevant Intake Group commencing on the first CYP's Acceptance Date into the relevant Intake Group and ending on the final Assessment Date for the last CYP referred into the relevant Intake Group. For clarity, this Measurement Date will occur 18 Months from the last CYP's Acceptance Date into that relevant Intake Group.

Minister means the Minister for Families, Communities and Disability Services or his or her delegate or nominee from time to time.

Month means a calendar month.

Moral Rights has the meaning given under the Copyright Act, which includes the right to:

- (1) attribution of authorship;
- (2) not have authorship falsely attributed; and
- (3) integrity of authorship.

Newpin means the delivery of Services to be undertaken by the Property Trust on the terms of this Agreement.

Objective has the meaning given to it in clause 2.1.

Operating Organisation Service Centre means an Organisation Service Centre that is open and providing Services under the Agreement. The date on which an Organisation Service Centre is deemed to be opened is the date the Department and the Property Trust agree in writing that the Organisation Service Centre is able to receive Referrals in accordance with this Agreement. The date on which an Organisation Service Centre is deemed to be closed is the date the Department and the Property Trust agree in writing that the Organisation Service Centre is to cease providing Services under the Agreement.

Operations Manual means the operations manual set out in Annexure A.

Organisation Service Centre means a centre which is established at the Commencement Date or to be established thereafter and/or operated and maintained by the Property Trust for the purposes of delivering the Outcomes under this Agreement. An Organisation Service Centre will, in accordance with this Agreement, provide services as listed in the Operations Manual.

Other Delegated Entity has the meaning given to it by clause 8.3(2).

Other Material means any Material which a party owned prior to the Commencement Date or which was created by a party independently of the Agreement.

Outcome means, in relation to each CYP in a relevant Intake Group, the outcome recorded on the CYP's Assessment Date which may be a Restoration or an Unsuccessful Outcome for each CYP.

Outcome Payments means the outcome payments available to the Property Trust (as paid to Uniting or such other Service Provider as notified to the Department in writing) in accordance with this Agreement, as referred to in clause 21.1(2) and specified in the Payment Schedule.

[REDACTED]

The relevant periods of operating expenses forming the basis of each Outcome Payment are as follows:

Outcome Payment	Relevant Intake Group	Operating expense period
1	Intake Group 1	1 July 2020 to 30 June 2021
2	Intake Group 2	1 July 2021 to 30 June 2022
3	Intake Group 3	1 July 2022 to 30 September 2023

OOHC means statutory out-of-home care as defined for the purposes of the Act.

Parent means each person having parental responsibility for the CYP (prior to a Court order being made that re-allocates parental responsibility). For a CYP in OOHC (under a Court order), a parent means the person (other than the Minister or the Secretary) who had parental responsibility for the CYP immediately before the CYP was placed in OOHC. The definition of 'parent' depends on the section of the Act under which it is applied.

Payment Schedule means the payment schedule set out in Schedule 2.

Performance Calculation means the calculation of the Outcome Payments as specified in the Payment Schedule.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW).

Personnel of a party means the officers, employees, agents, volunteers, delegates, contractors and Service Providers of, respectively, that party. For the avoidance of doubt, the Property Trust is not the Personnel of the Department.

Poor Performance means where an Organisation Service Centre has failed over a significant period to deliver an [REDACTED]

[REDACTED]

[REDACTED]

(2) [REDACTED]

Prescribed Rate means the applicable total rate of interest as determined under section 22 of the *Taxation Administration Act 1996* (NSW) and published Quarterly on the website of Revenue NSW (or in any replacement publication/at any replacement address as may be notified by the Department from time to time).

Privacy Legislation means:

- (1) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (2) the *Health Records and Information Privacy Act 2002* (NSW);
- (3) the *Privacy Act 1988* (Cth);
- (4) any legislation (to the extent that such legislation applies to the Department or the Property Trust, or any other recipient of Personal Information and/or Health Information) from time to time in force in any:
 - (a) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (b) non-Australian jurisdiction (to the extent that the Department or the Property Trust is subject to the laws of that jurisdiction in respect of any Personal Information and/or Health Information), affecting privacy, Personal Information, Health Information or the collection, handling, storage, processing, use or disclosure of personal data; and
- (5) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time.

Privacy Principle means any or all of:

- (1) the information and protection principles contained in sections 8 to 19 of the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (2) the health privacy principles contained in Schedule 1 to the *Health Records and Information Privacy Act 2002* (NSW),

and includes any amendment or replacement of these principles from time to time.

Property Trust's Materials means any Material the Property Trust owns or in which the Property Trust has any Intellectual Property Rights, as at or after the Commencement Date, which is used in the performance of this Agreement.

Public Accountability Body means the NSW Auditor-General, the NSW Ombudsman and the NSW Privacy Commissioner.

Quarter means each consecutive period of 3 Months ending on the respective last day of March, June, September and December, as the case may be.

Record means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

Referral means an eligible Newpin referral that is made to the Property Trust by the Department's "Contract Manager".

Referral Date means the date of a Referral.

Reputational Proceedings means any inquiry, investigation, conciliation, mediation, arbitration or such similar proceedings against the Property Trust or any director, officer, employee, delegate, Service Provider or agent of the Property Trust that could or has the potential to, in the reasonable opinion of the Department, have an adverse effect on the reputation of the Services, the Department or the NSW Government.

Residual Funds means Funds paid to the Property Trust that have not been spent or Committed for the Services.

Restoration or **Restored** in relation to a CYP, means the exit of the CYP from OOHC to the care of their Parent/s. The date of that exit will be the date of exit as recorded in the Department's client management system which entry will be made the Department as soon as practicable after the CYP leaves OOHC. If the Department's client management system does not record a date of exit from OOHC for a CYP in circumstances where the Property Trust believes the CYP has exited OOHC or if the Property Trust disputes the date of exit so entered, the Property Trust may seek confirmation from the Department as to whether or not the exit has occurred and the date of such exit in accordance with the applicable procedure for seeking confirmation of Restorations set out in the Operations Manual.

Restoration Rate means the number of CYP Restored to their Parent/s in each Intake Group, relative to the number of CYP who remained in, or returned to, OOHC in the same Intake Group.

SBB means the social benefit bond trial between the Department and the Property Trust (amongst others) entered into on or around March 2013.

SBB Family has the meaning given to it in the Payment Schedule.

SBB Program means the OOHC services provided pursuant to the SBB.

Secretary means the Secretary for the Department or his or her delegate or nominee from time to time.

Serious Incident means an incident that:

- (1) is likely to impact on the Property Trust's ability to conduct or provide the Services or otherwise fulfil its obligations under this Agreement;
- (2) may affect or has affected the Property Trust's obligations, or its performance of those obligations, under this Agreement and requires an emergency response, death or serious injury or any criminal activity; and
- (3) has or may attract significant public interest or attention.

Service Provider means a person or organisation engaged or delegated by the Property Trust in any capacity whatsoever, either directly or through another person, to provide part or all of the Services or the Outcomes but does not include any employee or volunteer of the Property Trust. For the avoidance of doubt, the parties acknowledge and agree that:

- (1) Uniting is an approved Service Provider on and from the Commencement Date; and
- (2) the Property Trust's Other Delegated Entities (if any) are Service Providers for the purposes of this Agreement.

Services means:

- (1) the services necessary to deliver the Outcomes in accordance with this Agreement (including the Operations Manual) and all statutory and other legal requirements;

- (2) the services that are otherwise necessary or incidental to, or that may be required for, the proper performance of this Agreement in accordance with its terms; and
- (3) Transition-Out Services.

Standing Charge means the standard charge specified in the Payment Schedule.

State Records has the same meaning as in the State Records Act.

State Records Act means the *State Records Act 1998* (NSW).

State Records Authority means the authority constituted under section 63 of the State Records Act.

Successful Outcome means CYP who are Restored to the care of a Parent and who remain in the care of his/her Parent on the Assessment Date. For clarity, this means that the CYP is not in OOHC on the Assessment Date.

Synod has the meaning given to that term in Recital E.

Taxes means taxes, excluding income tax, GST, sales tax and capital gains tax, but including charges, withholding taxes, levies imposts, duties (including stamp and customs duty), excise, and other similar taxes imposed by any taxing Authority in any jurisdiction in Australia or elsewhere together with any related interest, penalties, fines, expenses or other statutory charges in respect of the supplies contemplated under this Agreement.

Term means the duration of this Agreement as specified in clause 11 or until the date on which this Agreement is terminated, whichever occurs first.

Third Party Material means any Material owned by a third party that is incorporated into the Agreement Material or is used to provide the Services.

Total Possible Funds Payable means the total maximum amount payable under this Agreement, with performance measured over a period of 4 years and 9 months and the amount made up of and no greater than:

- (1) the Total Possible Standing Charge; plus
- (2) the Total Possible Outcome Payments,

as paid at agreed intervals in accordance with this Agreement. Total Possible Funds Payable does not include any termination and/or Organisation Service Centre closure costs payable in accordance with this Agreement.

Total Possible Outcome Payments means the total possible Outcome Payments payable over the Term, with such amount being made up of 3 Outcome Payments calculated in accordance with the Payment Schedule on the relevant Measurement Date for the relevant Intake Group.

Total Possible Standing Charge means the total possible Standing Charges payable over the Term, being made up of instalments calculated as a percentage [REDACTED] of the agreed operating expenses incurred by the Operating Organisation Service Centre/s in the relevant Quarter.

Transition-Out Period has the meaning given to it by clause 31.

Transition-Out Plan means the plan developed in accordance with clause 31.2 to 31.5.

Transition-Out Services means the services to be provided by the Property Trust in accordance with clause 31.7.

Uniting means Uniting (NSW.ACT) ABN 78 722 539 923, being an institution or body of the Church, responsible for its social responsibility and community service programs.

Uniting Church Act has the meaning given to that term in Recital C.

Unsuccessful Outcome means a CYP in an Intake Group who have not been Restored, or recorded as a Successful Outcome, on the CYP's relevant Assessment Date. For the avoidance of doubt, this includes all CYP who remain in OOHC on their Assessment Date and may include CYP who were Restored during their Measurement Period and subsequently returned to OOHC [REDACTED] remaining in OOHC at the Assessment Date.

[REDACTED]

Young Person means a person who is aged 16 years or above but who is under the age of 18 years.

1.2 Except where the context otherwise requires:

- (1) **References to legislation.** A reference to a statute, regulation, ordinance or by-law ("law") will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that law from time to time.
- (2) **Reconstitution of a person.** A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, will be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.
- (3) **Time limits.** Where any time limit pursuant to this Agreement falls on a non-Business Day then that time limit will be deemed to have expired on the next Business Day.
- (4) **Grammatical forms.** Where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase will, unless the context otherwise requires, have a corresponding meaning.
- (5) **Singular and gender forms.** The singular includes the plural and vice versa and words importing a gender include the other gender.
- (6) **Rules of construction.** No rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Agreement or any part of it.
- (7) **Actions by the Department.** Where there occurs a reference to the doing of anything by the Department including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the Department.
- (8) **Headings.** The headings and index in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- (9) **Reasonableness.** Where the Department is required to act reasonably in the performance of this Agreement that will be read as a requirement to act as would a party in the position of the Department which is acting reasonably in its own best interests.

- (10) **No limitation.** The words “including”, “for example” or “such as” when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- (11) **References to groups.** A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.
- (12) **References to persons.** Persons will be taken to include any natural or legal person.
- (13) **References to currency.** All references to currency or dollars are references to Australian dollars.
- (14) **References to good faith.** Where a party is required to act in good faith in the performance of this Agreement that will be read as a requirement to act:
 - (a) honestly;
 - (b) reasonably, having regard to the terms of this Agreement; and
 - (c) co-operatively, by doing everything properly and reasonably within the control of that party to perform its or their obligations under this Agreement.
- (15) **References to Property Trust.** Without in any way limiting the liability of the Property Trust:
 - (a) an obligation of the Property Trust and/or its Personnel, is deemed, subject to clause 4.4, to also be an obligation of a Service Provider and/or their Personnel; and
 - (b) the Property Trust must both itself, and must procure that a Service Provider and/or its Personnel, perform all obligations on the Property Trust and/or its Personnel.

Administration of this Agreement

1.3 This Agreement will, subject to clause 1.2(15), be administered as follows:

- (1) The Property Trust enters into and executes this Agreement in its own right and is fully responsible for the performance of all obligations arising under or in connection with this Agreement.
- (2) The Property Trust will be solely liable in respect of any breach of this Agreement whether by:
 - (a) the Property Trust or its Personnel; or
 - (b) a Service Provider or its Personnel.
- (3) The Department is entitled to treat any act, matter or thing done by any Service Provider as having been done with the full authority and consent of the Property Trust.
- (4) Without limiting clause 17.1, the Property Trust must maintain accounts and records, and make them available for inspection and auditing by or for the benefit of the Department, that clearly show all payments and cash flows under or in connection with this Agreement.

- (5) The Property Trust must maintain and provide to the Department an up-to-date list of its Authorised Representatives. The Department is entitled to rely on and treat as binding, without need for any enquiry, any invoice issued on the letterhead of Uniting or such other Service Provider notified to the Department in writing (as the case may be) and also any written notice or other written communication (including emails) from an Authorised Representative in connection with this Agreement. Without limitation, this includes any written amendment to, or written waiver in respect of, this Agreement or the Operations Manual.
- (6) The Department consents to the Property Trust performing some or all of its obligations under or in connection with this Agreement through a Service Provider but on the basis that the Property Trust is responsible for all acts or omissions of the Service Provider and nothing in this consent relieves the Property Trust from duly and properly performing and discharging all of its obligations.
- (7) The Department acknowledges that whilst Uniting is an unincorporated body, it will not require proof that either the Property Trust or Uniting has entered into any legally-binding contract for the purposes of performing or, complying with, any obligation set out under this Agreement.
- (8) The Department acknowledges that the Property Trust may, by writing under its common seal, expressly empower any person in respect of any specific matter, as its agent or attorney to execute any deed, instrument, contract or agreement on its behalf, and any deed signed by such an agent or attorney on behalf of the Property Trust and under his or her seal shall bind the Property Trust and have the same effect as if it were under its common seal.
- (9) The Department acknowledges that, as at the Commencement Date, the Authorised Representative of the Property Trust works for Uniting.
- (10) For the purposes of giving or serving notices under this Agreement, the Department will, as at the Commencement Date and until notified otherwise, send all such notices to both the Property Trust and Uniting or such other Service Provider as notified to the Department in writing (as the case may be).

2 Newpin parameters

Objective

- 2.1 The Department and the Property Trust acknowledge and agree that the parties' intention in entering this Agreement is to ensure that the Outcomes are achieved to the benefit of the community, the Property Trust and the NSW Government (**Objective**).

Adherence to Objective

- 2.2 Each party must, in accordance with and subject to the provisions of this Agreement, perform its obligations under this Agreement having regard to and with the aim of satisfying the Objective.

Part B – Preliminary matters

3 Operations Manual

- 3.1 Prior to entry into this Agreement, the parties must execute the Operations Manual.

3.2 The parties acknowledge that the Operations Manual:

- (1) is designed to assist them in the day to day operation of this Agreement;
- (2) is intended to be a convenient repository of elements of this Agreement (and other Material that may bind the parties by Agreement or as a consequence of this Agreement or may simply be of assistance in the operation of this Agreement) that are considered to have day to day importance; and
- (3) will be subject to regular review, including as part of the Annual Review and may be amended or varied by agreement of the parties from time to time in writing.

4 Representations and warranties

General warranties

4.1 The Property Trust represents and warrants to the Department:

- (1) on a continuing basis that:
 - (a) it has the power and the authority to enter into and observe its obligations under this Agreement; and
 - (b) it has made its own assessment of the risks, contingencies and other circumstances relevant to this Agreement and has satisfied itself as to its ability to successfully deliver the Outcomes; and
- (2) on or prior to the Commencement Date, it has disclosed in writing to the Department any matters relating to the commercial, technical or financial capacity of the Property Trust that might materially affect the Property Trust's ability to perform any of its obligations under this Agreement.

Warranties relating to the Services and delivery of Outcomes

4.2 The Property Trust represents, warrants and undertakes to the Department on a continuing basis, throughout the Term and any Transition-Out Period that:

- (1) it will use all reasonable endeavours to achieve the Outcomes specified under this Agreement;
- (2) it will provide the Services in accordance with this Agreement, including the Operations Manual, with due care, skill and diligence and in a professional manner, using appropriately trained, knowledgeable and experienced Personnel;
- (3) any Materials supplied in connection with the Services (including all documentation and reports) will be fit for the purpose for which they are supplied;
- (4) it will provide the Services in accordance with all relevant Laws and it will not cause the Minister, the Secretary, or the Department to breach any Laws;
- (5) each of:
 - (a) the Services;
 - (b) the Property Trust's Materials; and
 - (c) any other Materials (including any Agreement Material, Other Material or Third Party Material) created or used by or on behalf of the Property Trust or any Service Provider in the course of performing this Agreement,

will not infringe Intellectual Property Rights of any person;

- (6) it has, or will obtain prior to the Commencement Date, all licences, permits, authorisations, consents or approvals required in connection with the provision of the Services and delivery of the Outcomes in accordance with this Agreement;
- (7) no Insolvency Event has occurred and remains current in respect of the Property Trust, and there are no circumstances which could give rise to an Insolvency Event in respect of the Property Trust; and
- (8) the Property Trust has an exclusive licence for use of the Newpin logo and Material as exclusive licensee of Newpin in Australia including the right to sub-licence the Department to use such logo/Material as part of the New Contract Material and in connection with the publicising of this Agreement in accordance with its terms.

Warranty and indemnity by the Property Trust

4.3 The Property Trust warrants to the Department that:

- (1) it is the trustee of assets held for and on behalf of the Church and, in particular, it is the trustee of assets in New South Wales which are managed by and under the control of Uniting in accordance with the Constitution of the Church pursuant to the Uniting Church Act and the by-laws made by the Synod pursuant to the Constitution of the Church; and
- (2) it is entitled to be indemnified out of all the assets referred to in clause 4.3(1) to meet any liability under this Agreement.

4.4 Subject to clause 4.5 and without in any way limiting the liability of the Property Trust, the Department acknowledges and agrees that there will be no personal liability of the following persons to the Department in respect of the acts or omissions of such persons undertaken in good faith in respect of this Agreement:

- (1) a member of the Property Trust;
- (2) a director or a member of a board responsible for an institution of the Church;
- (3) a senior executive of the Property Trust or the Service Provider; or
- (4) an individual who carries out work, in any capacity, for the Property Trust or the Service Provider.

4.5 Nothing in this Agreement will exclude or limit the liability of the persons referred to in clause 4.4 if any such person has engaged in fraud, criminal conduct, wilful misconduct or any liability which cannot be excluded or limited by law.

5 Property Trust's general obligations

Personnel

5.1 The Property Trust is solely responsible for:

- (1) all Personnel employed or otherwise engaged or supported from the Funds; and
- (2) the payment of all wages, entitlements, superannuation, payroll and other tax and associated costs to its Personnel.

Probity relating to Personnel

- 5.2 The Property Trust agrees to have risk assessment procedures and risk plans in place to ensure compliance with any obligations under the *Child Protection (Working With Children) Act 2012* (NSW) and to undertake national criminal record checks and any other relevant probity checks for Personnel, including those required by Law.
- 5.3 Before Personnel undertake any function or role in relation to the Services, the Property Trust agrees to:
- (1) ensure that the Personnel are not prohibited or disqualified under any Law from being employed or engaged to undertake such a role or function, or are not otherwise undesirable to work with children or vulnerable persons where the Personnel may have contact with children or vulnerable persons;
 - (2) have regard to whether any criminal record check or other probity check of the Personnel is relevant to and may impact on the suitability of the Personnel to perform the function or role in relation to the Services; and
 - (3) if requested by the Department, provide the Department with evidence satisfactory to the Department that the Property Trust has complied with this clause 5.3.
- 5.4 The Department may require the immediate removal of Personnel from undertaking any function or role in relation to the Services where, in the reasonable opinion of the Department, the Personnel are considered to represent an unacceptable risk to an individual or individuals receiving the Services.

Notifiable incidents

- 5.5 The Property Trust agrees to notify the Department immediately of any of the following:
- (1) when it becomes aware of Alleged Misconduct or a Serious Incident in relation to the provision or performance of the Services;
 - (2) serious complaints received in relation to the provision or performance of the Services;
 - (3) the occurrence of any event which may cause adverse publicity in relation to the Services or relating to a user of the Services;
 - (4) another NSW Government body or agency terminates an arrangement with the Property Trust under which it receives funding; or
 - (5) any current, pending or threatened Reputational Proceedings.

Notifications relating to the Property Trust

- 5.6 The Property Trust agrees to notify the Department as soon as practicable of any of the following:
- (1) changes to the Property Trust's name, address and contact details from those stated in the Agreement Details;
 - (2) any material change or proposed material change in the Property Trust's constitution or rules or memorandum and articles of association (however described); or
 - (3) a Change in Control of the Property Trust.

5.7 The Property Trust agrees to notify the Department immediately of any of the following:

- (1) any action or proposed action relating to an Insolvency Event; or
- (2) any notice or show cause notice as to why the Property Trust is not or should not come under external administration.

Complaints

5.8 The Property Trust agrees to:

- (1) have in place a complaints process to deal with any complaints about the Services and maintain a complaints register;
- (2) ensure the complaints process includes advising a person who makes a complaint that if they are unsatisfied with the outcome of the complaint they may also complain to the Department; and
- (3) provide the Department or any person nominated by the Department with access to the Property Trust's complaints register and any other material relevant to a complaint, where requested to do so.

Steering committee, Joint Working Group and planning meetings

5.9 The Property Trust acknowledges that the Department may require:

- (1) the establishment of a steering committee or Joint Working Group to oversee the Services; and/or
- (2) the convening of planning meetings with the Property Trust to ensure that it is meeting its obligations under this Agreement,

as stated in the Operations Manual and as otherwise reasonably required by the Department from time to time, and agrees to cooperate and provide all reasonable assistance to the Department in any of the above roles.

6 Assets and Capital Works

Acquiring of Assets

6.1 The Property Trust agrees not to use the Funds to purchase, lease or otherwise acquire any Assets for the Services unless:

- (1) it is stated in the Operations Manual and it is in accordance with any allocation of the Funds set out in the Payment Schedule; or
- (2) the Department has given its prior written approval and the Property Trust complies with any conditions placed on that approval.

Ownership of Assets

6.2 Unless it is otherwise stated in the Operations Manual, the Property Trust agrees that it must own or lease any Assets.

Use of Assets

6.3 The Property Trust agrees not to use Assets for any purpose other than for the performance of the Services unless it has obtained the prior written approval of the Department which will not be unreasonably withheld.

Obligations in relation to Assets

- 6.4 The Property Trust agrees to:
- (1) ensure that it obtains value for money in the procurement of Assets and related services;
 - (2) during the Term, use the Assets only for the purpose of the Services for which the Assets have been acquired;
 - (3) maintain the Assets in good working order;
 - (4) be fully responsible for, and bear all risk in relation to, the use and disposal of the Assets;
 - (5) maintain all appropriate insurances in respect of the Assets;
 - (6) maintain an Assets Register;
 - (7) maintain registration and licencing of the Assets; and
 - (8) not dispose of, deal with or encumber the Assets without the prior written approval of the Department.
- 6.5 The Property Trust will comply with any additional provisions relating to the Assets as stated in the Operations Manual.

Capital Works

- 6.6 The Property Trust will not use the Funds for Capital Works or General Infrastructure, without the prior written approval of the Department.
- 6.7 Any approval under clause 6.6 may be subject to additional conditions or requirements under this Agreement or as otherwise determined by the Department acting reasonably.

Registering of interest

- 6.8 The Property Trust agrees to comply with any reasonable request of the Department to register the Department's interest in any Assets, Capital Works or transaction relating to this Agreement, including the execution of any documents.

7 Compliance with Laws, guidelines, holding of rights, approvals and consents

- 7.1 The Property Trust must, and must procure that all Service Providers:
- (1) comply with all Laws applicable to the Services, delivery of the Outcomes and the performance of the Property Trust's obligations under this Agreement; and
 - (2) hold all rights, obtain and maintain all approvals and consents required by applicable Laws to provide the Services and deliver the Outcomes and otherwise perform its obligations under this Agreement.
- 7.2 Unless otherwise expressly provided under this Agreement, the Property Trust (and any Service Provider) must continue to comply with the requirements of clause 7.1 throughout the Term, notwithstanding any changes to applicable Laws.

- 7.3 The Property Trust must not cause the Minister, the Secretary or the Department, including the Minister's duty of care as guardian, to breach any Laws, statutory duty or requirement in respect of any CYP.
- 7.4 Without limiting this clause 7, the Property Trust must, and must procure that all Service Providers, comply with all government policies and guidelines relevant to this Agreement and applicable to the performance of the Services and delivery of the Outcomes as advised by the Department from time to time and set out in the Operations Manual including any changes to these policies and guidelines.

8 Delegated Services and subcontracting

Entry into subcontracts

- 8.1 Subject to clauses 8.3 to 8.4, the Property Trust must not subcontract or delegate the performance of the Services and/or delivery of the Outcomes or any part of them without the Department's prior written consent, which consent must not be unreasonably withheld.
- 8.2 The Department must expeditiously consider, and promptly notify the Property Trust of its determination in respect of, any request made under clause 8.1.

Provision of Services by a Service Provider

- 8.3 The parties agree that:
- (1) the Property Trust will provide the Services and deliver the Outcomes through one or more Service Providers on and from the Commencement Date; and
 - (2) the Property Trust may delegate the supply of the Services to any institution of the Church, any institution or body established by the Synod or such other affiliated or related entity of the Property Trust it chooses (**Other Delegated Entity**), provided that the Department receives prior written notice of such delegation prior to the delegation taking effect. The parties acknowledge and agree that the Property Trust is not required to seek the approval of the Department prior to appointing an Other Delegated Entity to supply the Services.

Delegated Services and subcontracting obligations

- 8.4 The Property Trust will continue to be bound by this Agreement notwithstanding that the Services are provided through a Service Provider and this does not limit the liability of the Property Trust in any way.
- 8.5 The Property Trust is not relieved of any of its liabilities or obligations under this Agreement as a result of any subcontracting or delegating of performance of the Services and/or delivery of the Outcomes or approval of any Service Provider and the Property Trust is at all times responsible for the performance of all Service Providers.

Ability to perform obligations

- 8.6 The Property Trust must ensure that each Service Provider is reputable and has sufficient experience, expertise and ability to perform its obligations to the standards required by this Agreement.

Insurance

- 8.7 The Property Trust must ensure that no Service Provider in connection with performance of the Services and/or delivery of the Outcomes is engaged without the relevant Service Provider having taken out, or having the benefit of, insurance in the manner and in the form

specified in this Agreement having regard to the nature of the services or work to be performed by them, as if they were the Property Trust.

Notification of alleged compliance failures

- 8.8 The Department must promptly notify the Property Trust of any alleged Service Provider's failure to comply with this clause 8 as soon as the Department becomes aware of any such allegation. However, a notification or failure to notify by the Department under this clause 8.8 will not affect the Property Trust's responsibility to ensure compliance with this Agreement.

9 Workforce of the Property Trust

Employee requirements

- 9.1 The Property Trust must:
- (1) ensure that each person and each Service Provider engaged or delegated for the provision of the Services, delivery of the Outcomes or otherwise performing services in relation to this Agreement are appropriately qualified, certified, skilled and experienced to perform their assigned tasks; and
 - (2) carry out such investigations of a prospective employee's/person's suitability as are legally required or otherwise appropriate given the nature of the relevant employee's/person's assigned tasks.
- 9.2 Without limiting any other provision of this Agreement, the Property Trust must, and must ensure that its Service Providers, comply with:
- (1) all applicable Laws in relation to working with CYPs as may apply from time to time, including the *Child Protection (Working with Children) Act 2012* (NSW) and the *Children's Guardian Act 2019* (NSW); and
 - (2) any particular requirements and processes in relation to working with CYPs set out in the Operations Manual.

Department checks

- 9.3 Notwithstanding clauses 9.1 and 9.2 the Department may carry out such searches and enquiries as it considers reasonable, to ensure the Property Trust's and each Service Provider's compliance with this clause 9.
- 9.4 The Property Trust must procure, and provide to the Department, the consent of each employee or prospective employee of the Property Trust or the Service Provider who is, or is likely to be, involved in the provision of the Service or delivery of the Outcomes or is otherwise likely to have contact with a CYP, to the making of any of the searches or enquiries referred to in clause 9.3.
- 9.5 Without limiting the Property Trust's obligations under clauses 9.1 and 9.2, if, in relation to any individual engaged by the Property Trust or a Service Provider to provide the Services or deliver the Outcomes or any other service related to this Agreement, the:
- (1) Department's searches, enquiries or checks reveal information indicating that an individual does not comply with the requirements of this Agreement; or
 - (2) Department considers that an individual is unsuitable or unqualified to perform the activities assigned to that individual,

the Department may consult with the Property Trust as to whether it is appropriate and lawful to discontinue engagement of that individual in connection with the performance of this

Agreement. The Department and the Property Trust, both acting reasonably and in a timely manner, will agree and implement appropriate measures following such consultation.

Property Trust's and Service Providers' employees

- 9.6 The Property Trust will be entirely responsible for the employment and conditions of service of the Property Trust's employees and must procure that any Service Provider is likewise responsible for its employees, and that the Service Provider complies with the same obligations and requirements as required by the Property Trust under this clause 9.

Labour relations

- 9.7 The Property Trust must (and must procure that any Service Provider must):
- (1) establish, maintain and administer a human resources policy and an industrial relations policy for the Services to be provided under this Agreement; and
 - (2) ensure that all persons employed or engaged to provide services in relation to this Agreement are paid all amounts, receive such benefits and allowances and are employed subject to such conditions to which they may be or become entitled to as a result of their engagement in providing the Services and/or delivering the Outcomes under or in relation to this Agreement by virtue of any applicable Law.

Independent contractors and Service Providers

- 9.8 The Property Trust and all Service Providers are independent contractors and nothing contained in this Agreement will be construed as constituting any relationship with the Department other than, with respect to the Property Trust, that of principal and independent contractor. Nor will anything in this Agreement be construed as creating any relationship whatsoever between the Department and the employees of the Property Trust or any Service Provider.
- 9.9 Neither the Property Trust nor any Service Providers nor any of their employees, are or will be deemed, by virtue of this Agreement or any agreement between the Property Trust and any Service Provider, to be employees of the Department.
- 9.10 The Property Trust indemnifies, and must procure that any Service Provider indemnifies and at all times holds the Department fully and effectively indemnified against any Losses arising directly or indirectly out of or in connection with any Claim that the Department is the employer of the Property Trust's employees or any Service Provider's employees. The Property Trust's liability to indemnify the Department under this clause 9.10 will be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of the Department or its Personnel caused or contributed to the Claim or Loss.
- 9.11 Without limiting clauses 9.9 and 9.10, the Property Trust is responsible for and must procure that any Service Provider is responsible for:
- (1) remuneration and benefits, including superannuation contributions, annual leave, sick leave, long service leave, overtime and penalty rates and provision of accommodation and sustenance;
 - (2) work care levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges and other imposts or levies imposed by Law; and
 - (3) any payment upon termination of service,
- payable to or in respect of the Property Trust's employees or contractors or any Service Provider's employees or contractors.

10 Work health and safety

- 10.1 The Property Trust agrees that in carrying out the Services it and its Personnel must:
- (1) comply with all applicable Laws (including Laws relating to child protection, work health and safety, superannuation, workers compensation, employment screening, privacy, workplace relations and tax); and
 - (2) to the extent reasonably practicable, ensure the health and safety of its Personnel.
- 10.2 Without limiting any other term of this Agreement, the Property Trust agrees to notify the Department in writing immediately of any non-compliance with applicable work health and safety Laws.

Part C – Financial performance of Services and delivery of Outcomes

11 Term of Agreement and extension option

- 11.1 This Agreement commences on the Commencement Date and, unless terminated earlier in accordance with its terms, continues for a period of 4 years and 9 Months.
- 11.2 The Department may agree to extend the Intake Period by up to 3 years, bringing the total Term to no longer than 7 years and 9 Months by notifying the Property Trust in writing, no less than 3 Months prior to the last date of the final Intake Group.

12 Referrals to the Property Trust

- 12.1 Subject to this clause 12, from the first date of Intake Group 1 until such date as agreed by the parties in the Transition-Out Plan (such date not to be later than the last date of Intake for Intake Group 3), Families that meet the eligibility criteria for each Intake Group will be referred to the Property Trust in accordance with the requirements and timeframes set out in the Operations Manual.
- 12.2 The Department may approve (which approval must not be unreasonably withheld) referrals by other Agencies and from other sources to the Property Trust as referenced in and otherwise in accordance with the Operations Manual and any such approved referral will be a Referral for the purposes of clauses 12.1 (but to avoid doubt, unless and until approved by the Department, any referral originating from an entity other than the Department will not be considered a Referral for any purpose of this Agreement).

13 Financial arrangements

Use of Funds

- 13.1 Subject to clause 13.2, the Property Trust agrees, and must procure that Uniting or such other Service Provider as notified to the Department in writing (as the case may be) also agrees, to use the Funds provided for the Services:
- (1) only for the purpose of providing the Services and in accordance with this Agreement; and
 - (2) within the Term and in accordance with any time periods stated in the Operations Manual and/or Payment Schedule (as applicable).
- 13.2 The Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) may use the Funds in accordance with any approval under clause 13.6.

- 13.3 The Department agrees to pay the Funds for the Services to Uniting or such other Service Provider as notified to the Department in writing (as the case may be) at the times, and in the amounts, stated in the Payment Schedule.
- 13.4 The Property Trust agrees that payment of all or part of the Funds is not an admission by the Department that the Property Trust has met its obligations under this Agreement to the reasonable satisfaction of the Department.

Other Funds

- 13.5 The Department is under no obligation to provide the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) with Funds or other financial assistance:

- (1) in excess of the total amount stated in the Payment Schedule; or
- (2) beyond the expiration or termination of the Term.

Residual Funds at end of Term

- 13.6 The Property Trust agrees to, and will procure that Uniting or such other Service Provider as notified to the Department in writing (as the case may be) also agrees to, repay to the Department any Residual Funds remaining within 20 Business Days of the last day of the Term, unless the Department has given prior written approval for the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) to retain the Residual Funds.
- 13.7 Where the Department approves the retention of Residual Funds, the Property Trust will, and will procure that Uniting or such other Service Provider as notified to the Department in writing (as the case may be) also will, use those Residual Funds in accordance with the approval, including any terms and conditions specified by the Department.

14 Services and Outcomes

- 14.1 The Property Trust undertakes, in delivery of the Outcomes, to perform the Services:
- (1) with a view to achieving the Objective and in accordance with this Agreement including the Operations Manual;
 - (2) in a diligent manner and with all necessary skill, diligence and care expected in the provision of such services; and
 - (3) in accordance with all representations and warranties as to the Property Trust's experience and ability expressly or impliedly made by reference to this Agreement.

15 Location, opening and closure of Organisation Service Centres

- 15.1 The Property Trust undertakes that it will only operate Organisation Service Centres during the Term in locations as agreed with the Department in writing from time to time and listed in the Operations Manual.
- 15.2 The Property Trust may, at its own cost, open additional Organisation Service Centres or close any Organisation Service Centres during the Term subject to obtaining the Department's prior written consent, such consent not to be unreasonably withheld, to the location, the timing of the opening or closure of any Organisation Service Centre and compliance with any other requirements set out in the Operations Manual. The Department will use its best endeavours to consider each application expeditiously so as not to delay any approved additional Organisation Service Centre.

- 15.3 The Department may at any time during the Term by written notice to the Property Trust request a review of the location and/or the closure of any Organisation Service Centre in accordance with this Agreement and the Operations Manual.

16 Roles and responsibilities, communication and consultation, and cooperation with Agencies

- 16.1 The respective roles and responsibilities of the Department and the Property Trust, and lines of communication and consultation in relation to Newpin and delivery of the Outcomes by the Property Trust, are as set out in this Agreement and the Operations Manual.
- 16.2 The Property Trust agrees to work collaboratively and co-operatively with all other Agencies and any other stakeholders involved in child wellbeing and child protection regardless of the differences in size, individual philosophies, structures and funding sources to create an integrated system across government and non-government Agencies in accordance with the Child Wellbeing and Child Protection NSW Interagency Guidelines (available at <https://www.facs.nsw.gov.au/providers/children-families/interagency-guidelines>).

Part D – Reviews, audits and changes

17 Access, cooperation and reviews

Access to premises and records

- 17.1 The Property Trust acknowledges and agrees that the Department, any persons nominated by the Department and any Public Accountability Body may on notice to the Property Trust require access to:
- (1) the Property Trust's premises or the premises where the Services are being provided;
 - (2) the premises at which any work associated with the Services is undertaken;
 - (3) the premises at which any Assets are located;
 - (4) copies of records held or created by the Property Trust in relation to the Services,
- for purposes associated with this Agreement, including any review or audit of the Property Trust's performance under this Agreement or ability to provide all or part of the Services.
- 17.2 Where possible, the Department will give reasonable notice to the Property Trust and seek to involve the Property Trust in any performance review or audit. However, the notice under clause 17.1 does not need to be in any particular form.

Cooperation and access

- 17.3 Unless it is prohibited by Laws from disclosing such information or material, the Property Trust will cooperate with and provide all assistance reasonably requested by the Department under clause 17.1.
- 17.4 The cooperation and assistance under clause 17.3 includes full and free access to:
- (1) the Personnel, accounts, records and other information; and
 - (2) the Services or places of business to conduct the performance review or audit,
- for purposes associated with this Agreement or any review of the Services provided by the Property Trust.

Application of this clause

- 17.5 The Property Trust must ensure that any subcontract entered into for the purpose of this Agreement allows the Department under clause 17.1 to have access as specified in this clause 17.

Annual Review

- 17.6 Within 3 months of the end of the relevant Intake Group, the Joint Working Group will complete a review of the Services, delivery of the Outcomes and the operation of this Agreement (**Annual Review**) in accordance with the requirements and timeframes set out in the Operations Manual.

- 17.7 The Annual Review must include a review of:

- (1) the performance of the parties in achieving the Objective;
- (2) the performance of the Property Trust in delivering the Outcomes under this Agreement;
- (3) the implementation of the Operations Manual;

[REDACTED]

[REDACTED]

[REDACTED]

- (7) such other matters as the Department or the Property Trust may agree from time to time.

Departmental reviews

- 17.8 Without limiting any other rights of the Department under this Agreement, the Department may, at the cost of the Department, conduct, or requisition a third party provider to conduct, reviews and/or evaluations from time to time during the Term, including with respect to the Property Trust's service delivery model, and the Property Trust will in good faith participate, at its own reasonable cost, in any such reviews and/or evaluations and provide the Department, or any third party provider, with such assistance and Material as may reasonably be required.

Part E – Adverse events

18 Force majeure

Force Majeure Event

- 18.1 A party that complies with the obligations in this clause 18 will not be liable for any failure or delay arising due to a Force Majeure Event:
- (1) in the case of the Property Trust, in the performance or discharge of its obligation to provide the Services, deliver the Outcomes and other services pursuant to this Agreement; and

- (2) in the case of the Department, in the performance or discharge of its obligations pursuant to this Agreement.

18.2 The Department is not liable to pay any amounts to the Property Trust during any period during which the Property Trust has failed to perform its obligations, including any performance of the Services and delivery of any Outcomes, due to a Force Majeure Event.

Notification of Force Majeure Event

18.3 A party whose performance or discharge of its obligations referred to in clause 18.1 is affected by a Force Majeure Event must as soon as practicable:

- (1) notify the other party; and
- (2) describe in a reasonable level of detail the nature of the Force Majeure Event and its likely effect on that non-performing party's performance or discharge of its obligations under this Agreement.

Response to a Force Majeure Event

18.4 On the occurrence of a Force Majeure Event, the non-performing party must use its reasonable endeavours to continue to resume performance or observance whenever and to whatever extent possible without delay, including by means of alternate sources, workarounds or other means.

18.5 Either party may terminate this Agreement in whole by notice to the other party if any Force Majeure Event has the result that the affected party fails to perform its obligations under this Agreement for more than 3 Months.

[REDACTED]

[REDACTED]

[REDACTED]

Part F – Loss, damage and insurance

19 Indemnity

19.1 The Property Trust is responsible for, and hereby releases and indemnifies the Department, the Minister, the Secretary and their respective Personnel (**those indemnified**) on demand from and against any Claim or Loss, including for:

- (1) death or personal injury;
- (2) loss of or damage to property (including property belonging to the Department or for which it is responsible);

- (3) any infringement or alleged infringement of any Intellectual Property Rights (including Moral Rights);
- (4) third party Claims, costs, charges or expenses in respect of the Services and/or delivery of the Outcomes;
- (5) any unlawful, wrongful, wilful or negligent act or omission of the Property Trust or its Personnel; and
- (6) any breach of this Agreement,

which may arise out of, or in connection with the performance or non-performance by the Property Trust and/or their Personnel of this Agreement or any subcontract by the Property Trust of any part of this Agreement (including the Services).

- 19.2 The Property Trust's liability to indemnify those indemnified under this Agreement will be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the Claim or Loss.
- 19.3 The Department holds on trust for those indemnified the benefit of the indemnity provided by the Property Trust under clause 19.1.

Cap on liability

██████████ The Property Trust's liability arising from the indemnity in clause 19.1(6) ██████████
██████████

- 19.5 Subject to clause 19.4, the Property Trust has no limitations on its liability under or in connection with the Agreement.

Notification of Claims

- 19.6 The Property Trust must advise the Department immediately if it becomes aware of any third party Claim, or likely Claim, against the Property Trust or its Personnel in connection with this Agreement.

Continuing liability

- 19.7 The indemnities contained in this clause 19 are continuing obligations of the Property Trust separate and independent of any other responsibility of the Property Trust and will continue beyond the Term.

Consequential Loss

- 19.8 The Department will not, in any circumstances, be liable for any Consequential Loss suffered or incurred by the Property Trust arising under or in connection with this Agreement.

20 Insurance

Property Trust to maintain

- 20.1 The Property Trust must take out and maintain or procure the taking out and maintenance of the insurances specified in the Agreement Details at the times, in the manner and in the form specified in the Agreement Details and any other insurances as may be required by applicable Law.
- 20.2 All policies of insurance must be effected with an insurance company which, if Australian, is licensed by the Australian Prudential Regulation Authority or, if the insurer is an international company, has a Standard and Poor's rating of not less than A-.

No limit of liability

- 20.3 Neither failure to comply nor full compliance by the Property Trust with the insurance provisions of this Agreement will limit or relieve the Property Trust of its liabilities and obligations under this Agreement.

Evidence of insurance

- 20.4 The Property Trust must, on request, produce satisfactory evidence to the Department that the insurance policies referred to in this clause 20 have been effected and renewed.

Notification of insurance claims

- 20.5 The Property Trust must, and must ensure that all relevant Service Providers, as soon as practicable:
- (1) inform the Department in writing of a claim, or an occurrence of an event that may give rise to a claim, under a policy of insurance required under this clause 20; and
 - (2) keep the Department fully informed of subsequent action and developments concerning the claim or event referred to in clause 20.5(1).

Part G – Payment Provisions

21 Payments

Standing Charge and Outcome Payments

- 21.1 Subject to this Agreement (including clause 21.7), the Department will, in consideration of the Property Trust entering and performing its obligations under this Agreement:
- (1) irrespective of the delivery of any Outcomes, pay Uniting or such other Service Provider as notified to the Department in writing (as the case may be) the Standing Charge in accordance with the Payment Schedule; and
 - (2) if and to the extent that the specified Outcomes are delivered, pay Uniting or such other Service Provider as notified to the Department in writing (as the case may be) the applicable Outcome Payments in accordance with the Payment Schedule.

Payments

- 21.2 The Property Trust acknowledges and agrees that, to the extent that any amounts are paid by the Department to Uniting or such other Service Provider as notified to the Department in writing (as the case may be) under or in connection with this Agreement, this constitutes valid consideration for the performance by the Property Trust of its obligations under this Agreement and that the Property Trust has no claim against the Department in respect of any additional amounts payable.

Late payments

- 21.3 Subject to clause 21.4, if any payment due under this Agreement is not paid by its due date interest will be payable on that payment calculated at the Prescribed Rate from the day after the date on which payment was due up to (and including) the date of payment.
- 21.4 Interest on a late payment is not payable unless the amount of interest owed exceeds \$20.

Disputed Amounts

- 21.5 If the Department disputes, in good faith, any amount payable under or in connection with this Agreement (including as set out in an invoice), the Department will be entitled to withhold payment of the disputed amount (the **Disputed Amount**). A Disputed Amount will be resolved in accordance with clause 38. Until the dispute is resolved, and subject to the outcome of that dispute, the Disputed Amount will be held in suspense for the duration of the dispute. Any Disputed Amount found to be payable by the Department to Uniting or such other Service Provider as notified to the Department in writing (as the case may be) will be paid on resolution of the dispute together with interest at the Prescribed Rate from the due date for payment of the Disputed Amount until actual payment is made to the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) by the Department.

Reconciliation upon early termination

- 21.6 In the event of early termination of this Agreement the Department will undertake a reconciliation of the total Outcome Payments payable for the Financial Year to the date of termination and make any adjustments as may be reasonably determined by the Department.

Aggregate cap on amounts payable under this Agreement

- 21.7 The Property Trust agrees and acknowledges, and will procure that Uniting or such other Service Provider as notified to the Department in writing (as the case may be) agrees and acknowledges, that the total aggregate amount payable by the Department to the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) during the Term is capped in the aggregate at the Total Possible Funds Payable, plus any termination or closure costs (in accordance with the Payment Schedule).

22 GST

GST exclusive

- 22.1 The consideration expressed in this Agreement (unless otherwise specified) is GST exclusive and does not include any amount for GST.
- 22.2 Subject to clause 22.3, if anything supplied under or in connection with this Agreement constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply (**GST Amount**). The GST Amount will be:
- (1) equal to the value of the supply calculated in accordance with GST Law multiplied by the prevailing GST rate; and
 - (2) subject to clauses 22.3 and 22.4, payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the relevant taxable supply is attributable under the GST Law.

The supplier of a taxable supply made under or in connection with this Agreement must issue a tax invoice for the supply in accordance with the GST Law to the recipient of the supply.

Non-monetary consideration or partly non-monetary and partly monetary consideration

- 22.3 If either the Department or the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) makes a supply to the other for consideration which is wholly non-monetary consideration, or partly non-monetary and partly monetary consideration, then:
- (1) if the consideration is wholly non-monetary:

- (a) the supply will for the purposes of this clause be styled a "Consideration in Kind Supply";
 - (b) the consideration for the Consideration in Kind Supply is GST inclusive and will not be increased on account of GST under subclause 22.2;
 - (c) the Department and the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) agree that the GST inclusive market value of each of the Consideration in Kind Supply and the consideration for that supply (being in turn, a Consideration in Kind Supply) are equal;
 - (d) the Department and the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) will each include in any tax invoice, issued by it in respect of a Consideration in Kind Supply made by it in return for a Consideration in Kind Supply by the other, the same amount on account of the GST inclusive market value of the supply to which the tax invoice relates being the price for that supply; and
 - (e) prior to the issue of the tax invoices referred to in clause 22.3(1)(d), the Department and the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) will use all reasonable endeavours to agree upon the GST inclusive market value of the reciprocal Consideration in Kind Supplies and, failing agreement, will accept as final and binding the GST inclusive market value of the reciprocal Consideration in Kind Supplies determined (at the cost of the Department and the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) shared equally between them) by an independent expert nominated by the President or other most senior officer of the Institute of Chartered Accountants in Australia; and
- (2) if the consideration is, in part, monetary and, in part non-monetary, then:
- (a) part of the supply will be treated as made for the non-monetary consideration and will for the purposes of this clause be styled a "Consideration in Kind Supply" and will be subject to the operation of clause 22.3(1); and
 - (b) the remaining part of the supply will be treated as made for monetary consideration which is GST exclusive and subject to the operation of clause 22.2.

22.4 If the Commissioner of Taxation or a court determines for any reason whatsoever that the Consideration in Kind Supplies referred to in clause 22.3 which each of the Department and the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) make in return for the other do not have an equal GST inclusive market value for GST purposes, then:

- (1) if the Consideration in Kind Supply made by the Department to the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) is determined to have a greater GST inclusive market value than the reciprocal Consideration in Kind Supply made by the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) to the Department, the Department will pay to the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) an additional amount equal to the GST [REDACTED]

[REDACTED] if the Consideration in Kind Supply made by the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) to the Department is determined to have a greater GST inclusive market value than the

reciprocal Consideration in Kind Supply made by the Department to the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be), then the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) will pay to the Department an additional amount equal to the GST [REDACTED]

- (3) the Department and the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) will do all things required, including issuing new tax invoices and adjustment notes (if necessary), to give effect to the relevant determination by the Commissioner or court; and
- (4) any amount payable under this subclause is GST inclusive and will not be increased on account of GST under clause 22.2.

Adjustment notes

- 22.5 If in relation to a taxable supply under or in connection with this Agreement an adjustment event occurs that gives rise to an adjustment, then the GST Amount will be adjusted accordingly and, where necessary, a payment will be made to reflect the change in the GST Amount (by the recipient to the supplier in respect of an increase in the GST Amount and by the supplier to the recipient in respect of a decrease in the GST Amount). If a payment is required, it will be made within 10 Business Days of the issue of an adjustment note by Uniting or such other Service Provider as notified to the Department in writing (as the case may be) who must issue an adjustment note immediately upon becoming aware of the adjustment event concerned.

Reimbursements of costs, expenses or other amounts

- 22.6 Notwithstanding any other provision of this Agreement, any amount payable under or in connection with this Agreement, which is calculated by reference to a cost, expense, or amount paid or incurred by a party to this Agreement, will be reduced by an amount equal to any input tax credit to which that party is entitled in respect of that cost, expense or amount.

Input tax credits

- 22.7 Any amount on account of GST payable by the Department to the Property Trust. Uniting or such other Service Provider as notified to the Department in writing (as the case may be) under this clause will be limited to the amount of an input tax credit to which the Department is entitled in respect of the relevant supply which the Department acquires.

GST groups

- 22.8 If a party is a member of a GST group, references to GST for which the party is liable and to input tax credits to which the party is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- 22.9 Where a word or phrase is defined under GST Law, it has the same meaning in this Agreement.

23 Other Taxes

- 23.1 Subject to clause 22 and this clause 23, the Property Trust must pay, and must keep the Department indemnified against, any Taxes payable upon, or in respect of, this Agreement or the supply of the Services and delivery of the Outcomes wherever and however such Taxes arise.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Part H – Suspension, reduction, repayment and termination

24 Suspension or withholding Funds

- 24.1 If the Department, acting reasonably, considers it appropriate, it may by written notice to the Property Trust, immediately suspend or withhold (either temporarily or permanently) the use and/or payment of all or any part of the Funds if:
- (1) the Property Trust has failed, or in the Department's opinion, is likely to fail, to provide the Services in accordance with this Agreement;
 - (2) Uniting or such other Service Provider as notified to the Department in writing (as the case may be) has received Funds for the Services that have not been spent or Committed for the Services in accordance with this Agreement, including as a result of Uniting or such other Service Provider as notified to the Department in writing (as the case may be) having a surplus or underspend;
 - (3) the Property Trust has breached a provision of this Agreement or another arrangement or agreement with the Department or other NSW Government Agency;
 - (4) the Property Trust has misused, or in the Department's opinion, is suspected to have misused, the Funds or has shown an inability to properly manage the Funds or the Assets;
 - (5) the Property Trust has breached this Agreement;
 - (6) the Department has concerns on reasonable grounds that the Property Trust is not financially stable; or
 - (7) the Property Trust or any of its Personnel has breached or is suspected to have breached any Laws material to the Services.
- 24.2 The Department may, by giving written notice to the Property Trust, reduce the Services to be provided under this Agreement to reflect any suspension or withholding of all or part of the Funds under clause 24.1 and the Property Trust agrees to suspend provision of the Services at the request of the Department in accordance with this clause 24.

- 24.3 A notice under clause 24.1 or clause 24.2 will contain the reasons for any payment being withheld or reduction of the Services and the steps the Property Trust and Uniting or such other Service Provider as notified to the Department in writing (as the case may be) can take to address those reasons.
- 24.4 The Department will pay the withheld amount, subject to any suspension of the Services under clause 24.1 or clause 24.2, once the Property Trust and Uniting or such other Service Provider as notified to the Department in writing (as the case may be) have addressed the reasons contained in the notice to the reasonable satisfaction of the Department.
- 24.5 Nothing in this clause 24 prevents a party from exercising any other rights under this Agreement.

25 Reducing Funding

- 25.1 Where:

- (1) the Department is required to cease the funding to the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) because of changes to the State budget or any guidelines or policies of the State or Commonwealth government;
- (2) the Department determines that the needs of the users of the Services no longer justifies the Funding or that other persons are in greater need than the users of the Services; or
- (3) Organisation Service Centres are closed, resulting in a reduction to the Standing Charges and Outcome Payments,

even though the Property Trust is not in default, the Department may reduce the Funding at any time, subject to any Law, by giving the Property Trust reasonable written notice.

- 25.2 Where the Funding is reduced under this clause 25, then the Department must review the scope of the Services with the Property Trust.
- 25.3 If the Department reduces the Funding under this clause 25, the Department is only liable for:
- (1) instalments of the Funding that were due to the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) up to the date of reduction; and
 - (2) reasonable costs the Property Trust incurs as a direct result of the reduction, subject to the Department's reasonable approval.
- 25.4 If the Department reduces the Funding under this clause 25, then the Property Trust must (and must procure that Uniting or such other Service Provider as notified to the Department in writing (as the case may be)):
- (1) immediately stop carrying out its obligations in relation to any Services, that may have been removed by the reduction;
 - (2) immediately do everything it can to mitigate and lessen all losses, costs and expenses that it may suffer in relation to the reduction;
 - (3) repay to the Department any part of the Funding that the Department requires to be repaid as a result of the reduction, which will be a debt due and owing to the Department;

- (4) provide written evidence to satisfy the Department of the amounts claimed as reasonable costs; and
 - (5) comply with any reasonable request made by the Department in relation to the reduction of the Funding.
- 25.5 The Department is not liable to pay the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) compensation for any loss of profit or benefits that would have been received had the reduction not occurred.
- 25.6 This clause does not limit any other rights or remedies that may be available to the Department.

26 Repayment of Funds

Notice concerning Funds

26.1 If at any time the Department forms the reasonable opinion:

- (1) that the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) has not used, spent or Committed the Funds in accordance with this Agreement;
- (2) that the Property Trust has failed to perform any of the Property Trust's obligations under this Agreement or has otherwise not complied with this Agreement; or
- (3) there is an overpayment or incorrect payment of the Funds,

the Department may by giving notice in writing to the Property Trust:

[REDACTED]

[REDACTED]

[REDACTED]

Property Trust's rights and obligations

- 26.2 The Property Trust will comply, and must procure that Uniting or such other Service Provider as notified to the Department in writing (as the case may be) complies, with a notice that the Department gives under clause 26.1.
- 26.3 The Property Trust may make a written request to the Department to reallocate or retain Funds specified in a notice under clause 26.1. If the Department agrees to such a request, the Property Trust agrees, and will procure Uniting or such other Service Provider as notified to the Department in writing (as the case may be) to agree, to use the Funds in accordance with any terms and conditions specified by the Department.

Department's rights and obligations

- 26.4 If the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) fails to make payment required by a notice under clause 26.1, the Property Trust must, and must procure that Uniting or such other Service Provider as

notified to the Department in writing (as the case may be) [REDACTED]
[REDACTED]

27 Termination by Department for convenience

- 27.1 The Department may terminate this Agreement in whole or in part at its convenience and without cause at any time by giving at least 20 Business Days' notice in writing and paying to the Property Trust, Uniting or such other Service Provider as notified to the Department in writing (as the case may be) the termination payment detailed in the Payment Schedule.
- 27.2 Any payment made under clause 27.1 will be in total satisfaction of any liability of the Department in respect of this Agreement and its termination. Upon request by the Department, the Property Trust must, and must procure that Uniting or such other Service Provider as notified to the Department in writing (as the case may be), execute a deed of release on terms acceptable to the Department.
- 27.3 The Property Trust must, and must procure that Uniting or such other Service Provider as notified to the Department in writing (as the case may be), do everything reasonably possible to prevent or otherwise mitigate any losses resulting to the Property Trust and Uniting or such other Service Provider as notified to the Department in writing (as the case may be) from termination by the Department under clause 27.1.

28 Termination by Department for cause and on other grounds

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

(13) [REDACTED]

Other grounds

28.2 The Department may terminate this Agreement in whole or in part if the Department is otherwise entitled under a specific provision of this Agreement to terminate this Agreement, provided that the Department complies with any conditions or restrictions applying to such a provision.

29 Termination by the Property Trust

29.1 The Property Trust may terminate this Agreement in whole or in part at any time with immediate effect by giving notice to the Department if:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30 Consequences of termination

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31 Transition-Out

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Part I – Administration of Newpin

32 Authorised Representatives

- 32.1 The Authorised Representatives are the primary contact for their respective parties, with authority to deal with all matters relating the administration of this Agreement on behalf of the relevant party and otherwise as described in this Agreement.

33 Newpin oversight framework

- 33.1 A Newpin oversight framework will be established in accordance with the Operations Manual.

34 Records, data and other information

Maintenance of records

- 34.1 The Property Trust must during the Term:
- (1) prepare and maintain up to date, comprehensive, true and accurate computerised Records of, and supporting documentation for, the Services and the delivery of Outcomes and other services provided under and/or in relation to this Agreement, in accordance with generally accepted industry standards, accounting principles and applicable Law; and
 - (2) unless otherwise required by the Department, retain the Records for the period of 7 years after the expiry or earlier termination of this Agreement except where the Records relate to, or are in connection with, a Family, unborn Child or CYP, in which

case the Property Trust must retain the Records for the period of 7 years from when the youngest CYP of the Family turns 18 years of age (**Additional Period**).

34.2 Without limiting clause 34.1:

- (1) the Property Trust must maintain complete and accurate Records and supporting documentation in relation to all matters set out in the Operations Manual; and
- (2) the Department may, from time to time and in consultation with the Property Trust, approve protocols for the maintenance and management of Records, with which, once approved, the Property Trust will comply.

Access to records

34.3 The Department will be entitled during the Term and the Additional Period to:

- (1) have access to all such Records at any time upon giving the Property Trust reasonable notice;
- (2) take extracts, make and/or obtain copies of any such Records as the Department considers appropriate; and
- (3) the provision of all reasonable assistance by the Property Trust and its Personnel to enable the Department to exercise its rights under this clause 34.3.

Information, reports and evidence for court proceedings

34.4 In addition to the information which the Property Trust may be required to provide to the Department pursuant to the Act, the Property Trust must also provide to the Department reports, information and evidence for court proceedings in accordance with any requirements and timeframes specified in the Operations Manual.

State Records

34.5 Without limiting this clause 34 and with effect from the Commencement Date and thereafter throughout the Term the Property Trust must:

- (1) make arrangements for the safe keeping and proper preservation of State Records;
- (2) establish, maintain and implement a records management program for the State Records;
- (3) provide the Department with any State Record it requires for the purposes of the State Records Act upon reasonable notice to the Property Trust;
- (4) ensure that all State Records are in a format reasonably accessible to, and able to be read and interpreted by, the Department;
- (5) co-operate with and assist the Department, including by providing access to the State Records Authority, in respect of any request received by the Department from the State Records Authority pursuant to the State Records Act;
- (6) comply with all reasonable requests and directions made by the Department to enable the Department to comply with its obligations pursuant to the State Records Act;
- (7) comply with any guidelines for administrative practice issued by the State Records Authority; and

- (8) at expiry, or earlier termination, of the Term, deliver all State Records to the Department.
- 34.6 Notwithstanding the Property Trust's obligations under the State Records Act, the Property Trust must not:
- (1) arrange for, nor effect, a transfer of custody or ownership of any State Records without the prior written consent of the Department; or
 - (2) remove or destroy any State Record except in accordance with arrangements agreed to by the State.

Government Information (Public Access) Act 2009 (NSW)

- 34.7 Without limiting clause 34.3 and for the purposes of the *Government Information (Public Access) Act 2009 (NSW)*, the Property Trust must provide the Department with immediate access to the following information contained in Records held by the Property Trust:
- (1) information that relates directly to the performance of the Services and the delivery of the Outcomes and any other services provided to the Department by the Property Trust pursuant to this Agreement;
 - (2) information collected by the Property Trust from members of the public to whom it provides, or offers to provide, the Services pursuant to this Agreement; and
 - (3) information received by the Property Trust from the Department to enable it to provide the Services and deliver the Outcomes and any other services pursuant to this Agreement.
- 34.8 For the purposes of clause 34.7, information does not include:
- (1) information that discloses or would tend to disclose the Property Trust's financing arrangements, financial modelling, cost structure or profit margin;
 - (2) information that the Property Trust is prohibited from disclosing to the Department by provision made by or under any Law, whether of any State or Territory, or of the Commonwealth; or
 - (3) information that, if disclosed to the Department, could reasonably be expected to place the Property Trust at a substantial commercial disadvantage in relation to the Department, whether at present or in the future.
- 34.9 The Property Trust will provide copies of any of the Records, and Material referred to in this clause 34, as requested by the Department, at the Property Trust's own cost.

Reports and other information

- 34.10 Without limiting this clause 34, the Property Trust must promptly provide the Department with such information and reports as the Department may from time to time reasonably require in relation to this Agreement, the Services and the Property Trust's financial position.

35 Privacy

- 35.1 During the Term, the Property Trust must comply, and must ensure that its Service Providers and Personnel comply, with the Privacy Legislation to the extent that the Property Trust is required to do so at Law.

35.2 Without limiting its obligations under clause 35.1, the Property Trust agrees:

- (1) not to do any act, or engage in any practice, that would breach a Privacy Principle, or which if done or engaged in by the Department, would be a breach of a Privacy Principle;
- (2) to comply with, carry out and discharge to the maximum extent possible, the obligations contained in the Privacy Principles as if it were the Department carrying out and discharging those obligations and to comply with all reasonable directions of the Department in relation to these obligations;
- (3) to notify the Department immediately upon becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this clause 35, whether by the Property Trust or its Personnel;
- (4) to ensure that any Personnel of the Property Trust who is required to deal with Personal Information and/or Health Information for the purposes of this Agreement is made aware of the obligations in this clause 35; and
- (5) to ensure that any other agreement with a subcontractor, who may be fulfilling a requirement in relation to this Agreement which includes the handling of Personal Information and/or Health Information, contains the same or equivalent obligations as this clause 35 which are enforceable by the Property Trust against the subcontractor,.

35.3 Without limiting this clause 35, the Property Trust must also ensure that:

- (1) information disclosed under this Agreement will be treated by the Property Trust as confidential;
- (2) no publication that uses or is based on information disclosed under this Agreement will enable the identity of an affected person to be ascertained; and
- (3) any personal information disclosed in the provision of the Services will be used or dealt with in accordance with the Privacy Principles, as those principles would apply if the Property Trust were a public sector Agency.

35.4 This clause 35 will survive termination or expiry of this Agreement for a period of 7 years.

36 Confidentiality

Obligation to keep confidential

36.1 The Property Trust and the Department must:

- (1) keep confidential:
 - (a) the contents of this Agreement, information relating to negotiations concerning this Agreement and/or the commercial arrangements between the parties;
 - (b) information regarding CYPs and their Families;
 - (c) reports, files, professional advice, information and data required to be prepared or maintained under or for the purposes of this Agreement;
 - (d) any information which is marked or identified as confidential by either party; and
 - (e) any information which is required to be kept confidential at Law; and

- (2) use all reasonable endeavours to prevent their Personnel from making any disclosure to any person of any such matters.

Permitted disclosure

36.2 Clause 36.1 will not apply to:

- (1) any disclosure of any information the disclosure of which is agreed between the Property Trust and the Department, in accordance with that agreement;
- (2) any disclosure of information that is reasonably required by persons engaged in the performance of the obligations of a party under this Agreement;
- (3) any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of clause 36.1;
- (4) any disclosure which is required by any Law (including any order of a court of competent jurisdiction);
- (5) any disclosure of information which is already lawfully in the possession of the receiving party, prior to the disclosure by the disclosing party;
- (6) any disclosure by the Department of any information or document relating to this Agreement to any department, office or Agency of the government of New South Wales including Cabinet, any Minister or member of a Minister's staff;
- (7) any disclosure of information that is reasonably required by a person in order to exercise or enjoy the rights under any licence granted under clause 37; and
- (8) subject to compliance with Privacy Legislation and provision to the Department of copies of all Material supplied, any disclosure of Materials developed by the Property Trust in its Newpin programs to Family Action, a UK charity and owner of intellectual property in the Newpin logo, solely for the purpose of sharing with Family Action the lessons learnt from use of that Material in delivery of the Outcomes.

Disclosure subject to confidentiality

36.3 Where disclosure is permitted under clause 36.2, other than clauses 36.2(3), (4), (5) and (6), the party making the disclosure must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this Agreement.

No exploitation of information

36.4 The Property Trust must not make use of this Agreement or any information issued or provided by or on behalf of the Department in connection with this Agreement otherwise than for the purposes of this Agreement, except with the prior written consent of the Department.

Return of certain information

36.5 Without limiting clause 30, on or before the expiration or earlier termination of the Term, the Property Trust must ensure that all Records in the Property Trust's possession, custody or control which contains information relating to any CYP and their respective Family, including the documents in the possession, custody or control of any Service Provider, are delivered up to the Department.

Property Trust's confidentiality obligations to clients

36.6 Without limiting this clause 36, both the Department and the Property Trust will ensure the rights to confidentiality of any CYP and their respective Family and staff are protected in

36.7 The Property Trust acknowledges that it is subject to section 76 of the *Community Welfare Act 1987* (NSW) and as a result, a breach of confidentiality under this Agreement may be an offence under that section.

Ownership of Intellectual Property Rights

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (1) obtain all necessary consents to any act or omission that might otherwise infringe a person's Moral Rights under or in connection with the Agreement, including acts or omissions that occurred before, on or after the Commencement Date; and
- (2) provide the Department with written copies of the consents referred to in clause 37.5(1) on request and immediately notify the Department if they cannot obtain any such consent.

38 Dispute resolution

Dispute resolution procedure

38.1 Subject to clause 38.12, the parties must attempt to resolve any dispute in relation to this Agreement in accordance with this clause 38 before resorting to court proceedings or other external dispute resolution mechanisms except as specified in this clause.

[REDACTED]

[REDACTED]

[REDACTED]

Escalation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Continued performance of Agreement

38.13 Notwithstanding the existence of a dispute, unless and to the extent otherwise agreed, each party must continue to perform this Agreement.

39 Notices

39.1 A notice under this Agreement must be:

- (1) in writing, directed to the Authorised Representative of the other party; and
- (2) forwarded to the postal address or email address of that Authorised Representative or the address last notified by the intended recipient to the sender.

39.2 A notice under this Agreement will be deemed to be served:

- (1) in the case of delivery in person – when delivered to the recipient's address for service and a signature received as evidence of delivery;
- (2) in the case of delivery by post – within 3 Business Days of posting; or
- (3) in the case of delivery by email – when sent to the recipient's email address for service, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

39.3 Notwithstanding the preceding clause, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

40 General

No fetter

[REDACTED]

Non-waiver

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Relationship

- 40.14 The relationship between the parties is one of principal and independent contractor. None of the parties has the power, right or authority to bind the other or to assume or create any obligation on behalf of the other or in their name, other than as expressly provided in this Agreement. Neither party may represent that it has any such right, power or authority.
- 40.15 Nothing in this Agreement is to be construed as constituting the parties as partners or as creating the relationship between them of employer and employee or principal and agency, other than as expressly provided in this Agreement.

Rights cumulative

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Proportionate liability

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Legal advice and costs

- 40.24 Except as otherwise agreed in writing each party will bear its own costs and expenses incurred in relation to this Agreement including the negotiation, preparation and execution of this Agreement or any related document.
- 40.25 A party to this Agreement that has an obligation to do anything under this Agreement must perform that obligation at its cost, unless this Agreement expressly provides otherwise.
- 40.26 A party that requests any consent, waiver, amendment, supplement, replacement, novation, assignment or transfer under this Agreement or any related document must pay all costs associated with such consent, waiver, amendments, supplement, replacement, novation, assignment or transfer unless this Agreement expressly provides otherwise.

Counterparts

- 40.27 This Agreement may be executed by counterparts by the respective parties, which together will constitute one agreement.

Applicable law

- 40.28 This Agreement is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.

Submission to jurisdiction

- 40.29 Each party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.

Schedule 1 – Agreement Details

Item 1 Department's Authorised Representative

Name: [REDACTED]
Position: Manager
Address: Level 4, 2 Cavill Avenue, Ashfield, NSW 2131
Tel: [REDACTED]
Email:

Item 2 Property Trust's Authorised Representative

Name: [REDACTED]
Position: Head of Newpin at Uniting
Address: Parramatta: Cumbræ, 7 Blackwood Place, North Parramatta, NSW 2151
Tel: [REDACTED]
[REDACTED]
Email:

Item 3 Insurance

1. The Property Trust must hold and maintain and must ensure that all Service Providers are beneficiaries under or otherwise hold and maintain, the following insurance during the Term:
 - (a) broad form public liability policy of insurance which includes:
 - (i) occurrence based public liability insurance of the value of at least \$20 million in respect of each claim; and
 - (ii) products liability insurance for an amount of at least \$20 million for the total aggregate liability for all claims arising out of the Property Trust's provision of the Services and/or delivery of the Outcomes for the period of cover;
 - (b) workers' compensation insurance in accordance with applicable legislation for all the Property Trust's employees;
 - (c) professional indemnity insurance for an amount of at least \$5 million. The professional indemnity insurance must:
 - (i) cover the Property Trust's liability to the Department in respect of the Services and any products supplied ancillary to the Services; and
 - (ii) be maintained by the Property Trust until the expiry or termination of this Agreement and for a period of not less than 6 years after the expiry or termination of this Agreement;
 - (d) all risk property insurance for all of the Property Trust's equipment and materials used in the provision of the Services and/or delivery of the Outcomes;
 - (e) business continuity insurance for an appropriate amount to cover the Property Trust for business interruption in respect of the Services and delivery of the Outcomes;
 - (f) directors' and officers' liability insurance in relation to all the Property Trust's directors and officers involved in the Property Trust's performance of this Agreement from time to time;

- (g) personal accident (volunteers) insurance insuring the Property Trust's (or any other approved Service Provider's) volunteers for personal injury risk arising during voluntary duties in connection with this Agreement; and
 - (h) such other insurance policies as are reasonably required by the Department from time to time in respect of the Services and/or delivery of the Outcomes.
2. All insurance policies required under this Item 3, apart from workers compensation and professional indemnity insurance must:
- (a) note the interest of the Department and any Service Providers subject to the relevant insurer agreeing to note such interests;
 - (b) contain a cross-liability clause in which the insurer agrees to waive any rights of subrogation or action that it may have to acquire against all or any of the persons comprising the insured or otherwise entitled to the benefit of the policy; and
 - (c) require the insurer to notify all named insured of any variation or cancellation of the policy provided that a notice of claim given to the insurer by the Department, the Property Trust or any Service Provider will be accepted by the insurer as a notice of claim given by all of the insured;
 - (d) cover the Property Trust's liability to the Department in respect of the Services and/or delivery of the Outcomes (excluding insurance for workers' compensation and risks property); and
 - (e) not exclude liability assumed by the Property Trust under this Agreement.

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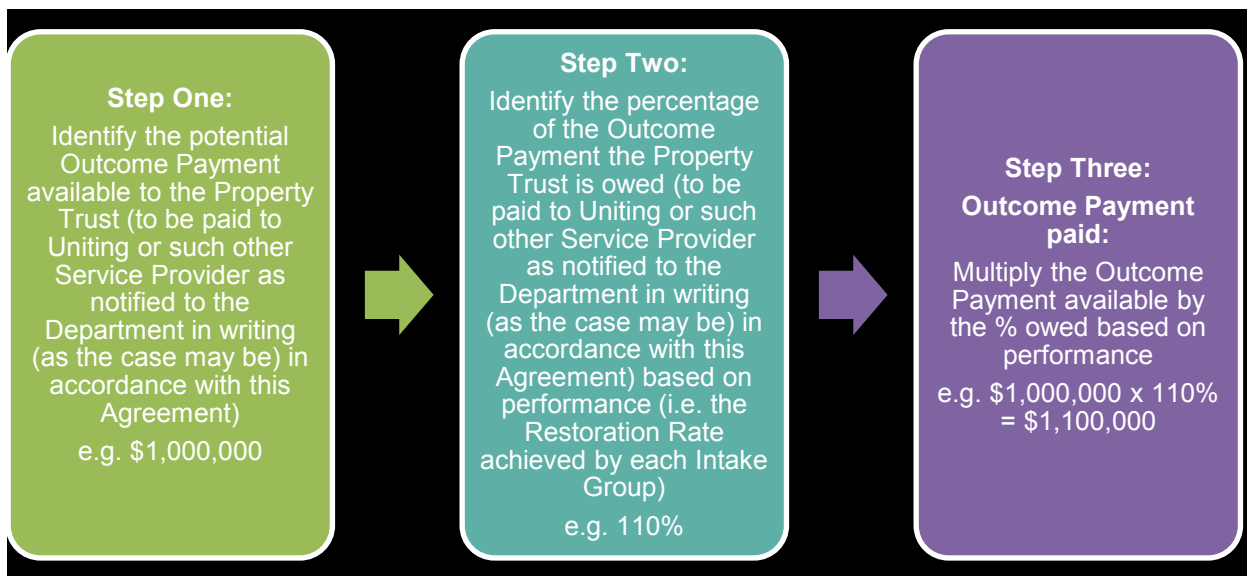
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Outcome payment		Measurement Date		Payment Date*	



Outcome payment	Relevant Intake Group	Operating expense period	Total Opex for the period	Outcome Payment (i.e. 23.1% of Opex across the relevant period)* (E)

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Annexure A – Operations Manual