

Conformed copy as at 30 June 2015 – includes variations made by Deeds of Variation 1 (April 2014- definitions of "Cohort 1, Cohort 2 and Cohort 3) and 2 (June 2015 – new Payment Schedule).



**Minister for Family and Community Services for
and on behalf of the Crown in right of the State of
New South Wales**

("Department")

and

**The Uniting Church in Australia Property Trust
(NSW) as nominee and agent for and on behalf of
UnitingCare NSW.ACT ABN 78 722 539 923**

("Organisation")

and

**The Uniting Church in Australia Property Trust
(NSW) ABN 77 005 284 605 as trustee**

("Property Trust")

**DEED OF IMPLEMENTATION AGREEMENT FOR
NEWPIN SOCIAL BENEFIT BOND PILOT**

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Implementation Agreement

THIS DEED OF AGREEMENT is made on _____ of _____ 2013.

Parties

THE MINISTER FOR FAMILY AND COMMUNITY SERVICES for and on behalf of the State of New South Wales, acting through the Community Services Division, Department of Family and Community Services, pursuant to section 6 of the Community Welfare Act 1987 ("the **Department**")

AND THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (NSW) as nominee and agent for and on behalf of UnitingCare NSW.ACT, ABN 78 722 539 923 ("the **Organisation**")

AND THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (NSW) ABN 77 005 284 605 in its capacity as trustee of assets held on trust for The Uniting Church in Australia including assets that are managed by and under the control of UnitingCare NSW.ACT ("the **Property Trust**")

Recitals

- A. The NSW Government wishes to undertake a social benefit bond (SBB) trial in the areas of out-of-home care and criminal recidivism in this State. A SBB, also known as a social impact bond, is a relatively new financial instrument that pays a return to private investors based on the achievement of agreed social outcomes. Under a SBB, an investor provides upfront funds to a partner (non-government organisation (NGO) or intermediary) to provide services to government that will, if successful, reduce future costs to government through improved social outcomes in the relevant area. Part of the savings to government is used to repay this investment and provide a reward payment to the NGO or intermediary commensurate with the outcomes achieved.
- B. The NSW Government, through NSW Treasury, issued a Request for Proposal on 30 September 2011 (RFP) to identify preferred proponents with whom to develop a number of SBB pilots in the areas of out-of-home care and recidivism.
- C. The Organisation, amongst others, lodged a proposal through UnitingCare Burnside in response to the RFP and was identified as a preferred proponent to develop a SBB pilot in the area of out-of-home care.
- D. The Department and the Organisation have agreed, following collaborative work and negotiations during a joint development phase in 2012, to undertake an SBB pilot in the area of out-of-home care. This Agreement will be a contract for outcomes supporting the SBB pilot.

- E. The Property Trust is constituted a statutory corporation under s. 12 of the Uniting Church in Australia Act 1977 (NSW) and holds the assets (in and of NSW) of UnitingCare NSW.ACT.
- F. In view of the unincorporated status of UnitingCare NSW.ACT and the fact that its assets are held by the Property Trust on trust for The Uniting Church in Australia, the Department has requested, and the Property Trust has agreed to provide, a warranty, indemnity and undertaking from the Property Trust in its capacity as trustee of assets held on trust for The Uniting Church in Australia including assets that are managed by and under the control of UnitingCare NSW.ACT as provided in clauses 6.3 and 6.4 of this Agreement.

Operative provisions

PART A – INTERPRETATION AND PROJECT 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).

"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 Look-up Table 6 Agreed Closure Costs Look-up Table: capped amount per Organisation Service Centre to be closed in Part C of Schedule 3 (Payment Schedule) as the Organisation 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.

"Agreed Opening Costs" means such amount up to the maximum amount set out in Look-up Table 8 Agreed Opening Costs Look-up Table: capped amount per Organisation Service Centre to be opened in Part E of Schedule 3 (Payment Schedule) as the Organisation is able to reasonably satisfy the Department it has incurred, or will incur, as a direct result of the opening of an Organisation Service Centre.

"Agreement" means this deed of 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.

"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 the Project.

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

"Bond" means the financial instrument and/or agreement issued to or agreed with an investor(s) by a person (the SBB Borrower) the proceeds of which may be applied by the SBB Borrower as loan advance(s) to the Organisation under the Loan Agreement for the Organisation's performance of its obligations under this Agreement and governing the rights of bondholders as lenders to the Bond issuer.

"Case Management" means the process whereby an individual and/or a Family's needs are identified and services are co-ordinated and managed in a systematic way. The elements of case management include assessment, case planning, implementation (service delivery), monitoring and review.

"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.

"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.

"Cohort 1" comprises Families referred to the Organisation by the Department, Existing Families and, with the written approval of the Department, Families referred by other Agencies:

- (a) with one or more Children aged less than 6 years who at the time of referral to the Organisation have been in OOHC for at least 3 Months; and includes
- (b) any sibling of such a Child or Children who at the time of referral is:
 - (i) unborn and is/are likely to enter OOHC; and/or
 - (ii) aged less than 18 years and who at the time of referral is/are also in OOHC;

but does not include any Child or Young Person of the Family in Intensive Foster Care or for whom the Department considers restoration is not appropriate, unless otherwise agreed between the Department and the Organisation in writing.

"Cohort 2" comprises Families with:

- (a) an unborn Child or Children; and/or
- (b) one or more Child aged less than 6 years;

who at the time of referral to the Organisation are identified as at risk and for whom a safety and risk assessment is commenced by the Department or a Supervision Order is in place and the unborn Child or Children and/or Child or Children have been assessed by the Department as 'safe with plan'.

"Cohort 3" comprises Families with at least one Child aged less than 6 years at the time of referral to the Organisation who is not in OOHC and who do not meet the eligibility criteria for Cohort 1 or Cohort 2 but who have otherwise been referred to the Organisation.

"Commencement Date" means the date on which this Agreement is last executed by the parties.

"Conditions Precedent" means a condition precedent specified in clause 3.1.

"Confidential Information" means the information referred to in clause 33.1.

"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.

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

"Counterfactual" is the alternative scenario that assumes no provision of the Services by the Organisation used to measure performance of the Organisation in relation to Cohort 1.

"Counterfactual Review Date" means the first day after expiry of the Initial Period.

"Cut Off Date" means the date by which a Condition Precedent must either be satisfied by the Organisation or waived by the Department, as specified in the applicable paragraph of clause 3.1.

"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 Organisation under this Agreement) and which the Organisation in performing this Agreement may use.

"Director-General" means the Director General for the Department of Family and Community Services or his or her delegate or nominee from time to time.

"Existing Contract Material" means any Material which exists at the Commencement Date and which is incorporated with the New Contract Material.

"Existing Family" means a Family that meets the eligibility criteria for Cohort 1 and was referred to the Organisation prior to satisfaction of the Conditions Precedent set out in clause 3.1(c) and which the Department has approved under that clause.

"Family" includes siblings, birth parents, grandparents, extended family and other persons significant to the Child or Young Person.

"Fathers' Centre" means an Organisation Service Centre identified by the Organisation and approved by the Department as a fathers' centre and set out in the Operations Manual from time to time.

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

"Force Majeure Event" means:

- (a) 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;

- (b) disruption of facilities or systems caused by the impact of an aircraft, vessel or vehicle;
- (c) strikes or other industrial actions, other than strikes or other industrial action primarily involving some or all of the party's employees;
- (d) war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or disorder, rebellion, illegal acts or epidemic; or
- (e) embargo, power shortage or water shortage;

the consequence of which:

- (f) is beyond the control of and was not caused or contributed to by the party which is seeking to rely on the event;
- (g) could not have been reasonably prevented or remedied by expenditure by the party which is seeking to rely on the event; and
- (h) 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.

"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).

"Independent Certifier" means an independent body, acceptable to both parties, that is suitably qualified and experienced to undertake the certification of payments and performance as required under this Agreement, appointed in accordance with clause 21.

"Initial Period" means the period from the Referral Date to the third anniversary of the Referral Date or such other period which is no less than three years from the Referral Date, as may be agreed between the parties in writing.

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

- (a) application is made to a court for an order, or an order is made, that it be wound up, 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;
- (b) a liquidator or provisional liquidator is appointed and the appointment is not terminated within 21 days of it being made;
- (c) 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;

- (d) 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;
- (e) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) 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;
- (g) 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;
- (h) 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 (a) – (g) inclusive;
- (i) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (j) a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;
- (k) a writ of execution is levied against it or a material part of its property which is not dismissed within 21 days;
- (l) 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
- (m) anything that occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

"Intellectual Property Rights" means all intellectual and industrial property rights in Australia or throughout the world created before or after the Commencement Date including any rights in or relating to any invention, discovery or new processes (whether patentable or not), patents, know-how, copyright, design, semi-conductor or circuit layouts rights, trade mark, trade, business or company names or other proprietary rights and any right to registrations of such rights.

"Intensive Foster Care" means the form of foster care specifically designed to meet the needs of a Child or Young Person who has been assessed as being a level 4 on the child assessment tool currently used by the Department or such similar tool as the Department may adopt from time to time. Intensive foster care is for Children and Young Persons assessed as having complex and high support needs, or for particular groups of Children and/or Young Persons (like siblings) that together present a more complex caring role, or for Children and Young People at critical phases in their development.

"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.

"Loan Agreement" means the loan agreement between the Organisation and the SBB Borrower issuing entity entered into for the purposes of the Organisation having access to funds to enable it to perform its obligations under this Agreement.

"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.

"Live Matched Control Group" means the live matched control group in relation to Cohort 1 derived and managed in accordance with the requirements and methodology set out in the Operations Manual.

"Management Agreement" means any management agreement to be entered into between the Bond issuer and a third party manager engaged to manage the SBB transaction (including investor reporting, investor distribution and transaction cash flows).

"Material" includes a Record and for the avoidance of doubt also includes know-how, skills, methodologies, tools, equipment and software.

"Minister" means the Minister for Family and Community Services or his or her delegate or nominee from time to time.

"Month" means a calendar month.

"Moral Rights" means the rights of integrity and rights of attribution of authorship and performership and other rights of a similar nature which now exists or which may exist in the future, including moral rights under Part IX of the Copyright Act 1968 (Cth) and performers protection under Part XIA of the Copyright Act 1968 (Cth).

"Mothers' Centre" means an Organisation Service Centre identified by the Organisation and approved by the Department as a mothers' centre and set out in the Operations Manual from time to time.

"New Contract Material" means any Material created, written or otherwise brought into existence by or on behalf of the Organisation in the course of performing this Agreement in which subsists newly created Intellectual Property Rights but excludes Service Delivery Material.

"Operations Manual" means the operations manual referred to in clause 4 (Operations Manual) as amended from time to time in accordance with this Agreement.

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

"Organisation Service Centre" means a centre which is established at the Referral Date or to be established thereafter and/or operated and maintained by the Organisation for the purposes of delivering the Outcomes under this Agreement. An Organisation Service Centre will, in accordance with this Agreement, be identified as either a Mothers' Centre or a Fathers' Centre in the Operations Manual.

"Outcome" means in relation to:

- (a) each Child or Young Person in a Cohort 1 Family: the Restoration of the Child or Young Person;
- (b) each Child (including an unborn Child once born) or Young Person in a Cohort 2 Family: that the Child or Young Person has not entered OOHC during the period of not less than 12 Months from the date on which the Organisation accepted the referral of the Family; and
- (c) each Child or Young Person in a Cohort 3 Family: that the Child or Young Person has not entered OOHC from the date on which the Organisation accepted the referral to the date 12 Months after the date of referral.

"Outcome Payments" means the payments referred to in clause 21.1(b) and specified in Schedule 3 (Payment Schedule).

"Out-of-Home Care" or "OOHC" means statutory out-of-home care as defined for the purposes of the Act.

"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, contractors and Sub-contractors of, respectively, that party.

"Poor Performance" means, in connection with the termination of this Agreement that the Agreement, or in connection with the closure of an Organisation Service Centre the performance of that centre, has failed over a significant period to deliver an adequate financial return to the Organisation, notwithstanding that the Agreement is being performed by both parties in accordance with its terms and, to avoid doubt, excludes any poor performance referable to a Force Majeure Event, lack of referrals or any breach of this Agreement.

"Prescribed Rate" means the applicable total rate of interest as determined under s. 21 of the Taxation Administration Act 1996 (NSW) and published quarterly at www.osr.nsw.gov.au/taxes/other/taa/rates/ (or in any replacement publication/at any replacement address as may be notified from time to time). For example, the Prescribed Rate of interest for the period 11/1/12 - 31/3/13 is 11.24%.

"Privacy Legislation" means:

- (a) the Privacy and Personal Information Protection Act 1998 (NSW);
- (b) the Health Records and Information Privacy Act 2002 (NSW);
- (c) the Privacy Act 1988 (Cth);
- (d) any legislation (to the extent that such legislation applies to the Department or the Organisation, or any other recipient of Personal Information and/or Health Information) from time to time in force in any:
 - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia);

- (ii) non-Australian jurisdiction (to the extent that the Department or the Organisation 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
- (e) 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:

- (a) the information and protection principles contained in sections 8 to 19 of the Privacy and Personal Information Protection Act 1998 (NSW); and
- (b) 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.

"Project" means the social benefit bond trial in the area of Out-of-Home Care to be undertaken by the parties on the terms and conditions of this Agreement.

"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 Date" subject to clause 3 (Conditions Precedent), means such date agreed by the parties in writing following satisfaction and/or waiver of the Conditions Precedent in accordance with clause 3.

"Restoration" in relation to a Child or Young Person, means the exit of the Child or Young Person from OOHC. The date of that exit shall be the date of exit as recorded in the Department's client management system which entry shall be made as soon as practicable after the Child or Young Person leaves OOHC. If the Department's client management system does not record a date of exit from OOHC for a Child or Young Person in circumstances where the Organisation believes the Child or Young Person has exited OOHC or if the Organisation disputes the date of exit so entered, the Organisation 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.

"Service Delivery Material" means any Material created, written or otherwise brought into existence by or on behalf of the Organisation in the course of performing this Agreement which relates directly to the methodologies developed by the Organisation in relation to the delivery of the Outcomes in which subsists newly created Intellectual Property Rights.

"Services" means:

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

- (b) 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 including any services related to transition-in; and
- (c) Transition-Out Services.

"Standing Charge" means the amount referred to in clause 21.1(a) and specified in Schedule 3 (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.

"Sub-contractor" means a person or organisation engaged by the Organisation 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 Organisation.

"Supervision Order" means an order made under section 76 of the Act as may be amended or replaced from time to time.

"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, expense or other statutory charge in respect of the supplies contemplated under this Agreement. It also includes taxes which are replacement taxes for the taxes referred to in this definition.

"Term" means the duration of this Agreement as specified in clause 10 (Term of Agreement) or until the date on which this Agreement is terminated, whichever occurs first.

"Transition-Out Period" has the meaning given to it by clause 28.

"Transition-Out Plan" means the plan developed in accordance with clause 28.1.

"Transition-Out Services" means the services to be provided by the Organisation in accordance with clause 28.7.

"UCB" means UnitingCare Burnside, forming part of UCCYPF and a registered business name of UnitingCare NSW.ACT.

"UCCYPF" means UnitingCare Children, Young People and Families, a service group and business segment of UnitingCare NSW.ACT.

"UnitingCare NSW.ACT" means an unincorporated body of The Uniting Church in Australia, responsible for its social responsibility and community service programs, comprising the members of the board of UnitingCare NSW.ACT.

"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:

- (a) **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.
- (b) **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, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.
- (c) **Time Limits.** Where any time limit pursuant to this Agreement falls on a non-Business Day then that time limit shall be deemed to have expired on the next Business Day.
- (d) **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 shall unless the context otherwise requires have a corresponding meaning.
- (e) **Singular and gender forms.** The singular includes the plural and vice versa and words importing gender include the other gender.
- (f) **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.
- (g) **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.
- (h) **Headings.** The headings and index in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- (i) **Reasonableness.** Where the Department is required to act reasonably in the performance of this Agreement that shall 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.
- (j) **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.
- (k) **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.
- (l) **References to persons.** Persons will be taken to include any natural or legal person.
- (m) **References to currency.** All references to currency or dollars are references to Australian dollars.
- (n) **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:

- (i) honestly;
 - (ii) reasonably, having regard to the terms of this Agreement; and
 - (iii) co-operatively, by doing everything properly and reasonably within the control of that party to perform its or their obligations under this Agreement.
- (o) **References to Organisation.** A reference to the Organisation and/or its Personnel, where the context so admits, includes, respectively, UCCYPF, UCB and/or their Personnel.

Administration of this Agreement

1.3 This Agreement will be administered as follows:

- (a) The Property Trust enters into and executes this Agreement as nominee and agent for the Organisation except in respect of clauses 6.3 and 6.4, in respect of which it executes as principal in its capacity as trustee of the assets of The Uniting Church in Australia including the assets managed by and under the control of UnitingCare NSW.ACT. The Organisation has authorised and directed the Property Trust to enter this Agreement (except clauses 6.3 and 6.4) as its nominee and agent. A reference in this Agreement to the Organisation's rights or obligations are those of UnitingCare NSW.ACT and any undertaking given by the Organisation binds UnitingCare NSW.ACT to perform that undertaking.
- (b) The Organisation agrees not to remove or replace the Property Trust as the nominee and agent of the Organisation without the prior written consent of the Department (consent not to be unreasonably withheld or delayed). If the Department does so consent, then subject to the terms (if any) of such consent, a reference to the Property Trust in this Agreement includes any replacement nominee and agent.
- (c) The Department is entitled to treat any act, matter or thing done by the Property Trust as having been done with the full authority and consent of the Organisation.
- (d) The Organisation 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.
- (e) The Organisation 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 the Organisation 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.
- (f) The Department consents to the Organisation performing some or all of its obligations under or in connection with this Agreement through UCCYPF but on the basis that the Organisation is responsible for all acts or omissions of UCCYPF and/or UCB and nothing in this consent relieves the Organisation from duly and properly performing and discharging all of its obligations. The Department is entitled to treat any act, matter or thing done by the UCCYPF as having been done with the full authority and consent of the Organisation.

Capacity of Property Trust

1.4 The Property Trust executes this Agreement in two capacities:

- (a) as agent and nominee of the Organisation in respect of the whole Agreement except for clauses 6.3 and 6.4; and
- (b) in its capacity as trustee of assets held on trust for The Uniting Church of Australia, but principally with respect to the assets that are managed by and under the control of UnitingCare NSW.ACT, in respect of the warranty, indemnity and undertaking given in clauses 6.3 and 6.4.

1.5 The Property Trust acknowledges and agrees that it has given the warranty, indemnity and undertaking in clauses 6.3 and 6.4 for good consideration from the Department.

Enforcement of this Agreement

1.6 The Department, the Property Trust and Organisation agree that:

- (a) the Department may enforce the warranty, indemnity and undertaking in clauses 6.3 and 6.4 directly against the Property Trust;
- (b) the Property Trust, which is not a party to this Agreement, except in respect of clauses 6.3 and 6.4, may take the benefit of and enforce this Agreement including by way of legal proceedings, in its own name as if it were a party to the whole Agreement; and
- (c) the Department may enforce this Agreement, including by way of legal proceedings, against either or both of the Organisation and the Property Trust as if the Property Trust were a party to the whole Agreement; and
- (d) if the Department elects to enforce this Agreement against the Property Trust, and/or is unable to enforce this Agreement against the Organisation due to its lack of corporate capacity, the Organisation will ensure that the Property Trust has sufficient funds to meet its obligations to the Department under any judgment obtained against the Property Trust.

2. Project Parameters

Objectives

2.1 The Department and the Organisation acknowledge and agree that the parties' intention in entering this Agreement is that:

- (a) this Agreement supports a successful trial of a pilot SBB;
- (b) the Outcomes are achieved to the benefit of the community, investors, the Organisation and the NSW Government; and
- (c) the Services are evaluated to enhance the evidence base and focus on measurement for social programs.

Adherence to Objectives

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 objectives referred to in clause 2.1.

PART B – PRELIMINARY MATTERS

3. Conditions Precedent

Conditions Precedent

- 3.1 Subject to clauses 3.2 and 3.3 the obligations of the Department under this Agreement do not come into force until satisfaction, or waiver by the Department, of the following Conditions Precedent on or before the applicable Cut Off Date:
- (a) receipt by the Department, on or before the date that is 1 Month after the Commencement Date of a legal opinion from lawyers for the Organisation and the Property Trust, confirming:
 - (i) that the Organisation has the legal capacity and authority to enter this Agreement (except clauses 6.3 and 6.4) as principal;
 - (ii) that the Property Trust has the legal capacity and authority to enter clauses 6.3 and 6.4 of this Agreement as principal, in its capacity as trustee of assets held on trust for The Uniting Church in Australia;
 - (iii) that the Agreement is correctly executed by the Property Trust on behalf of the Organisation and, in respect of clauses 6.3 and 6.4, in its own right as trustee;
 - (iv) that the Agreement is legally enforceable against the Organisation and, pursuant to clauses 1.6, 6.3 and 6.4, against the Property Trust; and
 - (v) that the Property Trust is duly authorised by the Organisation to enter this Agreement (except clauses 6.3 and 6.4) on behalf of the Organisation.
 - (b) the parties having agreed and finalised in writing the financial model forming the basis of the payments to be made under this Agreement on or before 1 June 2013;
 - (c) approval by the Department on or before 1 June 2013 of a list, to be submitted by the Organisation, of all Families meeting the criteria for Cohort 1 that were referred to the Organisation prior to the Commencement Date and up to submission of the list to the Department, which the Organisation wishes to include as part of Cohort 1 from the Referral Date;
 - (d) the parties having agreed and finalised on or before 1 June 2013 the Operations Manual in accordance with clause 4 (Operations Manual);
 - (e) appointment by the Organisation, on or before the date that is 6 Months after the Commencement Date, of the Independent Certifier in accordance with clause 21 and receipt by the Department of a copy of the signed agreement between the Organisation and the Independent Certifier;
 - (f) approval by the Department, on or before the date that is 2 Months after the Commencement Date, of the terms of the Bond and all related documents including any security documents in connection with the Bond, information memorandum, prospectus and other marketing information;
 - (g) approval by the Department, on or before the date that is 2 Months after the Commencement Date, of the terms of the Loan Agreement and all related funding documents including any security documents in connection with the Loan Agreement;

- (h) approval by the Department, on or before the date that is 2 Months after the Commencement Date, of the terms of the Management Agreement;
- (i) receipt by the Department, on or before the date that is 3 Months after the Commencement Date, of a certified copy of the Bond and Loan Agreement and related documents that have been approved under clause 3.1(f) and 3.1(g) together with a legal opinion from the lawyers of the Organisation confirming that the Loan Agreement and related funding documents are legal and binding on the parties to those documents;
- (j) receipt by the Department of written confirmation from the Organisation on or before the date that is 6 Months after the Commencement Date that the Bond (in the principal amount of \$7 million) has been fully subscribed; and
- (k) receipt by the Department, on or before the date that is 1 Month after the Commencement Date, of a certificate of authority for the Property Trust to execute this Agreement for and on behalf of the Organisation and in its capacity as trustee of assets held on trust for The Uniting Church in Australia.

Satisfaction or waiver of Conditions Precedent

- 3.2 The Organisation must use all reasonable endeavours to satisfy each of the Conditions Precedent on or before the applicable Cut Off Date. For the purposes of clauses 3.1 (c), (e), (f), (g) and (h) the Organisation must provide to the Department the relevant documents for approval by no later than 1 Month prior to the relevant Cut Off Date.
- 3.3 Each party agrees to act in good faith and provide the other party with reasonable assistance, including reviewing all documentation provided to it in relation to any Condition Precedent, on a timely basis during the period from the Commencement Date until the earlier of:
 - (a) waiver or satisfaction of the Conditions Precedent; or
 - (b) termination of this Agreement pursuant to clause 3.7.
- 3.4 The Organisation must promptly notify the Department in writing if it considers that any Condition Precedent is satisfied or becomes incapable of being satisfied.
- 3.5 Only the Department may waive a Condition Precedent. The Department may in its absolute discretion extend any Cut Off Date for a Condition Precedent (including where the Organisation has requested an extension and the Department is satisfied that there are reasonable grounds for such request) provided that any new Cut Off Date must not extend beyond a date that is 9 Months after the Commencement Date.
- 3.6 Clauses 3.2, 3.3, 3.4 and 3.5 do not impose any obligation on the Department to exercise a discretion, or give any approval, in any way.

Termination for non-fulfilment of Conditions Precedent

- 3.7 If any Condition Precedent is not waived or satisfied on or before the applicable Cut Off Date, the Department may, by giving written notice to the Organisation within 15 Business Days following the relevant Cut Off Date, terminate this Agreement without liability.
- 3.8 If the Department terminates this Agreement under clause 3.7, this Agreement has no further effect and neither party is liable to the other for any loss or damage arising from or in connection with such termination provided that nothing in this clause 3.8 shall affect the right of either party to recover loss or damage suffered in connection with a breach of this Agreement by the other party before such termination.

4. Operations Manual

- 4.1 The parties' will act in good faith to agree the Operations Manual by the Cut Off Date such document to at least cover the matters outlined in Schedule 2 (Operations Manual) and to be consistent with this Agreement.
- 4.2 The parties acknowledge that the Operations Manual is:
- (a) designed to assist them in the day to day operation of this Agreement;
 - (b) 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
 - (c) once agreed in accordance with clause 4.1, the Operations Manual 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.

5. Loan Agreement, Bond and Management Agreement

- 5.1 Once the terms of the Loan Agreement, the Bond, the Management Agreement and any related documents have been approved by the Department under clause 3.1 these documents must not be amended without the prior written consent of the Department, such consent not to be unreasonably withheld or delayed, other than any minor, technical or other immaterial amendments or amendments to correct a mistake or error with the Department to act expeditiously with respect to any request for such consent.

6. Representations and warranties

General warranties

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

Warranties relating to the Services and delivery of Outcomes

- 6.2 The Organisation represents, warrants and undertakes to the Department on a continuing basis, throughout the Term and any Transition-Out Period that:
- (a) it will use all reasonable endeavours to achieve the Outcomes specified under this Agreement;

- (b) 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;
- (c) any Materials supplied in connection with the Services (including all documentation and reports) will be fit for the purpose for which they are supplied;
- (d) it will provide the Services in accordance with all relevant Laws and it will not cause the Minister, the Director-General, or the Department to breach any Laws;
- (e) each of:
 - (i) the Services;
 - (ii) the Organisation's Materials;
 - (iii) any other Materials (including any New Contract Material and Service Delivery Material) created by or on behalf of the Organisation in the course of performing this Agreement;

will not infringe Intellectual Property Rights of any person or where there may be an infringement appropriate prior approval has been obtained from the holder of the Intellectual Property Rights;

- (f) it has, or will obtain prior to the Referral 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;
- (g) no Insolvency Event has occurred and remains current in respect of the Organisation, and there are no circumstances which could give rise to an Insolvency Event in respect of the Organisation; and
- (h) the Organisation has an exclusive IP licence for use of the Newpin logo and Material as exclusive licensee of the Newpin Program 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

- 6.3 (a) The Property Trust warrants to the Department that: (i) it is the trustee of assets held for and on behalf of The Uniting Church in Australia and, in particular, it is the trustee of assets in New South Wales which are managed by and under the control of UnitingCare NSW.ACT in accordance with the Constitution of the Uniting Church in Australia pursuant to the Uniting Church in Australia Act 1977 (NSW) and the by-laws made by the Synod of New South Wales and ACT of the Uniting Church in Australia pursuant to the Constitution of the Uniting Church in Australia; and (ii) it is entitled to be indemnified out of all the assets referred to in clause 6.3(a)(i) to meet any liability under this Agreement.
- (b) In its capacity as trustee for UnitingCare NSW.ACT, the Property Trust undertakes to indemnify the Department, subject to clause 6.3(d), on demand from the assets referred to in clause 6.3(a)(i) in the event that the Department is entitled to recover any moneys from UnitingCare NSW.ACT, to the extent that such moneys are not paid to the Department by UnitingCare NSW.ACT within 60 days of a written demand being made upon UnitingCare NSW.ACT by the Department (and copied to the Trust).

- (c) In clause 6.3(b) "entitled to recover" includes would have been entitled to recover from UnitingCare NSW.ACT if that entity was a corporate body and separate legal entity.
- (d) In the event that the Department seeks to recover any moneys from the Property Trust pursuant to clause 6.3(b) then the Department must:
 - (i) give reasonable notice to the Property Trust of its intended claim by serving a copy of its demand on UnitingCare NSW.ACT upon the Property Trust as soon as practicable (and in any event within 14 days) after service of the demand on UnitingCare NSW.ACT so as to permit the Property Trust to ascertain the nature and basis of the request; and
 - (ii) in the event UnitingCare NSW.ACT fails to fully meet the demand made upon it by the Department within 30 days of its service upon the Organisation, the Department may make written demand for payment of that amount upon the Property Trust and the Property Trust will make payment within 30 days of service of that demand upon the Property Trust.

6.4 The Property Trust and UnitingCare NSW.ACT both jointly and severally undertake to the Department that, in the event the UnitingCare NSW.ACT assets, as stated in the audited accounts of UnitingCare NSW.ACT from time to time, fall below a base value of \$ 55 million then:

- (a) the Property Trust and/or UnitingCare NSW will immediately notify the Department of that fact;
- (b) such event shall be treated as a breach of this Agreement and the parties shall immediately enter into discussions to determine an appropriate method of resolving such breach. In the event that the matter cannot be resolved by negotiations (which may include the provision of additional assets held in trust by the Property Trust) then the matter will be dealt with in accordance with clause 35 (Dispute Resolution) with the intention of ensuring that the Department, at all times, has confidence on reasonable grounds that UnitingCare NSW.ACT and the Property Trust shall be able to meet any liability which UnitingCare NSW.ACT may have or may be likely to have to the Department under the terms of this Agreement; and
- (c) in the event that the Department cannot be reasonably satisfied of the ability of UnitingCare NSW.ACT and the Property Trust to meet their actual or potential liability to the Department then the Department may terminate this Agreement in accordance with clause 25.2; and
- (d) the Department acknowledges and agrees with the Property Trust and UnitingCare NSW.ACT that the members of the Property Trust are not personally liable to the Department for any liability which may fall due to be paid to the Department pursuant to this Agreement.

7. Compliance with Law, guidelines, holding of rights, approvals and consents

7.1 The Organisation must, and must procure that all Sub-contractors:

- (a) comply with all Laws applicable to the Services, delivery of the Outcomes and the performance of the Organisation's obligations under this Agreement; and

(b) hold all rights, obtain and maintain all approvals and consent 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 Organisation (and any Sub-contractor) must continue to comply with the requirements of clause 7.1 throughout the Term, notwithstanding any changes to applicable Laws.

7.3 The Organisation must not, through any negligent or unlawful act or omission of the Organisation or its Personnel, or through any breach of this Agreement, cause the Minister, the Director-General or the Department, including the Minister's duty of care as guardian, to breach any Laws, statutory duty or requirement in respect of any Child or Young Person in OOHC.

7.4 Without limiting this clause 7, the Organisation must, and must procure that all Sub-contractors, 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. Subcontracting

Entry into subcontracts

8.1 Subject to clause 8.3, the Organisation must not subcontract 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 Organisation of its determination in respect of, any request made under clause 8.1.

Provision of Services through UCCYPF

8.3 The parties agree that the Organisation will provide the Services and deliver the Outcomes through UCCYPF.

8.4 The Organisation will continue to be bound by this Agreement notwithstanding that the Services are provided through UCCYPF.

Subcontracting obligations

8.5 The Organisation is not relieved of any of its liabilities or obligations under this Agreement as a result of any subcontracting of performance of the Services and/or delivery of the Outcomes or approval of any Sub-contractor and the Organisation is at all times responsible for the performance of all Sub-contractors.

Ability to perform obligations

8.6 The Organisation must ensure that each Sub-contractor is reputable and has or has access to sufficient experience, expertise and ability to perform its obligations to the standards required by this Agreement.

Insurance

8.7 The Organisation must ensure that no Sub-contractor in connection with performance of the Services and/or delivery of the Outcomes is engaged without the relevant Sub-contractor 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 Organisation.

Notification of alleged compliance failures

- 8.8 The Department must promptly notify the Organisation of any alleged Sub-contractor's failure to comply with clause 7 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 Organisation's responsibility to ensure compliance with clause 7 or its liability for any breach of that clause.

9. Workforce of Organisation

Employee Requirements

- 9.1 The Organisation must:
- (a) ensure that each person and each Sub-contractor engaged in 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
 - (b) 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 clauses 7 (Compliance with Law, guidelines, holding of rights, approvals and consents) and 9.1, the Organisation must, and must ensure that its Sub-contractors, comply with:
- (a) all applicable Laws in relation to working with Children and Young Persons as may apply from time to time, including once commenced the Child Protection (Working with Children) Act 2012 (NSW); and
 - (b) any particular requirements and processes in relation to working with Children and Young Persons 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 Organisation's and each Subcontractor's compliance with this clause 9.
- 9.4 The Organisation must procure, and provide the Department, the consent of each employee or prospective employee of the Organisation or the Subcontractor 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 Child or Young Person, to the making of any of the searches or enquiries referred to in clause 9.3.
- 9.5 Without limiting the Organisation's obligations under clauses 9.1 and 9.2, if, in relation to any individual engaged by the Organisation or a Subcontractor to provide the Services or deliver the Outcomes or any other service related to this Agreement, the:
- (a) Department's searches, enquiries or checks reveal information indicating that an individual does not comply with the requirements of this Agreement; or
 - (b) Department considers that an individual is unsuitable or unqualified to perform the activities assigned to that individual;

the Department must consult with the Organisation as to whether it is appropriate and lawful to discontinue engagement of that individual in connection with performance of this Agreement. The Department and the Organisation, both acting reasonably and in a timely manner, will agree and implement appropriate measures following such consultation.

Organisation's and Subcontractors' employees

- 9.6 Other than as expressly provided in this Agreement, the Organisation will be entirely responsible for the employment and conditions of service of the Organisation's employees and must procure that any Subcontractor is likewise responsible for its employees, and that the Subcontractor complies with the same obligations and requirements as required by the Organisation under this clause 9.

Labour relations

- 9.7 The Organisation must (and must procure that any Subcontractor must):
- (a) establish, maintain and administer a human resources policy and an industrial relations policy for the Services to be provided under this Agreement; and
 - (b) 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 Subcontractors

- 9.8 The Organisation and all Subcontractors 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 Organisation, 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 Organisation or any Subcontractor.
- 9.9 Neither the Organisation nor any Subcontractors nor any of their employees, are or will be deemed, by virtue of this Agreement or any agreement between the Organisation and any Subcontractor to be employees of the Department.
- 9.10 The Organisation indemnifies, and must procure that any Subcontractor indemnifies and at all times holds the Department fully and effectively indemnified against any and all Claims and Losses arising directly or indirectly out of or in connection with any Claim that the Department is the employer of the Organisation's employees or any Subcontractor's employees. The Organisation'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 Organisation is responsible for and must procure that any Sub-contractor is responsible for:
- (a) remuneration and benefits, including superannuation contributions, annual leave, sick leave, long service leave, overtime and penalty rates and provision of accommodation and sustenance;
 - (b) work care levies, group tax, payroll tax, fringe benefits tax, superannuation guarantee charges and other imposts or levies imposed by Law; and
 - (c) any payment upon termination of service;

payable to or in respect of the Organisation's employees or contractors or any Sub-contractor's employees or contractors.

Work health and safety obligations

- 9.12 In undertaking the Services, delivery of the Outcomes and other services related to or in connection with this Agreement, the Organisation must:
- (a) keep the workplace in a good and safe condition so that they do not present a risk to the health or safety of any person; and
 - (b) ensure the safety of people from harm in providing the Services, delivery of the Outcomes and other services related to or in connection with this Agreement.

PART C- PERFORMANCE OF SERVICES AND DELIVERY OF OUTCOMES

10. Term of Agreement

- 10.1 This Agreement commences on the Commencement Date and, unless terminated earlier in accordance with its terms, continues for a period which will expire on the earlier of:
- (a) 30 June 2020; and
 - (b) 7 years from the Referral Date.

11. Transition-In

- 11.1 The parties agree to comply with their respective obligations in relation to transition-in as set out in Schedule 4 (Transition-In).

12. Referrals to Organisation

- 12.1 Subject to this clause 12, from the Referral Date until such date as agreed by the parties in the Transition-Out Plan, such date not to be later than 6 ½ years from the Referral Date (the "**Referral Termination Date**"), Families that meet the eligibility criteria for each Cohort will be referred to the Organisation in accordance with the requirements and timeframes set out in the Operations Manual.
- 12.2 Subject to clause 12.3, for Cohort 1, the Department undertakes from the Referral Date until the Referral Termination Date, to refer during each Financial Year (the "**Referral Period**") the lesser of:
- (a) the number of eligible Families requested by the Organisation; and
 - (b) the following number of eligible Families in aggregate:
 - (i) 8 eligible Families to each Mother's Centre operating during the whole of that Referral Period; and
 - (ii) 17 eligible Families to each Fathers' Centre operating during the whole of that Referral Period.
- 12.3 Where an Organisation Service Centre does not operate for the whole of a Referral Period (and the Operations Manual does not specify a minimum number of referrals for the relevant part of the Referral Period), the Department and the Organisation must in good faith, as part of any transition arrangements in relation to the opening or closure of the Organisation

Service Centre, agree on the number of referrals for the purposes of clause 12.2(b) in relation to that Organisation Service Centre.

- 12.4 In the event that in any Financial Year the Organisation requests more referrals than the aggregate number of referrals for Cohort 1 in clause 12.2(b) and the Department fails in that year to make the aggregate number of referrals, the Outcome Payment for Cohort 1 for that Financial Year will be calculated in accordance with Schedule 3 (Payments).
- 12.5 The Department may approve (which approval shall not be unreasonably withheld) referrals by other Agencies, UnitingCare NSW.ACT, UCCYPF and from other sources to the Organisation 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 and 12.2 (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. Services and Outcomes

- 13.1 The Organisation undertakes, in delivery of the Outcomes, to perform the Services:
- (a) with a view to achieving the objectives referred to in clause 2.1 and in accordance with this Agreement including the Operations Manual;
 - (b) in a diligent manner and with all necessary skill, diligence and care expected in the provision of such services; and
 - (c) in accordance with all representations and warranties as to the Organisation's experience and ability expressly or impliedly made by reference to this Agreement.

14. Location, Opening and Closure of Organisation Service Centres

- 14.1 The Organisation undertakes that it will only operate Organisation Service Centres in locations as agreed with the Department from time to time and listed in the Operations Manual.
- 14.2 The Organisation 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 and the timing of the opening or closure of any Organisation Service Centre in accordance with the process set out in the Operations Manual. The Department shall consider each application expeditiously so as not to delay any approved additional Organisation Service Centre.
- 14.3 The Department may at any time during the Term by written notice to the Organisation request a review of the location and/or the closure of any Organisation Service Centre in accordance with the process set out in the Operations Manual.
- 14.4 If the parties agree to closure of an Organisation Service Centre:
- (a) in consequence of a Force Majeure Event affecting the Organisation Service Centre or due to low referrals (being less than the referrals guaranteed for Cohort 1 on a per centre basis under clause 12.2) to the Organisation Service Centre, the Department will pay the Agreed Closure Costs associated with the closure and other amounts as detailed in Part G of Schedule 3 (Payment Schedule).
 - (b) upon the request of the Organisation and in consequence of the Poor Performance of the Organisation Service Centre the Department will pay the amounts detailed in Part H of Schedule 3 (Payment Schedule).

- 14.5 Subject to clause 14.6, the Organisation will pay Agreed Opening Costs associated with the opening of an agreed Organisation Service Centre in the new agreed location.
- 14.6 If an Organisation Service Centre is closed under clause 14.4 due to the Department's failure to make the number of referrals for Cohort 1 set out in clause 12.2 and the Department agrees to the opening of a new Organisation Service Centre in another location (not being a location in the vicinity of the Organisation Service Centre that is closed) then the Department will pay the Agreed Opening Costs of the new centre.

15. Communication and consultation with Department and Agencies

Roles and responsibilities

- 15.1 The respective roles and responsibilities of the Department and the Organisation and lines of communication and consultation in relation to the Project and delivery of the Outcomes by the Organisation are as set out in the Operations Manual.

Organisation to co-operate with Agencies

- 15.2 The Organisation 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 www.community.nsw.gov.au/kts/guidelines).

PART D – REVIEW AND CHANGES

16. Reviews

Annual Review

- 16.1 Within 20 Business Days from 1 July each year, or such time as the Department reasonably requests, the Department and the Organisation will jointly commence 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.
- 16.2 The Annual Review must include review of:
- (a) the performance of the parties in achieving the objectives set out in clause 2.1;
 - (b) the performance of the Organisation in delivering the Outcomes under this Agreement;
 - (c) the implementation of the Operations Manual;
 - (d) the annual rate of restoration for the Live Matched Control Group for the preceding Financial Year; and
 - (e) such other matters as the Department or the Organisation may determine from time to time.

Departmental Reviews

- 16.3 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 of the Project, including with respect to the Organisation's service delivery model, and the

Organisation 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.

17. The Counterfactual

Use of Counterfactual to measure performance

17.1 The calculation of Outcome Payments in respect of Cohort 1 as set out in Schedule 3 (Payment Schedule) takes into account a Counterfactual rate of restoration to be derived and applied in accordance with this clause and Schedule 3 (the "**Counterfactual Rate of Restoration**").

17.2 The Counterfactual Rate of Restoration for the Initial Period is agreed at the fixed rate specified in Schedule 3 (Payment Schedule) ("**Fixed Counterfactual Rate of Restoration**").

Reset of Counterfactual Rate of Restoration on Counterfactual Review Date

17.3 Subject to clauses 17.4 and 17.5, from the Counterfactual Review Date, the Counterfactual Rate of Restoration will be the rate of restoration for the Live Matched Control Group calculated in accordance with the methodology set out in the Operations Manual for the relevant period for which the Outcome Payment for Cohort 1 is being calculated ("**Live Counterfactual Rate of Restoration**").

17.4 If on the Counterfactual Review Date the Live Counterfactual Rate of Restoration is less than 20% or greater than 30% then:

(a) if the parties acting reasonably do not consider that the negotiations referred to in clause 17.4(b) will reach agreement then either party may immediately terminate this Agreement on 20 Business Days written notice to the other party and:

(i) if the Department terminates, the Department will pay to the Organisation a termination payment as detailed in Part I of Schedule 3 (Payment Schedule); or

(ii) if the Organisation terminates, the Department will pay to the Organisation a termination payment as detailed in Part L of Schedule 3 (Payment Schedule); or

(b) the parties may seek to negotiate and reach agreement on variations and amendments to this Agreement for the purposes of addressing any significant adverse commercial impact arising from the use of the Live Counterfactual Rate of Restoration.

17.5 In the event that the parties are unable to reach agreement on such variations and/or amendments within 6 Months from the commencement of negotiations, then:

(a) either party may immediately terminate this Agreement on 20 Business Days' written notice; or

(b) the parties may elect to terminate this Agreement by mutual agreement,

and the Department will pay to the Organisation:

(c) if the Department terminates the Agreement, the termination payment detailed in Part I of Schedule 3 (Payment Schedule);

- (d) if the Organisation terminates the Agreement, the termination payment detailed in Part L of Schedule 3 (Payment Schedule); or
 - (e) if the parties mutually agree to terminate, the termination payment detailed in Part K of Schedule 3 (Payment Schedule).
- 17.6 To avoid doubt, clauses 17.4 and 17.5 will not apply in the event that the Live Counterfactual Rate of Restoration is equal to or greater than 20% and less than or equal to 30% and consequently no right of termination under either of these clauses arises and the Live Counterfactual Rate of Restoration is used to calculate the Cohort 1 Outcome Payment payable from the Counterfactual Review Date.
- 17.7 Any payment made to the Organisation under clauses 17.4 or 17.5 will be in total satisfaction of any liability of the Department to the Organisation in respect of this Agreement and its termination. Upon request by the Department the Organisation must execute a deed of release on terms acceptable to the Department.

PART E - ADVERSE EVENTS

18. Force majeure

Force Majeure Event

- 18.1 A party will not be liable for any failure or delay:
- (a) in the case of the Organisation, in the performance or discharge of its obligation to provide the Services, deliver the Outcomes and other services pursuant to this Agreement; and
 - (b) 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 Organisation during any period during which the Organisation 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:
- (a) notify the other party's Representative; and
 - (b) describe in a reasonable level of detail the nature of the Force Majeure Event and its likely effect in 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, work-arounds 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.

- 18.6 Where either party terminates this Agreement in accordance with clause 18.5, the Department will pay to the Organisation a termination payment as detailed in Part K of Schedule 3 (Payment Schedule).
- 18.7 Any payment made to the Organisation under clause 18.6 will be in total satisfaction of any liability of the Department to the Organisation in respect of this Agreement and its termination. Upon request by the Department the Organisation must execute a deed of release on terms acceptable to the Department.
- 18.8 Where a Force Majeure Event prevents either party from carrying out its obligations under this Agreement in respect of some but not all of the Organisation Service Centres (and provided that the effects of such occurrence are subsisting), either party may 3 Months after the occurrence of the relevant Force Majeure Event seek to have the affected Organisation Service Centre closed in accordance with clause 14.4.

PART F – LOSS DAMAGE AND INSURANCE

19. Organisation's Indemnity

- 19.1 The Organisation is responsible for, and hereby releases and indemnifies the Department, the Minister, the Director-General and their respective Personnel (those indemnified) on demand from and against any Claim or Loss, including for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the Department or for which it is responsible);
- (c) any infringement or alleged infringement of any Intellectual Property Rights (including Moral Rights);
- (d) third party suits claims, actions, demands, proceedings, penalties, costs, charges or expenses in respect of the Services and/or delivery of the Outcomes;
- (e) any unlawful, wrongful, wilful or negligent act or omission of the Organisation or its Personnel (including without limitation defamation); and
- (f) any breach of this Agreement;

which may arise out of, or in connection with the performance or non-performance by the Organisation and/or its Personnel of this Agreement or any subcontract by the Organisation of any part of this Agreement.

- 19.2 The Organisation'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.

Notification of Claims

- 19.3 The Organisation must advise the Department immediately it becomes aware of any third party claim, or likely claim, against the Organisation or its Personnel in connection with this Agreement.

Continuing Liability

- 19.4 The indemnity contained in this clause 19 is a continuing obligation of the Organisation separate and independent of any other responsibility of the Organisation and will continue beyond the Term.

20. Insurance

Organisation to maintain

- 20.1 The Organisation 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 Regulatory 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 Organisation with the insurance provisions of this Agreement will limit or relieve the Organisation of its liabilities and obligations under this Agreement.

Evidence of Insurance

- 20.4 The Organisation 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 Organisation must, and must ensure that all relevant Sub-contractors, as soon as practicable:
- (a) 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
 - (b) keep the Department fully informed of subsequent action and developments concerning the claim or event referred to in clause 20.5(a).

PART G – PAYMENT PROVISIONS

21. Payments to Organisation

Payments to Organisation

- 21.1 Subject to this Agreement (including clause 21.15), the Department will, in consideration of the Organisation entering and performing its obligations under this Agreement:
- (a) irrespective of the delivery of any Outcomes, pay the Organisation the Standing Charge in accordance with Schedule 3 (Payment Schedule); and
 - (b) if and to the extent that the specified Outcomes are delivered, pay the Organisation the applicable Outcome Payments, net of the Standing Charge in respect of Cohort 1 Outcomes Payments, in accordance with Schedule 3 (Payment Schedule).

Late Payments

- 21.2 Subject to clauses 21.3 and 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 to (and including) the date of payment.
- 21.3 Interest on a late payment is not payable unless the amount of interest owed exceeds \$20.

Disputed Amounts

- 21.4 If the Department disputes, in good faith, any amount set out in an Organisation 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 35 (Disputes). 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 the Organisation shall be paid forthwith 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 Organisation by the Department.

Independent Certifier

- 21.5 The Organisation must at its own cost appoint an Independent Certifier by no later than 5 Months from the Commencement Date.
- 21.6 The appointment of the Independent Certifier must be made by way of a competitive tender process and be approved, such approval not to be unreasonably withheld, by the Department.
- 21.7 The terms and conditions of the:
- (a) tender process including the services to be provided by the Independent Certifier; and
 - (b) contract for services between the Organisation and the Independent Certifier,
- must be agreed between the parties. Without limiting this clause 21.7, the contract for service must include a term giving the Department direct access to and contact with the Independent Certifier for the purposes of this Agreement and the Project.
- 21.8 The Independent Certifier will have such functions and responsibilities as set out in the contract for services between the Organisation and the Department referred to in clause 21.7(b).
- 21.9 Subject to clause 21.10, if the contract between the Organisation and Independent Certifier is terminated or the Independent Certifier is otherwise unable to perform its obligations under that contract, the Organisation must replace the Independent Certifier with another suitably qualified body on substantially the same terms and conditions as the previous certifier and clauses 21.6 and 21.7 will apply to that appointment.
- 21.10 The Organisation must not terminate its contract with the Independent Certifier without obtaining the Department's prior written consent, such consent not to be unreasonably withheld.

Independent Certifier's reports

- 21.11 The Organisation must within the timeframes specified within Schedule 3 (Payment Schedule) submit to the Department, together with any invoice for the Outcome Payments,

a report from the Independent Certifier addressing the matters set out in Part M of Schedule 3 (Payment Schedule).

Annual Reconciliation and Reconciliation upon Early Termination

- 21.12 The Department will at the end of the each Financial Year during the Term undertake a reconciliation of the total Outcome Payments payable for that Financial Year in accordance with clause 21.1(b) and deduct the aggregate of all Standing Charge payments paid during the same period. The balance will be payable by the Department to the Organisation within the timeframes specified in Schedule 3 (Payment Schedule) or such other timeframe as may be agreed between the parties in writing.
- 21.13 In the event that no Outcome Payment is payable in any Financial Year, the Organisation will not be required to refund to the Department the Standing Charge paid in that Financial Year.
- 21.14 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 in accordance with the applicable termination payment provisions and make any necessary deductions as set out in those provisions.

Aggregate Cap on amounts payable under this Agreement

- 21.15 The Organisation agrees and acknowledges that the total aggregate amount payable by the Department to the Organisation during the Term under this Agreement is capped at \$55 million.

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:

- (a) equal to the value of the supply calculated in accordance with GST Law multiplied by the prevailing GST rate; and
- (b) 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 Organisation makes a supply to the other for consideration which is wholly non-monetary consideration, or partly non-monetary and partly monetary consideration, then:
- (a) if the consideration is wholly non-monetary:
 - (i) the supply will for the purposes of this clause be styled a "Consideration in Kind Supply";
 - (ii) the consideration for the Consideration in Kind Supply is GST inclusive and will not be increased on account of GST under subclause 22.2;
 - (iii) the Department and the Organisation 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;
 - (iv) the Department and the Organisation 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;
 - (v) prior to the issue of the tax invoices referred to in clause 22.3(a)(iv), the Department and the Organisation 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 Organisation 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.
 - (b) if the consideration is, in part, monetary and, in part non-monetary then:
 - (i) 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(a); and
 - (ii) the remaining part of the supply shall 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 Organisation make in return for the other do not have an equal GST inclusive market value for GST purposes, then:
- (a) if the Consideration in Kind Supply made by the Department to the Organisation is determined to have a greater GST inclusive market value than the reciprocal Consideration in Kind Supply made by the Organisation to the Department, the Department will pay to the Organisation an additional amount equal to the GST payable on 10% of the difference within 10 Business Days of the date the relevant determination is made;
 - (b) if the Consideration in Kind Supply made by the Organisation 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 Organisation, then the Organisation will pay to the Department an additional amount equal to the GST payable on 10% of the difference within 10 Business Days of the date the relevant determination is made;

- (c) the Department and the Organisation 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
- (d) 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 supply 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 the payee 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 Organisation 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 (GST) and this clause 23 (Other Taxes), the Organisation 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.
- 23.2 The Department will on application by the Organisation consider reimbursing the Organisation for:

- (a) any stamp duty paid by the Organisation on:
 - (i) this Agreement;
 - (ii) the Bond; and
 - (iii) the Loan Agreement: and/or
- (b) any additional land tax paid by the Organisation as a direct result of the Organisation's performance of its obligations under this Agreement.

23.3 The Commonwealth government has indicated an intention to reform tax concessions provided to not for profit ("**NFP**") organisations to ensure that they are only targeted at activities that directly further the purpose they were established for, being the purpose that is the basis of the NFP's exemption from income tax. In the event that the Commonwealth implements such reforms and the Organisation is adversely impacted by the reforms, the Department agrees to consider reimbursing the Organisation for any additional Taxes it is required to pay directly associated with this Agreement.

Part H – BREACH AND TERMINATION

24. Termination by Department for Convenience

- 24.1 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 Organisation the termination payment detailed in Part I of Schedule 3 (Payment Schedule).
- 24.2 Any payment made to the Organisation under clause 24.1 will be in total satisfaction of any liability of the Department to the Organisation in respect of this Agreement and its termination. Upon request by the Department the Organisation must execute a deed of release on terms acceptable to the Department.
- 24.3 The Organisation must do everything reasonably possible to prevent or otherwise mitigate any losses resulting to the Organisation from the termination.

25. Termination by Department for Cause and on Other Grounds

For Cause

- 25.1 The Department may terminate this Agreement in whole or in part at any time with immediate effect by giving notice to the Organisation if:
 - (a) the Organisation has committed a material breach of any provision of this Agreement, the breach is not capable of being remedied and the parties have not agreed in writing a basis upon which this Agreement can continue within 20 Business Days of the Organisation receiving notice of that breach;
 - (b) the Organisation commits a material breach of this Agreement that is capable of remedy and the Organisation fails to remedy that breach within 20 Business Days following receipt of a notice requiring it to do so;
 - (c) the Organisation commits any breach of this Agreement on a recurring basis in any rolling 3 Month period being a breach in respect of which the Department has, during that 3 Month period, issued at least 3 notices under clause 25.1(b);

- (d) the Organisation or the Property Trust is the subject of or suffers an Insolvency Event;
- (e) the Organisation abandons the Services or expresses or demonstrates an intention to cease or substantially cease performance of this Agreement;
- (f) the Organisation suffers a Change in Control which the Department reasonably considers will have an adverse impact on the performance of the Services or the delivery of the Outcomes under this Agreement; and/or
- (g) the Department is entitled to terminate as a result of a conflict of interest in accordance with clause 37.6.

Other Grounds

- 25.2 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.

26. Termination by Organisation

- 26.1 The Organisation may terminate this Agreement in whole or in part at any time with immediate effect by giving notice to the Department if:
- (a) the Department has committed a material breach of any provision of this Agreement, the breach is not capable of being remedied and the parties have not agreed in writing the basis upon which this Agreement can continue within 20 Business Days of the Department receiving notice of that breach; and/or
 - (b) the Department commits a material breach of this Agreement that is capable of remedy and the Department fails to remedy that breach within 20 Business Days following receipt of a notice requiring it to do so.
- 26.2 The Organisation may terminate this Agreement if the Organisation is otherwise entitled under a specific provision of this Agreement to terminate this Agreement, provided that the Organisation complies with any conditions or restrictions applying to such a provision.
- 26.3 The Organisation may terminate this Agreement at any time up to 1 Year prior to the expiry of the Term, on a minimum of 3 Months' and maximum of 12 Months' written notice, on the basis of Poor Performance.

27. Consequences of Termination

- 27.1 Except as otherwise required in accordance with relevant legislative requirements and the Organisation's reasonable commercial record keeping requirements, the Organisation must, immediately following expiry or earlier termination of this Agreement, return to the Department, or, if expressly required by the Department, destroy (at the Department's sole option and in the manner reasonably specified by the Department), all:
- (a) Confidential Information of the Department;
 - (b) Department's Materials;
 - (c) New Contract Material;
 - (d) all Records referred to at clauses 31.2, 31.5(h) and 33.5; and

(e) other tangible property and materials of the Department,

which is or are in the possession, custody or control of the Organisation, a Subcontractor or any Personnel or either of them as at the date of expiry or earlier termination.

- 27.2 Except as otherwise required in accordance with relevant legislative requirements and the Department's reasonable commercial record keeping requirements, the Department must, immediately following expiry or earlier termination of this Agreement, return to the Organisation, or destroy (at the Organisation's sole option and in the manner reasonably specified by the Organisation), all Organisation's Materials and Confidential Information of the Organisation which:
- (a) are in the possession, custody or control of the Department or any Personnel of the Department as at the date of expiry or earlier termination of this Agreement; and
 - (b) the Department is not expressly entitled, in accordance with the terms of this Agreement, to retain following such expiry or termination.
- 27.3 Termination of this Agreement in respect of a particular Service or Outcome does not affect the other Services or Outcomes provided under this Agreement which will remain subject to the terms of this Agreement.
- 27.4 Where the Agreement is terminated by the Department in accordance with clause 24 (Termination by Department for Convenience) or if terminated by the Organisation pursuant to clause 26.1 or clause 26.2 (but in the case of clause 26.1 or clause 26.2, subject to execution by the Organisation of an appropriate deed of release, on terms acceptable to the Department, releasing the Department from all liability in respect of this Agreement and its termination), the Department will pay a termination payment as provided in clause 24.1 and Part I of Schedule 3 (Payment Schedule).
- 27.5 Where the Agreement is terminated by the Department on or up to 6 months after the Counterfactual Review Date in accordance with clauses 17.4(a) or 17.5(a), the Department will pay a termination payment as provided in clauses 17.4(a)(i) or 17.5(c), as applicable.
- 27.6 Where the Agreement is terminated by the Organisation on or up to 6 months after the Counterfactual Review Date in accordance with clauses 17.4(a) or 17.5(a), the Department will pay a termination payment as provided in clause 17.4(a)(ii) or 17.5(d), as applicable.
- 27.7 Where the Agreement is terminated by mutual agreement of the parties under clause 17.5(b), the Department will pay a termination payment as provided in clause 17.5(e).
- 27.8 Where the Agreement is terminated by either party for a Force Majeure Event in accordance with clause 18.5, the Department will pay a termination payment as provided in clause 18.6.
- 27.9 Where the Agreement is terminated by the Department for cause in accordance with clause 25.1, subject to execution by the Organisation of an appropriate deed of release that releases the Department from all liability in respect of its payment obligations under this Agreement, the Department will pay a termination payment to the Organisation as detailed in Part J of Schedule 3 (Payment Schedule).
- 27.10 Where the Agreement is terminated by the Organisation for Poor Performance in accordance with clause 26.3, then provided the Department is satisfied, acting reasonably, that the Organisation has established Poor Performance, and subject to the Organisation's execution of a deed of release, on terms acceptable to the Department, releasing the Department from all liability in respect of this Agreement and its termination, the Department will pay a termination payment to the Organisation as detailed in Part J of Schedule 3 (Payment Schedule).

- 27.11 Termination of this Agreement will not affect the accrued rights and remedies of either party.
- 27.12 On and from the date of termination, the Department must provide the Transition-Out Services in accordance with its obligations under clause 28 (Transition-Out) and the Transition-Out Plan.

28. Transition-Out

- 28.1 This clause 28 applies:
- (a) during the period commencing 24 Months prior to expiry of the Term and will expire on the last day of the Term; or
 - (b) in the event this Agreement is terminated, during the period commencing on the date of termination and ending on a date to be determined by the Department and advised to the Organisation.
- 28.2 The Organisation must prepare a draft transition-out plan which must be submitted to the Department no later than 24 Months before expiry of the Term.
- 28.3 Once submitted, the parties will work in good faith so that the draft transition-plan is finalised and approved by the Department no later than 18 Months before expiry of the Term.
- 28.4 The content and process for the finalisation of the Transition-Out Plan will be as set out in the Operations Manual.
- 28.5 Once the Transition-Out Plan has been finally approved by the Department, that plan is incorporated into and becomes part of, this Agreement.
- 28.6 In the event of termination of this Agreement prior to the expiry of the Term, the parties agree to transition out in accordance with the arrangements and timeframes set out in the Operations Manual for the closure of Organisation Service Centres.
- 28.7 Services disengaged in accordance with this clause 28 (whether encompassing all or part of the Services or Outcomes), and any additional services which the Organisation is required to provide under this clause 28, are referred to as Transition-Out Services.
- 28.8 Once the Transition-Out Period has commenced the Organisation must do all things necessary to provide the Transition-Out Services described in the Transition-Out Plan as being the obligations of the Organisation.
- 28.9 Except where this Agreement is terminated by the Department under clause 25.1 (for cause) in which case the Organisation will provide the Transition-Out Services at no cost to the Department, the Department will pay the fees for the Transition-Out Services, if any, agreed in the Transition-Out Plan.

PART I – ADMINISTRATION OF PROJECT

29. Authorised Representatives

- 29.1 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 including clause 1.3(e).

30. Project Oversight Framework

30.1 A Project oversight framework will be established in accordance with the Operations Manual.

31. Records, data and other information

Maintenance of records

31.1 The Organisation must during the Term:

- (a) 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;
- (b) 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, Child or Young Person, in which case the Organisation must retain the Records for the period of 7 years from when the youngest Child and/or Young Person of the Family turns 18 years of age ("**Additional Period**").

31.2 Without limiting clause 31.1

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

Access to records

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

- (a) have access to all such Records at any time upon giving the Organisation reasonable notice;
- (b) take extracts, make and/or obtain copies of any such Records as the Department considers appropriate; and

the Organisation and its Personnel must give the Department all reasonable assistance to enable the Department to exercise its rights under this clause 31.3.

Information, reports and evidence for court proceedings

31.4 In addition to the information which the Organisation may be required to provide to the Department pursuant to Chapter 16A and s.248 of the Act the Organisation must also provide to the Department the various reports, information and evidence for court proceedings as specified in the Operations Manual and in accordance with any requirements and timeframes specified in the Operations Manual.

State Records

31.5 Without limiting this clause 31 and with effect from the Commencement Date and thereafter throughout the Term the Organisation must:

- (a) make arrangements for the safe keeping and proper preservation of State Records;
- (b) establish and maintain and implement a records management program for the State Records;
- (c) provide the Department with any State Record it requires for the purposes of State Records Act upon reasonable notice to the Organisation;
- (d) ensure that all State Records are in a format reasonably accessible to, and able to be read and interpreted by, the Department;
- (e) 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;
- (f) 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;
- (g) comply with any guidelines for administrative practice issued by the State Records Authority; and
- (h) at expiry, or earlier termination, of the Term, deliver all State Records to the Department.

31.6 Notwithstanding the Organisation's obligations under the State Records Act, the Organisation must not:

- (a) arrange for, nor effect, a transfer of custody or ownership of any State Records without the prior written consent of the Department; or
- (b) remove or destroy any State Record except in accordance with arrangements agreed to by the State.

Government Information (Public Access) Act 2009 (NSW)

31.7 Without limiting clause 31.3 and for the purposes of the Government Information (Public Access) Act 2009 (NSW), the Organisation must provide the Department with immediate access to the following information contained in Records held by the Organisation:

- (a) 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 Organisation pursuant to this Agreement;
- (b) information collected by the Organisation from members of the public to whom it provides, or offers to provide, the Services pursuant to this Agreement; and
- (c) information received by the Organisation from the Department to enable it to provide the Services and deliver the Outcomes and any other services pursuant to this Agreement.

31.8 For the purposes of clause 31.7, information does not include:

- (a) information that discloses or would tend to disclose the Organisation's financing arrangements, financial modelling, cost structure or profit margin;
- (b) information that the Organisation 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

- (c) information that, if disclosed to the Department, could reasonably be expected to place the Organisation at a substantial commercial disadvantage in relation to the Department, whether at present or in the future.

31.9 The Organisation will provide copies of any of the Records, and Material referred to in this clause 31, as requested by the Department, at the Organisation's own cost.

Reports and other information

31.10 Without limiting this clause 31, the Organisation 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 Project and the Organisation's financial position.

32. Privacy

32.1 During this Agreement the Organisation must comply, and must ensure that its Sub-contractors and Personnel comply with the Privacy Legislation to the extent that the Organisation is required to do so at Law.

32.2 Without limiting its obligations under clause 32.1, the Organisation agrees:

- (a) 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;
- (b) 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;
- (c) 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 32, whether by the Organisation or its Personnel;
- (d) to ensure that any Personnel of the Organisation 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 32; and
- (e) to ensure that any other agreement with a Sub-contractor, 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 32 which are enforceable by the Organisation against the Sub-contractor, as applicable.

32.3 This clause 32 will survive termination or expiry of this Agreement for a period of 7 years.

33. Confidentiality

Obligation to keep confidential

33.1 The Organisation and the Department must:

- (a) keep confidential:
 - (i) the contents of this Agreement, information relating to negotiations concerning this Agreement and/or the commercial arrangements between the parties;

- (ii) information regarding Children, Young Persons and their Families;
 - (iii) reports, files, professional advice, information and data required to be prepared or maintained under or for the purposes of this Agreement;
 - (iv) any information which is marked or identified as confidential by either party; and
 - (v) any information which is required to be kept confidential at Law.
- (b) use all reasonable endeavours to prevent their Personnel from making any disclosure to any person of any such matters.

Permitted Disclosure

33.2 Clause 33.1 will not apply to:

- (a) any disclosure of any information the disclosure of which is agreed between the Organisation and the Department, in accordance with that agreement;
- (b) any disclosure of information that is reasonably required by persons engaged in the performance of the obligations of a party under this Agreement;
- (c) 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 33.1;
- (d) any disclosure which is required by any Law (including any order of a court of competent jurisdiction) or in accordance with clause 35 (Dispute Resolution);
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to the disclosure by the disclosing party;
- (f) any provision of information to investors and potential investors in the Bond but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (g) any disclosure or provision of information that is required to be disclosed to the Independent Certifier;
- (h) 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;
- (i) 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 34 (Intellectual Property);
- (j) subject to compliance with Privacy Legislation and provision to the Department of copies of all Material supplied, any disclosure of Materials developed by the Organisation 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; and
- (k) any disclosure of information that is reasonably required in the reasonable opinion of the parties to the management agreement, on a confidential basis, to investors in respect of the Bond but so as to use reasonable endeavours not to identify, as far as practicable, any members of a Cohort.

Disclosure subject to confidentiality

- 33.3 Where disclosure is permitted under clause 33.2, other than clauses 33.2(c), (d) and (h), 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

- 33.4 The Organisation 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

- 33.5 Without limiting clause 27 (Consequences of Termination), on or before the expiration or earlier termination of the Term, the Organisation must ensure that all Records in the Organisation's possession, custody or control which contains information relating to any Child, Young Person and their respective Family, including the documents in the possession, custody or control of any Sub-contractor, are delivered up to the Department.

Organisation's confidentiality obligations to clients

- 33.6 Without limiting this clause 33 both the Department and the Organisation will ensure the rights to confidentiality of any Child, Young Person and their respective Family and staff are protected in both policy and practice in accordance with any relevant Law, subject to any requirements to disclose information in relation to such persons for the purposes of this Agreement or at Law.
- 33.7 The Organisation 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.

34. Intellectual Property

New Contract Material

- 34.1 Copyright (including future copyright) in all New Contract Material, vests in the Crown in right of the State of New South Wales or is otherwise hereby assigned by the Organisation to the Crown in right of the State of New South Wales. Title to, and Intellectual Property Rights in, all New Contract Material (other than copyright) shall, on creation, vest or otherwise be assigned or transferred to the Crown in right of the State of New South Wales, without the need for further assurance.
- 34.2 The Organisation must, at its own cost, do all things necessary and execute all documents to permit the vesting of ownership and title of Intellectual Property Rights in the Crown in right of the State of New South Wales including, without limitation, procuring from all its agents, sub-contractors and other third parties who are authors or makers of any New Contract Material, a written assignment to the Crown in right of the State of New South Wales of all Intellectual Property Rights of the agent, contractor or third party in the New Contract Material as necessary to give effect to clause 34.1.
- 34.3 If the ownership and title of Intellectual Property Rights referred to in clause 34.1 is not capable of being vested or assigned to the Crown in right of the State of New South Wales because the Organisation does not own or is unable at a reasonable cost to obtain ownership of those Intellectual Property Rights, the Organisation must at its own cost ensure that the Crown in right of the State of New South Wales is granted an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty- free licence to:

- (a) use, reproduce, communicate to the public and modify, enhance and adapt for its own purposes;
- (b) to sub-licence to third parties; and
- (c) to perform any other act with respect to copyright and to manufacture, sell hire or otherwise exploit,

all those Intellectual Property Rights but only as part of the New Contract Material and any further modification, enhancement, adaptation, or addition of that New Contract Material.

34.4 The Department grants to the Organisation an irrevocable, non-exclusive perpetual, royalty-free licence of any Intellectual Property Rights referred to in clause 34.1 and vested in or assigned to the Department, for use:

- (a) in performance of the Organisation's obligations under this Agreement; and
- (b) subject to the confidentiality requirements of this Agreement, in relation to a social benefit bond or similar other product, services or programmes within Australia in association with another Australian Commonwealth, State, Territory and/or local government agencies and instrumentalities.

34.5 The Organisation may request an additional licence to that granted in clause 34.4 to use any Intellectual Property Rights referred to in clause 34.1 and vested in or assigned to the Crown in right of the State of New South Wales by making a written request to the Department stating the nature of the additional licence requested and the reason for requesting the additional licence. The Department will consider any such request in good faith. If the Department considers it reasonable to do so in the circumstances, the Department may grant the Organisation a further licence on such conditions as the Department considers reasonable and subject to the parties entering into a written agreement as to the terms of any additional licence, including any fees or royalties payable for a proposed commercial purpose. The Department will not unreasonably refuse a request for a licence to publish research or policy papers relating to the Bond (which would be considered a non-commercial purpose) but may impose conditions including acknowledging copyright ownership of Material used and conditions to protect privacy and confidentiality as necessary.

Existing Contract Material

34.6 This Agreement does not affect the Intellectual Property Rights of the Organisation and/or third parties in Existing Contract Material, but the Organisation hereby grants and ensures that relevant third parties grant to the Department, without additional cost, an irrevocable, non-exclusive, world-wide, perpetual, transferrable, sub-licensable, royalty-free licence:

- (a) to use, reproduce, communicate to the public and modify, enhance and adapt for its own purposes;
- (b) to sub-licence to third parties; and
- (c) to perform any other act with respect to copyright and to manufacture, sell, hire or otherwise exploit,

all those Intellectual Property Rights but only as part of the New Contract Material and any further modification, enhancement, adaptation or addition of that New Contract Material.

Perfection of rights

- 34.7 The Organisation must execute all documents and do all acts and things required, at its cost, unless otherwise agreed, for the purposes of giving effect to the provisions of this Agreement dealing with Intellectual Property Rights.

Use of New Contract Material

- 34.8 Subject to clauses 34.4 and 34.5, the Organisation must ensure that the New Contract Material is used, copied or supplied only for the purposes of this Agreement and subject to its terms.

Department's Material

- 34.9 Nothing in this Agreement is intended to affect the ownership of the Department's Material.
- 34.10 Subject to clause 34.9, the Department hereby grants, to the Organisation, a royalty-free, non-exclusive, non-transferable licence, during the continuance of this Agreement, to use or reproduce any Department's Material which the Department provides to the Organisation, for the purposes of this Agreement.

- 34.11 The Organisation must not:
- (a) use the Department's Material for any purpose other than directly for the purposes of this Agreement;
 - (b) commercially or otherwise exploit the Department's Material.

Organisation's Material and Service Delivery Material

- 34.12 Nothing in this Agreement is intended to affect ownership of the Organisation's Material.
- 34.13 Subject to clause 34.12, the Organisation hereby grants to the Crown in right of the State of New South Wales and shall procure all relevant third parties to grant to the Crown in right of the State of New South Wales, a royalty free, non-exclusive, non-transferable licence, for the duration of this Agreement, to use all Organisation's Material and Service Delivery Material which the Organisation provides to the Department for the purposes of this Agreement.
- 34.14 The Department must not use the Organisation's Material or Service Delivery Material for any purpose other than directly for the purpose of this Agreement.

Moral Rights

- 34.15 The Organisation must hold or obtain, at its own cost, all necessary consents from any individual that has Moral Rights in the New Contract Material, Existing Contract Material that forms part of the New Contract Material, Organisation's Material, which is licensed to the Department under this Agreement and Service Delivery Material, to its use, adaptation and all other actions by the Department (or any contractor, agent or sublicensee of the Department) or the Organisation in exercise of the rights conferred by this clause 34. Such consents must be without restriction and without any requirement to attribute the authorship including any act or omission that might otherwise infringe the Moral Rights of any individual.

35. Dispute resolution

Dispute resolution procedure

- 35.1 Subject to clause 35.12, the parties must attempt to resolve any dispute in relation to this Agreement in accordance with this clause 35 before resorting to court proceedings or other external dispute resolution mechanisms except as specified in this clause.

Notice of dispute

- 35.2 A party claiming a dispute has arisen in relation to this Agreement must immediately notify the other party ("**Notice of Dispute**") in accordance with clause 36 (Notices).
- 35.3 The Notice of Dispute must specify in reasonable detail the nature of the dispute.

Referral to Representatives

- 35.4 If a dispute is notified under clause 35.2 the Authorised Representatives or their respective nominees will attempt to resolve the dispute.

Escalation

- 35.5 If the dispute is not resolved by the Authorised Representatives within 10 Business Days of it being referred to them then the dispute will be escalated by each party to:

- (a) in the case of the Organisation, its CEO or other nominated executive of comparable seniority within the Organisation; and
- (b) in the case of the Department, its Director-General or the Director-General's nominee.

- 35.6 If the dispute is not resolved within 10 Business Days of the dispute being referred to the parties' respective senior executives in accordance with clause 35.5, or within 20 Business Days of the dispute being notified in accordance with clause 35.2, the parties will refer the dispute to independent expert determination under clause 35.7.

Expert determination

- 35.7 If a dispute is referred to expert determination under this clause 35 the parties will agree an independent, appropriately qualified expert and, in consultation with the expert as necessary but consistently with clause 35.10, the terms of the referral (including questions to be determined, the expert's fees and expenses and the procedure for determination).

- 35.8 The fees and expenses of the expert will be borne by the parties equally.

- 35.9 The determination of the expert, if made within the period stated in clause in clause 35.12, will be binding on the parties unless referred to arbitration or legal proceedings within 10 Business Days after the relevant decision.

- 35.10 The expert must:

- (a) act as an expert, not an arbitrator;
- (b) be independent of both parties;
- (c) have no interest or duty that conflicts with his/her role as an independent expert;

(d) keep confidential all materials and information made available to that expert in respect of the dispute; and

(e) issue a written decision giving reasons within the period stated in clause 35.11.

35.11 If the parties cannot agree the expert or the terms of referral, or if the dispute is not determined within 20 Business Days of being referred to the expert (or such longer period as the parties may agree in writing), either party is free to pursue resolution of the dispute by legal proceedings or any other external dispute mechanism.

Exclusions

35.12 This clause 35 does not apply in either of the following circumstances:

(a) the exercise by either party of its rights to terminate this Agreement; or

(b) the commencement of legal proceedings by either party seeking urgent interlocutory relief.

Continued performance of Agreement

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

36. Notices

36.1 A notice under this Agreement must be:

(a) in writing, directed to the Authorised Representative of the other party; and

(b) forwarded to the address or facsimile number of that Authorised Representative or the address last notified by the intended recipient to the sender.

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

(a) in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery;

(b) in the case of delivery by post - within three business days of posting;

(c) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

36.3 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.

37. General

No fetter

37.1 Nothing in this Agreement is to be construed as requiring the Department (including the Director-General or Minister or any delegate of the Director-General or Minister) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation nothing in this Agreement is to be construed as limiting, fettering or otherwise

preventing in any way the exercise of any statutory function (including a power, discretion or duty).

- 37.2 No action or decision by the Department (including the Minister or the Director-General or any delegate of the Director-General or Minister) in the lawful exercise of a statutory function (including a power, discretion or duty) in connection with any Family, unborn Child, Child or Young Person will give rise to any liability for breach of this Agreement.

Publicity

- 37.3 The Organisation may not make any press or other announcements or releases relating to the Agreement or its subject matter without the prior written approval of the Department and then only in accordance with any conditions included in any such approval and the requirements of the Operations Manual.
- 37.4 The Department will make reasonable efforts to consult with the Organisation before the making of any press or other announcements or releases relating to this Agreement or its subject matter.

Disclosure of Conflict of Interest

- 37.5 The Organisation must:
- (a) notify the Department in writing immediately upon becoming aware of the existence or possibility of a conflict of interest; and
 - (b) subject to clause 37.6 comply with any reasonable direction by the Department in relation to managing that conflict of interest.
- 37.6 Where, in the Department's reasonable view the conflict of interest cannot be appropriately managed, the Department may terminate this Agreement for cause with immediate effect by giving notice to the Organisation.

Assignment or Novation

- 37.7 The Organisation must not assign, encumber, novate or otherwise transfer any right or obligation under this Agreement without the Department's prior consent which consent may be withheld in the Department's absolute discretion.
- 37.8 The Organisation acknowledges that the Department may conduct financial and other inquiries or checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment, novation or transfer.
- 37.9 The Department, at its own cost, may assign, novate or transfer this Agreement to a new legal entity where, by operation of statute or executive decision of the NSW Government, the Department is reconstituted into that new legal entity.

Writing

- 37.10 All amendments to this Agreement and all consents, approvals, waivers and agreements made under or pursuant to this Agreement must be evidenced in writing.

Consents

- 37.11 A party may give its consent or approval conditionally or unconditionally or may withhold its consent, in its absolute discretion, unless this Agreement specifically provides otherwise.

Non-waiver

- 37.12 No failure or delay by a party in exercising any right, power or remedy under this Agreement and no course of dealing or grant by that party of any time or other consideration, will operate as a waiver of the breach or a default by the other party. Any waiver of a default of this Agreement will not be construed as a waiver of any further breach of the same or any other provision.

Severability

- 37.13 If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

Relationship

- 37.14 The relationship between the parties is one of principal and independent contractor. Neither party 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.
- 37.15 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

- 37.16 The rights and remedies provided under this Agreement are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.
- 37.17 No indemnity in this Agreement limits the effect or operation of any other indemnity in this Agreement. Unless expressly provided otherwise, each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties.
- 37.18 A party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given. Each indemnity in this Agreement (and each release and each exclusion in respect thereof) survives the expiry or earlier termination of this Agreement.

Inconsistency

- 37.19 In the event of an inconsistency between the terms of this Agreement, for the purpose only of resolving the inconsistency, the following order of decreasing priority applies, unless otherwise agreement between the parties in writing:
- (a) operative provisions of this Agreement;
 - (b) Agreement Details (Schedule 1);
 - (c) Schedule 3 (Payment Schedule);
 - (d) Schedule 2 (Operations Manual);
 - (e) Schedule 4 (Transition-In); and
 - (f) other Schedules or attachments (if any).

Survival

- 37.20 Notwithstanding clause 10 (Term of Agreement), and without limiting any other provision of this Agreement relating to survival the following clauses survive any termination or expiration of this Agreement:
- (a) clause 6 (Representations and warranties);
 - (b) clauses 17.4, 17.5 and 17.7 (The Counterfactual – payments on termination);
 - (c) clause 18.6 (Force majeure – payments on termination);
 - (d) clause 19 (Organisation’s Indemnity);
 - (e) clause 20 (Insurance);
 - (f) clause 21 (Payments to Organisation);
 - (g) clause 22 (GST);
 - (h) clause 24 (Termination by Department for Convenience);
 - (i) clause 27 (Consequences of Termination);
 - (j) clause 28 (Transition-Out);
 - (k) clause 31(Records, data and other information);
 - (l) clause 32 (Privacy);
 - (m) clause 33 (Confidentiality);
 - (n) clause 34 (Intellectual Property);
 - (o) clause 35 (Dispute Resolution); and
 - (p) any other provision of this Agreement (including Schedule 3 (Payment Schedule)) which contemplates performance or observance following any termination or expiration of this Agreement including where referenced by, or necessary to, the operation of a clause the survival of which is expressly provided for in this clause 37.20.

Legal advice and costs

- 37.21 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 negotiation of this Agreement or any related document.
- 37.22 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.
- 37.23 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

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

Applicable law

37.25 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

37.26 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.

Executed as a Deed

Executed as a deed by the Department:

Signed, sealed and delivered by the Minister for)
 Family and Community Services , Pru Goward)
) (signature of Department's representative)
)
 in the presence of Anthony Benschler)
 (Insert name of witness)) (signature of witness)
)
 Date: 21 March 2013)
)
)
)
)

Executed as a deed by The Uniting Church in Australia Property Trust (NSW) as nominee and agent for and on behalf of UnitingCare NSW.ACT:

The Common Seal of the Uniting Church In Australia)
 Property Trust (NSW) was hereunto affixed on the)
 21st day of March, 2013 pursuant to a resolution of)
 the Trust at a duly convened meeting in the)
 presence of:)
)
)
 Member)
)
)
 Member)

Signatures on Record
(AB)

Executed as a deed by The Uniting Church in Australia Property Trust (NSW) in respect of clauses 6.3 to 6.4 of the Agreement as principal, in its capacity as trustee of the assets of The Uniting Church in Australia.

The Common Seal of the Uniting Church In Australia Property Trust (NSW) was hereunto affixed on the 21st day of March, 2013 pursuant to a resolution of the Trust at a duly convened meeting in the presence of:

.....

Member

.....

Member

SCHEDULE 1 AGREEMENT DETAILS

This attachment forms part of the Agreement between the Department and the Organisation.

Item 1 DEPARTMENT

Name: The Minister for Community Services, for and on behalf of the State of New South Wales, acting through Community Services, Department of Family and Community Services c/- 4-6 Cavill Avenue, Ashfield NSW 2131

A.B.N: 87 503 966 787

Address As above

Item 2 ORGANISATION

Name: UnitingCare NSW.ACT

A.B.N: 78 722 539 923

Address: Level 3, 222 Pitt Street, Sydney NSW 2000

Item 3 DEPARTMENT'S AUTHORISED REPRESENTATIVE

Name: Adele Brookes

Position: Principal Policy Officer

Address: 4-6 Cavill Avenue, Ashfield NSW 2131

Tel: (02) 9716 2970

Fax: (02) 9716 2249

Email: OOHCSocialBenefitBondPilots@facns.nsw.gov.au

Item 4 ORGANISATION'S AUTHORISED REPRESENTATIVE

Name: Claerwen Little

Position: Chief Executive Officer

Address: 13 Blackwood Place, North Parramatta

Tel: 9768 6866

Fax: 02 9630 2883

Email: clittle@burnside.org.au

Item 5 INSURANCE

1. The Organisation must hold and maintain and must ensure that all Sub-contractors 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;
 - (ii) products liability insurance for an amount of at least \$20 million for the total aggregate liability for all claims arising out of the Organisation'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 Organisation's employees;
 - (c) professional indemnity insurance for an amount of at least \$5 million. The professional indemnity insurance:
 - (i) must cover the Organisation's liability to the Department in respect of the Services and any products supplied ancillary to the Services;
 - (ii) must be maintained by the Organisation 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; and
 - (d) all risk property insurance for all of the Organisation'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 Organisation for business interruption in respect of the Services and delivery of the Outcomes;
 - (f) directors' and officers' liability insurance in relation to all the Organisation's directors and officers involved in the Organisation's performance of this Agreement from time to time;

- (g) personal accident (volunteers) insurance insuring the Organisation's (or any other approved Sub-Contractor'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 5, apart from workers compensation and professional indemnity insurance must:
- (a) note the interest of the Department and any Sub-contractors 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 insure 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 Organisation or any Sub-contractor will be accepted by the insurer as a notice of claim given by all of the insured;
 - (d) cover the Organisation'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 Organisation under this Agreement.

SCHEDULE 2 SCOPE OF OPERATIONS MANUAL

This attachment forms part of the Agreement between the Department and the Organisation

The Operations Manual will cover the following subject areas:

Introduction

Counterfactual

- > Live Matched Control Group ("LMCG") (requirements and methodology for deriving and managing this Group)
- > Process for determination of Counterfactual rate of restoration at year 3
 - Methodology - determination of rate based on annual rate of restoration for LMCG over prior 3 years
 - determining an agreed Counterfactual rate of restoration in the event the rate of restoration for LMCG is rejected
 - process for annual update of Counterfactual rate of restoration from year 4

Approved Mothers' Centres and Fathers' Centres

- > Agreed locations
- > Existing approved Centres
- > Process for agreeing relocation of Centres
- > Process for agreeing new Centres (including transition-in arrangements)
- > Process for agreeing closure of Centres (including transition-out arrangements)

Referral process (includes requirements and timeframes)

- > referrals by FACS
- > referrals by other Agencies (including process for approval by FACS)
- > minimum referrals in any part financial year (ie. where a Centre is opened or closed during the financial year).

Cohorts and eligibility criteria

- > Cohort 1
 - Intervention Group
 - Excluded Families (criteria for exclusion from Intervention Group)
- > Cohort 2
- > Cohort 3

Case Management Roles and Responsibilities

Procedure for seeking confirmation of Restorations

Records

- > list of records FACS requires Organisation to maintain and those for which copies are required, including documents/records which FACS will require the Organisation to hand over on termination/expiry of the Agreement and that will be required for Project evaluation

Reporting Requirements

- > reports, information and evidence required from Organisation for court proceedings (requirements and timeframes)

Information Exchange

- > includes IT arrangements and electronic sharing of data

Government policies and guidelines

- > any FACS or other Government policies and guidelines with which the Organisation (Trust/UCB) must comply
- > any particular requirements in relation to working with children checks etc

Annual review

- > includes review of the performance of the parties in achieving the objectives set out in clause 2.1
- > the performance of the Organisation in delivering the Outcomes under the Agreement
- > implementation of Operations Manual
- > the annual rate of restoration for the Live Matched Control Group for the preceding financial year
- > such other matters as FACS may determine from time to time.

Communications and media protocol

Transition Out

- > process for agreeing transition-out plans (content and timeframes)
- > arrangements and timeframes for closure of Centres on termination/expiry of the Agreement

Contract management

- > Project oversight framework
- > Contract Representatives
- > Tracking and monitoring referrals and Outcomes
- > Payment process
 - process for agreeing variations to timeframes for payment in Schedule 3
- > Dispute resolution (Parties' Representatives or their nominees)

- > Independent certification
 - process for disputing independent certifier's report

Key contacts

- > include Department and Organisation Authorised Representatives as listed in the Agreement Details

SCHEDULE 3 PAYMENT SCHEDULE

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This schedule (Payment Schedule) sets out the payments to be made under the terms of this Agreement between the Department and the Organisation. This schedule is intended to give effect to the objective of payments for Outcomes rather than service inputs. The information in this schedule reflects the financial model agreed between the parties prior to the Referral Date being the basis on which these amounts for Outcomes have been calculated, escalated and/or discounted.

The amounts specified in the Look-up Tables below are:

- A. exclusive of GST; and
- B. escalated at the end of each Financial Year by the agreed rate of 3%.

The total aggregate amount payable by the Department to the Organisation during the Term under this Agreement, including this Payment Schedule is capped at \$55 million.

Unless otherwise specified, the Restoration Rates and net Restorations used in the calculation of payments are to be rounded to the first decimal place using the rounding convention that if the figure in the second decimal place is equal to or greater than 5 the figure in the first decimal place will be

rounded up to the next highest figure and if the figure in the second decimal place is less than 5 the figure in the first decimal place will remain as is.

In this Payment Schedule, unless otherwise indicated, terms defined in the terms and conditions of this Agreement will have the same meaning in this Payment Schedule and:

"Agreed Closure Costs" means such amount up to the maximum amount set out in Look-up Table 6 Agreed Closure Costs Look-up Table: capped amount per Organisation Service Centre to be closed in Part C of this Payment Schedule as the Organisation 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.

"Agreed Opening Costs" means such amount up to the maximum amount set out in Look-up Table 8: Agreed Opening Costs Look-up Table: capped amount per Organisation Service to be opened in Part E of this Payment Schedule as the Organisation is able to reasonably satisfy the Department it has incurred, or will incur, as a direct result of the opening of an Organisation Service Centre.

"Break Costs" means such amount up to the maximum amount set out in Look-up Table 7: Break Costs Look-up Table: capped amount in Part D of this Payment Schedule as the Organisation is able to reasonably satisfy the Department it has incurred, or will incur, as a direct result of the termination of this Agreement. This includes the costs of winding up the Special Purpose Vehicle issuing the Bond and any costs associated with ending the Management Agreement and Loan Agreement.

"Fixed Counterfactual Rate of Restoration" means the fixed rate agreed for the Initial Period and is 25%.

"Live Counterfactual Rate of Restoration" means the rate of restoration derived from the Live Matched Control Group using the formula in the Operations Manual.

"Operating Organisation Service Centre" or **"Organisation Service Centre in operation"** means an Organisation Service Centre that is open and providing Services under this Agreement. The date on which an Organisation Service Centre is deemed to be opened is the date the Department and Organisation 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 Organisation agree in writing that the Organisation Service Centre is to cease providing Services under this Agreement.

"quarter" means each consecutive period of 3 Months ending on the respective last day of March, June, September and December.

"the Rate of Restoration for all Mothers' Centres" or **"Restoration Rate of all Mothers' Centres"** for Cohort 1 at Mothers' Centres in any specified period (the "relevant period") is calculated using the following formula:

$$\text{Restoration percentage (\%)} = [(RM - CM)/(RM + UM)] \times 100$$

Where: RM is the number of Cohort 1 Children and Young Persons in the Mothers' Centres who were Restored in the relevant period.

CM is the number of Cohort 1 Children and Young Person in the Mothers' Centres who have been both Restored and then Reversed in the relevant period as recorded in the Department's client management system.

UM is the number of Cohort 1 Children and Young Persons in the Mothers' Centres who became an Unsuccessful Referral in the relevant period.

"Restoration" or **"Restored"** in relation to a Child or Young Person, means the exit of the Child or Young Person from OOHHC. The date of that exit shall be the date of exit as recorded in the Department's client management system which entry shall be made as soon as practicable after the Child or Young Person leaves OOHHC. If the Department's client management system does not record a date of exit from OOHHC for a Child or Young Person in circumstances where the Organisation believes the Child or Young Person has exited OOHHC or if the Organisation disputes the date of exit so entered, the Organisation 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.

"Reversal" means the return of a Child or Young Person to OOHC who has been Restored whilst receiving Services from the Organisation as a Cohort 1 Child or Young Person within 12 months after the date of Restoration. The date of Reversal shall be the date of re-entry into OOHC as recorded in the Department's client management system which shall be made as soon as practicable after the Child or Young Person re-enters OOHC.

"Unsuccessful Referral" means a Child or Young Person in a Cohort 1 Family whose family is referred to the Organisation and receives some Services in respect of that Child or Young Person from the Organisation under this Agreement but which ceases to receive those Services without a Restoration of the Child or Young Person for any reason other than those identified in the Operations Manual as excluding the Child or Young Person from Cohort 1.

In this schedule, where the Department is to be satisfied with respect to any matter, the Department must act reasonably with respect to determining whether the Department has been satisfied.

PART A: STANDING CHARGE (CLAUSE 21)

1. The Standing Charge will be calculated and paid in accordance with this Part A except to the extent that this calculation and payment timeframe may be varied in the circumstances of the closure of an Operating Organisation Service Centre or the early termination of this Agreement by Parts F-L of this Schedule.
2. The Standing Charge is, subject to this Agreement (including this Payment Schedule) payable in equal quarterly instalments in arrears for each Financial Year of the Term on and from the Referral Date on a per Operating Organisation Service Centre basis.
3. The first instalment of the Standing Charge will be calculated at the expiry of the first quarter after the Referral Date, and where the Referral Date falls during the quarter on a pro rata basis for each Operating Organisation Service Centre, and then at the end of each quarter thereafter for the Term.
4. The instalment of the Standing Charge for any quarter is calculated using the following formula:

$$\text{Standing Charge instalment} = \text{Number of Operating Organisation Service Centres} \times J$$

Where J is the amount in Table 1: Standing Charge Look-up Table below for the Financial Year to which the Standing Charge relates.

For example, the Standing Charge Instalment payable for the third quarter in the 2014/15 Financial Year when 5 Organisation Service Centres were in Operation for the entire quarter would be:

$$\text{Standing charge instalment} =$$

Table 1: Standing Charge Look-up Table: quarterly payment per Operating Organisation Service Centre

FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
\$	\$	\$	\$	\$	\$	\$	\$

5. Where an Organisation Service Centre is opened or closed during the quarter for which the Standing Charge instalment is being calculated, an adjustment will be made to ensure the payment only covers the period for which the centre was open.

For example, the Standing Charge instalment for the third quarter in the 2014/15 Financial Year when 4 Operating Organisation Service Centres were in operation for the entire quarter and a fifth was opened one month into the quarter would be:

Standing Charge instalment =

6. The Organisation will issue the Department with an invoice for the Standing Charge instalment within 1 Month of the end of the relevant quarter.
7. Subject to the Department being satisfied that the invoice is true and correct and otherwise in accordance with this Part A of this Schedule the Department will pay the invoice within 1 Month of receipt of the correctly rendered invoice.

PART B: OUTCOME PAYMENTS (CLAUSE 21)

Outcome Payments will be calculated and paid in accordance with this Part B except to the extent that this calculation and payment timeframe may be varied in the circumstances of the closure of an Operating Organisation Service Centre or the early termination of this Agreement by Parts F-L of this Schedule (and with the intent that there will be no double payment under this Agreement unless expressly provided for).

Cohort 1 Payment timeframes and information required

1. Outcome Payments for Cohort 1 are, subject to this Agreement (including this Payment Schedule), payable on an annual basis within 3 Months of the end of the Financial Year for which the payment is due.
2. The Organisation will provide the Department with the following information within 10 Business Days of the end of the Financial Year:
 - (a) the total number of Restorations, Intra-Year Reversals and Unsuccessful Referrals of Cohort 1 Children and Young Persons at all Mothers' Centres during the Financial Year for which payment is due.
 - (b) the total number of Restorations, Intra-Year Reversals and Unsuccessful Referrals of Cohort 1 Children and Young Persons at all Fathers' Centres during the Financial Year for which the payment is due.
 - (c) the total number of Restorations of Children and Young Persons in Cohort 1 receiving a Service from the Organisation at all Mothers' Centres in operation during the Financial Year for which the payment is due;
 - (d) the total number of Restorations of Children and Young Persons in Cohort 1 receiving a Service from the Organisation at all Fathers' Centres in operation during the Financial Year for which the payment is due; and
 - (e) the Organisation's calculation of the Rate of Restorations for all Mothers' Centres in operation in aggregate and the Rate of Restorations for all the Fathers' Centres in operation in aggregate during the Financial Year for which the payment is due.

Cohort 1 Outcomes Payment

3. The Organisation will be paid for Restorations of Cohort 1 Children and Young Persons in excess of the number of Restorations in the Counterfactual.

The amount payable is calculated using the following formula:

$$\text{Cohort 1 Outcome Payment} = \text{Net Restorations} \times K$$

Net Restorations

Where Net Restorations = [the total number of Restorations for all Mothers' Centres + the total number of Restorations for all Father's Centres – the total number of Intra-Year Reversals for all Mothers' Centres – the total number of Intra-Year Reversals for all Fathers' Centres] - the Counterfactual Restorations

Where an Intra-Year Reversal is the Reversal of a Child or Young Person which took place in the same Financial Year as the Restoration of that same Child or Young Person.

Counterfactual Restorations represent the number of Restorations in the Counterfactual calculated using the following formula:

Counterfactual Restorations = Counterfactual Rate of Restoration x [total number of Restorations and Unsuccessful Referrals at all Mothers' Centres during the Financial Year for which payment is due + total number of Restorations and Unsuccessful Referrals at all Fathers' Centres during the Financial Year for which the payment is due]

In the Initial Period, the Counterfactual Rate of Restoration is the Fixed Counterfactual Rate of Restoration.

From the Counterfactual Review Date the Counterfactual Rate of Restoration will be the Live Counterfactual Rate of Restoration.

K

Where *K* is the amount in Table 2: Cohort 1 Outcome Payments Look-up Table: payments per net Restorations below for the Financial Year for which payment is due and referable to the Rate of Restoration for all Mothers' Centres in that same Financial Year. **For example**, if the Rate of Restoration for all Mothers' Centres was 25% in the 2015/16 Financial Year, the amount payable for each Net Restoration is \$

If the total number of Restorations and Unsuccessful Referrals at all Mothers' Centres and all Fathers' Centres' operating during that Financial Year was 100, the number of Restorations in the Counterfactual would be 25 (25% x 100).

If the total number of Restorations for all Mothers' and all Fathers' Centres operating during that Financial Year was 72 the Outcome Payment for that Financial Year would be:

NB: Restorations, Intra-Year Reversals and Unsuccessful Referrals associated with Organisation Service Centres that closed during the Financial Year for which payment is due and for which payment was made as a result of the closure of the Centre will not be included in the calculation of the Net Restorations for the Cohort 1 Outcome Payment under this Part B.

8. The Organisation will within 1 Month of the end of the Financial Year for which the payment is payable issue the Department with:
 - (a) an invoice for the final Cohort 1 Outcome Payment calculated in accordance with this Payment Schedule; and
 - (b) the Independent Certifier's report prepared in accordance with the requirements of this Agreement including this Payment Schedule.
9. Subject to the Department being satisfied as to the contents of the Independent Certifier's report and that the invoice is valid and correctly reflects the final Cohort 1 Outcome Payment payable for the relevant Financial Year, the Department will make the payment within 3 Months of the end of the Financial Year for which payment is due.
10. In the event that the Referral Date is not 1 July 2013 the first Cohort 1 Outcome Payment will relate to the Restoration Rate for all Mothers' Centres and the Net Restorations during the period between the Referral Date and the end of the first Financial Year in the Term (i.e. 1 July 2014). The final payment will relate to the Net Restorations during the period between the end of the last Financial Year in the Term (i.e 30 June 2020) and the final date of the Term and, if the period is less than 6 months, the Restoration Rate for all Mothers' Centres for the Financial Year preceding the period.

Cohort 2

11. Subject to this Agreement (including this Payment Schedule) Outcome Payments for Cohort 2 are payable on an annual basis within 3 Months of the end of the Financial Year for which the payment is due.
12. The Organisation will within 10 Business Days of the end of the relevant Financial Year provide the Department with the total number of Cohort 2 Outcomes achieved for each Organisation Service Centre in Operation during the Financial Year for which the payment is due.
13. The Cohort 2 Outcome Payment for each Organisation Service Centre in Operation during the Financial Year for which payment is due will be calculated using the following formula:

$$\text{Cohort 2 Outcome Payment} = M \times N$$

Where M is the number of Cohort 2 Outcomes achieved by the Organisation Service Centre in Operation during the Financial Year for which payment is due.

Where N is the amount in Table 4: Cohort 2 Outcome Payment Look-up Table: amount payable per Cohort 2 Outcome up to the capped annual amount per operating Organisation Service Centre for the Financial Year for which payment is due.

For example, if the number of Cohort 2 Outcomes achieved at an Operating Organisation Centre in year 2017/18 is 3, the Outcome Payment for Cohort 2 in relation to that centre would be:

Table 4: Cohort 2 Outcomes Payment Look-up Table: amount payable per Cohort 2 Outcome and capped annual amount per operating Organisation Service Centre

	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Payment per Cohort 2 Outcome								
Capped annual amount per OSC								

14. The Cohort 2 Outcome Payment for each Organisation Centre in operation during any Financial Year cannot exceed the capped annual amount per operating Organisation Service Centre for that Financial Year set out in Table 4: Cohort 2 Outcome Payments Look-up Table: amount payable per Cohort 2 Outcome and capped amount per Operating Organisation Service Centre.

For example, in the example referred to immediately above, where the Organisation achieves 3 Outcomes at an Organisation Service Centre in the 2017/18 Financial Year, the total Outcome Payment for Cohort 2 payable for that centre in that Financial Year could not exceed

NB: Organisation Service Centres that have closed during the Financial Year, and the Outcomes they have achieved, for which amounts have been paid in accordance with clause 14.4 and Parts G or H of this Payment Schedule will not be included in the calculation of the Cohort 2 Outcome Payment under this Part B of this Payment Schedule.

Final Cohort 2 Outcome Payment

15. The Organisation will within 1 Month of the end of the Financial Year for which the payment is due issue the Department with:
- (a) an invoice for the total Outcome Payment for Cohort 2 which is the sum of the Cohort 2 Outcome Payment for each Organisation Service Centre in operation during the Financial Year for which payment is payable calculated in accordance with this Payment Schedule; and
 - (b) the Independent Certifier's report prepared in accordance with the requirements of this Agreement including this Payment Schedule.
16. Subject to the Department being satisfied as to the contents of the Independent Certifier's report and that the invoice is valid and correctly reflects the total Outcome Payment for Cohort 2 payable for the relevant Financial Year, the Department will make the payment within 3 Months of the end of the Financial Year for which the payment is due.
17. The Organisation may submit the invoice for the total Cohort 2 Outcome Payment together with the invoice for the final Cohort 1 Outcome Payment.

Cohort 3

18. Subject to this Agreement (including this Payment Schedule) Outcome Payments for Cohort 3 are payable on an annual basis within 3 Months of the end of the Financial Year for which the payment is due.
19. The Cohort 3 Outcome Payment for each Organisation Service Centre in operation during the Financial Year for which payment is due is set out in Table 5: Cohort 3 Outcome Payment Look-up Table: amount payable per annum for each Operating Organisation Service Centre.
- For example,** for the 2014/15 Financial Year, the Organisation will be paid a Cohort 3 Outcome Payment of _____ for each Organisation Service Centre in operation during that Financial Year.

Table 5: Cohort 3 Outcome Payments Look-up Table: amount payable per annum for each Operating Organisation Service Centre

FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21

NB: Organisation Service Centres that have closed during the Financial Year, and for which amounts have been paid in accordance with clause 14.4 and Parts G or H of this Payment Schedule will not be included in the calculation of the Cohort 2 Outcome Payment under this Part B of this Payment Schedule.

Final Cohort 3 Outcome Payment

20. The Organisation will within 1 Month of the end of the Financial Year for which the payment is due, issue the Department with:
- an invoice for the total Cohort 3 Outcome Payments due for all Organisation Service Centres in operation during the Financial Year for which payment is due calculated in accordance with this Payment Schedule: and
 - the Independent Certifier's report prepared in accordance with the requirements of this Agreement including this Payment Schedule.
21. Subject to the Department being satisfied as to the contents of the Independent Certifier's Report and that the invoice is valid and correctly reflects the total Cohort 3 Outcome Payment payable for the relevant Financial Year, the Department will make the payment within 3 Months of the end of the Financial Year for which the payment is due.
22. The Organisation may submit the invoice for the total Cohort 3 Outcome Payment together with the invoices for the final Cohort 1 Outcome Payment and the total Cohort 2 Outcome Payment.

PART C: AGREED CLOSURE COSTS (How calculated)

- Where under this Agreement the Department is required to contribute to the Organisation's costs of closing an Organisation Service Centre, the amount the Department will contribute to the closure is capped at the amount set out in Table 6: Agreed Closure Costs Look-up Table: capped amount per Organisation Service Centre to be closed for the Financial Year in which the closure has been agreed by the parties to occur.

For example, if the Department requests the closure of an Organisation Service Centre during the 2015/16 Financial Year and the Organisation agrees to the closure, the Department will contribute towards the Organisation's incurred costs of closing the centre an amount up to and no greater than

Table 6: Agreed Closure Costs Look-up Table: capped amount per Organisation Service Centre to be closed

FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21

2. The Organisation must provide to the Department evidence satisfactory to the Department that the closure costs were actually incurred by the Organisation together with an invoice for the Department's contribution no later than 1 Month, or such later period as may be agreed by the parties in writing, after the actual closure of the Organisation Service Centre.
3. Subject to the Department being satisfied that the closure costs were actually incurred by the Organisation, the Department will pay any amount owing by way of Agreed Closure Costs, within 1 Month, or such other period as may be agreed by the parties in writing, of receipt of the acceptable evidence and valid invoice.

PART D: BREAK COSTS (How calculated)

1. Where under this Agreement the Department is required to contribute to the Organisation's Break Costs, the amount the Department will contribute is capped at the amount set out in Table 7: Break Costs Look-up Table: capped amount for the Financial Year in which the termination occurred.

For example, if the Department is required to contribute to Break Costs in the 2015/16 Financial Year, the Department will contribute towards the Organisation's incurred Break Costs an amount up to and no greater than

Table 7: Break Costs Look-up Table: capped amount

FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21

2. The Organisation must provide to the Department evidence satisfactory to the Department that the Break Costs were actually incurred by the Organisation in accordance with Parts I or K of this Payment Schedule.

PART E: AGREED OPENING COSTS (How calculated)

1. Where under this Agreement the Department is required to contribute to the Organisation's costs of opening an Organisation Service Centre, the amount the Department will contribute to the opening is capped at the amount set out in Table 8: Agreed Opening Costs Look-up

Table: capped amount per Organisation Service Centre to be opened for the Financial Year in which the opening has been agreed by the parties to occur.

For example, if the Department agrees to the opening of an Organisation Service Centre during the 2015/16 Financial Year and the Department must pay the Agreed Opening Costs under this Agreement, the Department will contribute towards the Organisation's incurred costs of opening the centre an amount up to and no greater than:

Table 8: Agreed Opening Costs Look-up Table: capped amount per Organisation Service Centre to be opened

FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21

2. The Organisation must provide to the Department evidence satisfactory to the Department that the Agreed Opening Costs were actually incurred by the Organisation together with an invoice for the Department's contribution no later than 1 Month, or such later period as may be agreed by the parties in writing, after the actual opening of the Organisation Service Centre.
3. Subject to the Department being satisfied that the Agreed Opening Costs were actually incurred by the Organisation, the Department will pay any amount owing by way of Agreed Opening Costs, within 1 Month, or such other period as may be agreed by the parties in writing, of receipt of the acceptable evidence and valid invoice.

PART F: PAYMENT WHEN COHORT 1 REFERRALS DO NOT MEET GUARANTEED MINIMUM REFERRALS (CLAUSE 12)

1. When the number of referrals for Cohort 1 in a Financial Year do not meet the aggregate minimum required in clause 12 (Referrals to Organisation) the Cohort 1 Outcome Payment for the following Financial Year will be calculated on the basis that the minimum number of referrals were made and any referrals that should have been made but were not made had resulted in Restorations.

For the avoidance of doubt, this Part F does not apply if this Agreement is terminated.

For example, if the referrals to all Operational Organisation Service Centres during the 2014/15 Financial Year were 2 below the aggregate minimum required, the total Cohort 1 Outcome Payment for the 2015/16 Financial Year would include payment for 2 additional Restorations at the amount paid for each net Restoration for that Financial Year.

PART G: PAYMENT UPON CLOSURE OF AN OPERATING ORGANISATION SERVICE CENTRE FOR A FORCE MAJEURE EVENT OR DUE TO LACK OF REFERRALS (CLAUSES 18.8 AND 14.4)

The following amounts will be payable to the Organisation in the event that an Organisation Service Centre is to be closed under clause 14.4 as a result of a Force Majeure Event or due to repeated referrals to the Centre to be closed that do not meet the minimum for that Centre referred to in clause 12.2.

For the avoidance of doubt, this Part G does not apply if this Agreement is terminated.

Agreed Closure Costs

1. Subject to this Agreement (including this Payment Schedule), the Department, upon closure of an Operating Organisation Service Centre, will pay to the Organisation the Agreed Closure Costs in accordance with Part C of this Schedule for each Operating Organisation Service Centre the parties agree to close. This amount will be adjusted by the proceeds of sale of assets purchased when the Centre was opened if the Department paid the Opening Costs for the Centre.

For example, if the Department paid the Agreed Opening Costs for the Centre and \$15,000 is received from the sale of assets purchased for the Centre, the Closure Costs payable upon termination and closure of the Centre will be reduced by

Calculating the Outcome Payment payable for Cohorts 2 and 3

2. The Cohort 2 Outcome Payment and Cohort 3 Outcome Payment payable for the Financial Year up to the date of closure, will be the pro rata maximum Outcome Payments for Cohort 2 and Cohort 3 that would be payable for the Financial Year in which the closure occurs in accordance with Part B of this Payment Schedule.

For example, if the closure of a single Organisation Service Centre occurs at the end of December in the 2016/17 Financial Year, 50% of the amount of _____ for the Organisation Service Centre will be payable in respect of Cohort 2 and 50% of the amount of _____ for the Organisation Service Centre will be payable in respect of Cohort 3. The total Outcome Payment for Cohort 2 and Cohort 3 on closure of the Centre for a Force Majeure event or because of lack of referrals would therefore be:

Calculating the Outcome Payment payable for Cohort 1

3. The amount payable to the Organisation upon closure of an Organisation Service Centre will also include an Outcome Payment for Cohort 1 which will be calculated using the formula:

$$\text{Cohort 1 Outcome Payment} = P \times Q$$

Where P is the net number of Children and Young Persons (CYP) in Cohort 1 referred to the Organisation who, as at the date of closure of the Organisation Service Centre are still in OOHC and whose Families are receiving a Service from the Organisation Service Centre to be closed. The net number is calculated using the formula:

$$\text{Net CYP} = \text{Total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of closure} - [\text{Counterfactual Rate of Restoration} \times \text{total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of closure}]$$

Where Q is the amount in Table 2: Cohort 1 Outcome Payment Look-up Table: payments per net Restorations in Part B of this Payment Schedule for the Financial Year in which the closure occurs and the Rate of Restoration for all Mothers' Centres in the previous Financial Year.

For example, if a Centre is closed under clause 14.4 for a Force Majeure Event or due to low referrals on 21 December 2016 and as at this date there are a total of 20 Children and/or Young Persons in Cohort 1 who are also in OOHC and are receiving a Service from the Organisation at that Centre when the Centre is closed; and in the 2015/16 Financial Year the Rate of Restoration for all Mothers' Centres was 59% and the Counterfactual rate of restoration is 25%; the amount payable is:

4. The Cohort 1 Outcomes Payment must be adjusted for reversals and the Standing Charge amounts paid and due as at the date of closure.

Adjusting the Cohort 1 Outcome Payment for reversals

5. The adjustment for reversals will be as set out in item 4 of Part B of this Payment Schedule where the number of Prior Financial Year Reversals refers to the number of Reversals: (a) which occurred during the period between the end of the Financial Year immediately before the date of closure, and the date of closure; and (b) which occurred not more than 12 months after the recorded date of Restoration, and (c) where the Restoration took place in the Financial Year immediately prior to the Financial Year in which the centre closed.

The amount to be deducted for each reversal is obtained from Table 3: Reversal Deduction Look-up Table: amount to deduct for each reversal using the Financial Year of the Restoration and the Rate of Restoration for all Mothers' Centres in the Financial Year of the Restoration, as described in Part B of this Payment Schedule.

For example, if 2 Children had returned to OOHC since 1 July 2016 and before 21 December 2016 when the Organisation Service Centre is closed, and in the 2015/16 Financial Year the Rate of Restoration for all Mothers' Centres was 59% the amount to be deducted for reversals is:

Adjusting the Cohort 1 Outcome Payment for the Standing Charge already paid

6. The Cohort 1 Outcome Payment must also be adjusted for all instalments of the Standing Charge paid as at the date of closure that relate to the Centre to be closed by deducting the aggregate of all instalments of the Standing Charge paid in the relevant Financial Year up to the date of closure that relate to the Centre to be closed.

For example, if the Organisation Service Centre is closed on 21 December 2016, the Standing Charge paid under the terms of Part A of this Schedule that related to the Centre would have been for a single quarter of the 2016/17 Financial Year: This amount would be deducted from the Cohort 1 Outcome Payment due.

Adjusting the Cohort 1 Outcome Payment for any Standing Charge due

7. The adjustment for any Standing Charge amount which is due but not paid as at the date of closure would be calculated as per Part A of this Schedule on a pro rata basis and added to the adjusted Cohort 1 Outcome Payment due. Using the example above the amount would be:

Additional amount deducted from Cohort 1 Outcome Payment

8. In addition, the Organisation will advise and provide acceptable evidence to the Department of the total amount the Organisation will, or is likely to, receive under any insurance claim which the Organisation is entitled to make associated with the Force Majeure Event. This amount will be deducted from the Cohort 1 Outcome Payment in the case that the closure is a result of a Force Majeure Event.

Calculating the total Cohort 1 Outcome Payment

9. The total Cohort 1 Outcome Payment payable in the case of closure for a Force Majeure Event or as a result of low referrals would therefore be:

Cohort 1 Outcome Payment – Reversals Deduction – Standing Charge paid + Standing Charge due – additional amount (if any) under item 8 of this Part G of the Payment Schedule.

Calculating the total amount to paid to the Organisation for closure of an Organisation Service Centre due to a Force Majeure Event or as a result of low referrals

10. The total amount payable to the Organisation on closure will be:
 Agreed Closure Costs + total Cohort 1 Outcome Payment + total Cohort 2 Outcome Payment + total Cohort 3 Outcome Payment
11. The Organisation will within 1 Month of the date of closure issue the Department with:
- (a) evidence of the closure costs for the Centre to be closed and, where the Department contributed to the Opening Costs of the Centre, the proceeds of sale of the assets;

- (b) evidence relating to item 8 of this Part G of the Payment Schedule, if applicable;
 - (c) an invoice for the total amount payable to the Organisation for the closure calculated in accordance with this Payment Schedule: and
 - (d) the Independent Certifier's report prepared in accordance with the requirements of this Agreement including this Payment Schedule.
12. Subject to the Department:
- (a) being satisfied as to the contents of the Independent Certifier's report and the additional evidence provided; and
 - (b) that the invoice is valid and correctly reflects the total amount payable to the Organisation for the closure,
- the Department will pay the amount payable within 2 Months of receipt of the invoice.

Additional amount due at the end of Term

13. At the end of the Term the Organisation's performance and financial position over the Term if the Organisation Service Centre had remained open, will be calculated based on the closed Centre's average net Restorations per annum and the average Rate of Restoration for all Mothers' Centres to the date of closure. If the Organisation's net Restorations and average Rate of Restoration for all Mothers' Centres was significantly affected by the closure, an additional amount will be payable to the Organisation to assist in the repayment of the principal amount owed under the Loan Agreement and interest owed to the investors.
14. The additional amount in item 13 immediately above will be subject to the total cumulative cap of referred to in clause 21.17 of this Agreement and to agreement between the parties.

PART H: PAYMENT UPON CLOSURE OF AN OPERATING ORGANISATION SERVICE CENTRE DUE TO POOR PERFORMANCE (CLAUSE 14.4)

The following amounts will be payable to the Organisation in the event that the Organisation has requested, and the Department has agreed to, the closure of an Organisation Service Centre due to its poor performance or for any other reason except a lack of referrals or a Force Majeure event.

Calculating the Outcome Payment payable for Cohorts 2 and 3

1. The Cohort 2 Outcome Payment and Cohort 3 Outcome Payment payable for the Financial Year up to the date of closure, will be the pro rata maximum Outcome Payments for Cohort 2 and Cohort 3 that would be payable for the Financial Year in which the closure occurs in accordance with Part B of this Payment Schedule.

For example, if the closure of a single Organisation Service Centre occurs at the end of December in the 2016/17 Financial Year, 50% of the amount of for the Organisation Service Centre will be payable in respect of Cohort 2 and 50% of the amount of for the Organisation Service Centre will be payable in respect of Cohort 3. The total Outcome Payment for Cohort 2 and Cohort 3 on closure of the Centre for poor performance would therefore be:

Calculating the Outcome Payment payable for Cohort 1

2. The amount payable to the Organisation upon closure of an Organisation Service Centre will also include an Outcome Payment for Cohort 1 which will be calculated using the formula:

$$\text{Cohort 1 Outcome Payment} = P \times Q$$

Where P is the net number of Children and Young Persons (CYP) in Cohort 1 referred to the Organisation who, as at the date of closure of the Organisation Service Centre are still in

OOHC and whose Families are receiving a Service from the Organisation Service Centre to be closed. The net number is calculated using the formula:

$$\text{Net CYP} = \text{Total number of CYP in cohort 1 and in OOHC receiving a service at the Centre at the date of closure} - [\text{Counterfactual Rate of Restoration} \times \text{total number of CYP in Cohort 1 and in OOHC receiving a service at the Organisation Service Centre at the date of closure}]$$

Where Q is the amount in Table 2: Cohort 1 Outcome Payment Look-up Table: payments per net Restorations in Part B of this Payment Schedule for the Financial Year in which the closure occurs and the Rate of Restoration for all Mothers' Centres in the previous Financial Year.

For example, if a Centre is closed on 21 December 2016 and as at this date there are a total of 20 Children and/or Young Persons in Cohort 1 who are also in OOHC and are receiving a Service from the Organisation at that Centre on 21 December 2016 when the Organisation Service Centre is closed; and in the 2015/16 Financial Year the Rate of Restoration for all Mothers' Centres was 59% and the Counterfactual Rate of Restoration is 25%; the amount payable is:

3. The Cohort 1 Outcome Payment must be adjusted for reversals and the Standing Charge amounts paid and due as at the date of closure.

Adjusting the Cohort 1 Outcome Payment for reversals

4. The adjustment for reversals will be as set out in item 4 of Part B of this Payment Schedule where the number of Prior Financial Year Reversals refers to the number of Reversals: (a) which occurred during the period between the end of the Financial Year immediately before the date of closure, and the date of closure; and (b) which occurred not more than 12 months after the recorded date of Restoration, and (c) where the Restoration took place in the Financial Year immediately prior to the Financial Year in which the centre closed.

The amount to be deducted for each reversal is obtained from Table 3: Reversal Deduction Look-up Table: amount to deduct for each reversal using the Financial Year of the Restoration and the Rate of Restoration for all Mothers' Centres in the Financial Year of the Restoration, as described in Part B of this Payment Schedule.

For example, if 2 Children who received Services at the Centre had returned to OOHC since 1 July 2016 and before 21 December 2016 when the Organisation Service Centre is closed, and in the 2015/16 Financial Year the Rate of Restoration for all Mothers' Centres was 59% the amount to be deducted for reversals is:

Adjusting the Cohort 1 Outcome Payment for the Standing Charge already paid

5. The Cohort 1 Outcome Payment must also be adjusted for all instalments of the Standing Charge paid as at the date of closure that relate to the Centre to be closed by deducting the aggregate of all instalments of the Standing Charge paid in the relevant Financial Year up to the date of closure that relate to the Centre to be closed.

For example, if the Organisation Service Centre is closed on 21 December 2016, the amount of the Standing Charge paid under the terms of Part A of this Schedule that related to the Centre would have been for a single quarter of the 2016/17 Financial Year: This amount would be deducted from the Cohort 1 Outcomes Payment due.

Adjusting the Cohort 1 Outcome Payment for any Standing Charge due

6. The adjustment for any Standing Charge amount which is due but not paid as at the date of closure would be calculated as per Part A of this Schedule on a pro rata basis and added to the adjusted Cohort 1 Outcomes Payment due. Using the example above the amount would be:

Calculating the total Cohort 1 Outcome Payment

7. The total Cohort 1 Outcome Payment payable in the case of closure of an Organisation Service Centre under clause 14.4 due to poor performance or any other reason except a Force Majeure Event or lack of referrals would therefore be:

Cohort 1 Outcome Payment – Reversals Deduction – Standing Charge paid + Standing Charge due.

Calculating the total amount to be paid to the Organisation for closure of an Organisation Service Centre under clause 14.4 due to Poor Performance

8. The total amount payable to the Organisation on closure will be:
- Total Cohort 1 Outcome Payment + total Cohort 2 Outcome Payment + total Cohort 3 Outcome Payment
9. The Organisation will within 1 Month of the date of closure issue the Department with:
- (a) an invoice for the total amount payable to the Organisation for the closure calculated in accordance with this Payment Schedule; and
 - (b) the Independent Certifier's report prepared in accordance with the requirements of this Agreement including this Payment Schedule.
10. Subject to the Department:
- (a) being satisfied as to the contents of the Independent Certifier's report; and
 - (b) that the invoice is valid and correctly reflects the total amount payable to the Organisation for the closure,
- the Department will pay the amount payable within 2 Months of receipt of the invoice.

PART I: TERMINATION PAYMENT ON TERMINATION BY THE DEPARTMENT FOR CONVENIENCE (CLAUSE 24) AND ON TERMINATION BY THE DEPARTMENT AFTER REVIEW OF THE COUNTERFACTUAL RATE OF RESTORATION (CLAUSES 17.4(a) AND 17.5) AND TERMINATION BY THE ORGANISATION FOR BREACH BY THE DEPARTMENT (CLAUSES 26.1 and 26.2)

The following amounts are payable by the Department to the Organisation in the event that the Department terminates this Agreement for convenience under clause 24 (Termination by Department for Convenience) and in the event that the Department terminates this Agreement following the review of the Counterfactual Rate of Restoration after the Initial Period under clause 17.4(a) or 17.5 or if the Organisation terminates the Agreement under clause 26.1 or 26.2.

Agreed Closure Costs

1. The Department, upon termination under clause 24 (Termination by Department for Convenience) or under clause 17.4(a) or 17.5 or 26.1 or 26.2, will pay to the Organisation the Agreed Closure Costs in accordance with Part C of this Payment Schedule for each Organisation Service Centre the Organisation elects to close as a result of the termination, to be calculated by reference to the Financial Year in which this Agreement was terminated by the Department. This amount will be adjusted by the proceeds of sale of assets purchased when the Centre was opened if the Department paid the Agreed Opening Costs for the Centre.

For example, if the Department paid the Agreed Opening Costs for the Centre and \$15,000 is received from the sale of assets purchased for the Centre, the Agreed Closure Costs payable upon termination and closure of the Centre will be reduced by \$15,000.

Calculating the Outcome Payments for Cohort 2 and Cohort 3

2. The Cohort 2 Outcome Payment and Cohort 3 Outcome Payment payable for the Financial Year up to the date of termination under clause 24 (Termination by Department for Convenience), or clause 17.4(a) or 17.5 or clause 26.1 or 26.2 of this Agreement will be the maximum Outcome Payment in respect of Cohort 2 and Cohort 3 that would otherwise be payable for the Financial Year in which the termination occurs in accordance with Part B of this Payment Schedule.

For example, if the termination occurs in December in the 2016/17 Financial Year and the Organisation was operating 7 Organisation Service Centres at the date of termination, the amount of _____ for each operating Organisation Service Centre will be payable in respect of Cohort 2 and the amount of _____ for each operating Organisation Service Centre will be payable in respect of Cohort 3.

The total Outcome Payment for Cohort 2 and Cohort 3 on termination for convenience would therefore be:

NB: Organisation Service Centres that closed during the period since the end of the last Financial Year and the date of termination and for which Cohort 2 and 3 payments were made upon their closure, will not be included in the calculation of the Cohort 2 and 3 Outcome Payment for termination under this Part I.

Calculating the Outcome Payment for Cohort 1

3. The amount payable to the Organisation upon termination under clause 24 (Termination by Department for Convenience), or by the Department under clause 17.4(a) or clause 17.5 or 26.1 or 26.2 will also include an Outcome Payment in respect of Cohort 1 which will be calculated using the following formula:

$$\text{Cohort 1 Outcome Payment} = P \times Q$$

Where P is the net number of Children and Young Persons (CYP) in Cohort 1 Families referred to the Organisation who, as at the date of termination, are still in OOHC and whose Families are receiving a Service from the Organisation under this Agreement. The net number is calculated using the formula:

$$\text{Net CYP} = \text{Total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of closure} - [\text{Counterfactual Rate of Restoration} \times \text{total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of termination}]$$

Where Q is the amount in Table 2: Cohort 1 Outcome Payment Look-up Table: payments per net Restoration in Part B of this Payment Schedule for the Financial Year in which the termination occurs and with reference to the Rate of Restoration for all Mothers' Centres in the previous Financial Year.

For example, if this Agreement is terminated by the Department for convenience with a date of termination of 21 December 2016 and as at this date there are a total of 80 Children and Young Persons in Cohort 1 who are in OOHC and whose Families are receiving a Service from the Organisation and in the 2015/16 Financial Year the Rate of Restoration for all Mothers' Centres was 59% and the Counterfactual Rate of Restoration was 25%, the amount payable is:

4. The Cohort 1 Outcome Payment must be adjusted for reversals and the Standing Charge amounts paid and due as at the date of termination.

NB: Restorations and Unsuccessful Referrals associated with Organisation Service Centres that closed during the period since the end of the last Financial Year and the date of termination and for which payment has been made as a result of the closure will not be included in the calculation for the Cohort 1 Outcome Payment under this Part I.

Adjusting the Cohort 1 Outcome Payment for reversals

5. The adjustment for reversals will be as set out above in item 4 of Part B of this Payment Schedule where the number of Prior Financial Year Reversals refers to the number of Reversals: (a) which occurred during the period between the end of the Financial Year immediately before the date of termination, and the date of termination; and (b) which occurred not more than 12 months after the recorded date of Restoration, and (c) where the Restoration took place in the Financial Year immediately prior to the Financial Year in which the termination of the Agreement occurred.

The amount to be deducted for each reversal is obtained from Table 3: Reversal Deduction Look-up Table: amount to deduct for each reversal using the Financial Year in which the Restoration occurred and the Rate of Restoration for all Mothers' Centres in the Financial Year of the Restoration, as described in Part B of this Payment Schedule.

For example, if 2 children had returned to Out-Of-Home Care since 1 July 2016 and before 21 December 2016 when the Agreement is terminated, and in 2015/16 the Rate of Restoration for all Mothers' Centres was 59% the amount to be deducted for reversals is:

Adjusting the Cohort 1 Outcome Payment for the Standing Charges already paid

6. The Cohort 1 Outcome Payment must also be adjusted for the total instalments of the Standing Charge paid in the relevant Financial Year up to the date of termination.

For example, if 4 Organisation Service Centres were in operation in the 2016/17 Financial Year as at 21 December 2016 when the Agreement is terminated the total instalments of the standing charge paid under Part A of this Payment Schedule would be 4 instalments of the quarterly charge: This amount would be deducted from the Cohort 1 Outcomes Payment due.

NB: any instalments of the Standing Charge paid to Centres that closed since the end of the last Financial Year and the date of termination would have been included in the adjustment to the payments associated with closure of the Centre(s) and will not be included in this adjustment.

Adjusting the Cohort 1 Outcome Payment for any Standing Charge due

7. The adjustment for any instalments of the Standing Charge which are due but have not been paid as at the date of termination would be calculated as per Part A of this Schedule on a pro rata basis and added to the adjusted Cohort 1 Outcomes Payment calculated above.

Using the example immediately above the amount would be:

NB: any instalments of the Standing Charge due to Centres that closed during the period since payment of the last instalment of the Standing Charge to the date of termination would have been included in the adjustment to the payments associated with closure of the Centre(s) and will not be included in this adjustment.

Additional amounts included Cohort 1 Outcome Payment

8. In addition, the Organisation will advise and provide evidence satisfactory to the Department of the following:
- (a) the principal amount outstanding as at the date of termination under the Loan Agreement;
 - (b) the interest owed under the Loan Agreement based on the average returns to investors at the date of termination;
 - (c) any associated Break Costs arising directly from termination of the Loan Agreement;
 - (d) the foregone return to the Organisation based on the average Rate of Restoration for all the Mothers' Centres since the Referral Date and the average net Restorations per annum achieved by the Organisation in each full Financial Year since the Referral Date to the date of termination; and

- (e) the total amounts received by the Organisation from the Department under the terms of this Agreement that have not been spent and are not committed to liabilities directly associated with this Agreement.

If the aggregate of the amounts in items 8(a), (b), (c), and (d) is greater than zero, the Cohort 1 Outcome Payment payable to the Organisation under this Part I to this Payment Schedule will be adjusted by the difference in that aggregate amount and the amount referred to in item 8(e) above.

Any amount payable under this item 8 of Part I of this Payment Schedule is subject to the Department being reasonably satisfied that the additional amount claimed under this item 8 is actually incurred or suffered by the Organisation as a direct result of the Department's termination for convenience and to any cap on the amount payable mentioned elsewhere in this Agreement (for example Break Costs).

For example, if the aggregate of the amounts in items 8(a) + (b) + (c) + (d) above is _____ and the total amount in item 8(e) above is _____ the Cohort 1 Outcome Payment payable under this Part I will be increased by _____

Calculating the total Cohort 1 Outcome Payment

9. The total Cohort 1 Outcome Payment due in the case of termination under clause 24 (Termination for Convenience), or for termination by the Department under clause 17.4(a) or 17.5 or clause 26.1 or 26.2 of this Agreement will therefore be:

Cohort 1 Outcome Payment – Reversals Deduction – Standing Charge paid + Standing Charge due + additional amount (if any) under item 8 of this Part I of the Payment Schedule.

Calculating the total amount to paid to the Organisation

10. The total amount payable to the Organisation for a termination under clause 24 (Termination by Department for Convenience) or for a termination by the Department under clause 17.4(a) or 17.5 or clause 26.1 or 26.2 of this Agreement will be:

Agreed Closure Costs + total Cohort 1 Outcome Payment + total Cohort 2 Outcome Payment + total Cohort 3 Outcome Payment.

11. The Organisation will within 2 Months of date of termination issue the Department with:
- (a) an invoice for the total amount payable to the Organisation for termination for convenience calculated in accordance with this Payment Schedule; and
 - (b) the evidence referred to in item 8 of this Part I of the Payment Schedule; and
 - (c) the Independent Certifier's report prepared in accordance with the requirements of this Agreement including this Payment Schedule.
12. Subject to the Department:
- (a) being satisfied as to the contents of the Independent Certifier's report;
 - (b) that the invoice is valid and correctly reflects the total amount payable to the Organisation for the Department's termination; and
 - (c) if required by the Department, the parties having executed a deed of release in accordance with clauses 17.7 or 24.2 or 27.4, as applicable,

the Department will pay the amount payable within 2 Months of receipt of the invoice.

PART J: TERMINATION PAYMENT ON TERMINATION BY THE DEPARTMENT FOR CAUSE AND OTHER GROUNDS (CLAUSE 25.1) OR BY THE ORGANISATION FOR POOR PERFORMANCE (CLAUSE 26.3)

The following amounts are payable by the Department to the Organisation in the event that the Department terminates this Agreement for cause under clause 25.1 or for termination by the Organisation for Poor Performance (Clause 26.3).

Calculating the Outcome Payments for Cohort 2 and Cohort 3

1. The Cohort 2 Outcome Payment and Cohort 3 Outcome Payment payable by the Department for the Financial Year up to the date of termination under clause 25.1 or termination by the Organisation under clause 26.3 of this Agreement will be the pro rata amount of the maximum Outcome Payment in respect of Cohort 2 and Cohort 3 that would otherwise be payable for the Financial Year in which the termination occurs in accordance with Part B of this Payment Schedule.

For example, if the termination occurs in December in the 2016/17 Financial Year and the Organisation was operating 7 Organisation Service Centres at the date of termination, the maximum amount payable for that year if the termination had not occurred would be for each operating Organisation Service Centre in respect of Cohort 2 and the amount of for each operating Organisation Service Centre in respect of Cohort 3. The termination has occurred halfway through the Financial Year therefore, the pro rata amount in the event of termination is 50% of the maximum amount payable for both Cohort 2 and 3.

The total Outcome Payment for Cohort 2 and Cohort 3 on termination by the Department for cause under clause 25.1 or for termination by the Organisation under clause 26.3 would therefore be:

NB: Organisation Service Centres that closed during the period since the end of the last Financial Year and the date of termination and for which cohort 2 and 3 payments were made upon their closure, should not be included in the calculation of the Cohort 2 and 3 Outcome Payment for termination under this Part J.

Calculating the Outcome Payment for Cohort 1

2. The amount payable to the Organisation upon termination under clause 25.1, or termination by the Organisation under clause 26.3 will also include an Outcome Payment in respect of Cohort 1 which will be calculated using the following formula:

$$\text{Cohort 1 Outcome Payment} = P \times Q$$

Where P is the net number of Children and Young Persons (CYP) in Cohort 1 Families referred to the Organisation who, as at the date of termination, are still in OOHC and whose Families are receiving a Service from the Organisation under this Agreement and who are expected to be Restored based on the average Rate of Restoration for all Mothers' Centres in the period since the Referral Date to the date of termination. The net number is calculated using the formula:

$$\text{Net CYP} = \text{Total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of termination} \times \text{average Rate of Restoration for all Mothers' Centres since the Referral Date} - [\text{average Counterfactual Rate of Restoration since the Referral Date} \times \text{total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of termination}]$$

Where Q is the amount in Table 2: Cohort 1 Outcome Payment Look-up Table: payments per net Restoration in Part B of this Payment Schedule for the Financial Year in which the termination occurs and with reference to the average Rate of Restoration for all Mothers' Centres since the Referral Date.

For example, if this Agreement is terminated by the Department for cause with a date of termination of 21 December 2016 and as at this date there are a total of 80 Children and Young Persons in Cohort 1 who are in OOHC and whose Families are receiving a Service from the Organisation and the average Rate of Restoration for all Mothers' Centres since the

Referral Date is 59% and the average Counterfactual Rate of Restoration since the Referral Date is 25%, the amount payable is:

3. The Cohort 1 Outcome Payment must be adjusted for reversals and the Standing Charge amounts paid and due as at the date of termination.

NB: Restorations and Unsuccessful Referrals associated with Organisation Service Centres that closed during the period since the end of the last Financial Year and the date of termination and for which payment has been made as a result of the closure will not be included in the calculation of the Cohort 1 Outcome Payment under this Part J.

Adjusting the Cohort 1 Outcome Payment for reversals

4. The adjustment for reversals will be as set out above in item 4 of Part B of this Payment Schedule where the number of Prior Financial Year Reversals refers to the number of Reversals: (a) which occurred during the period between the end of the Financial Year immediately before the date of termination, and the date of termination; and (b) which occurred not more than 12 months after the recorded date of Restoration, and (c) where the Restoration took place in the Financial Year immediately prior to the Financial Year in which the termination of the Agreement occurred.

The amount to be deducted for each reversal is obtained from Table 3: Reversal Deduction Look-up Table: amount to deduct for each reversal using the Financial Year in which the Restoration occurred and the Rate of Restoration for all Mothers' Centres in the Financial Year of the Restoration, as described in Part B of this Payment Schedule.

For example, if 2 Children had returned to OOHC since 1 July 2016 and before 21 December 2016 when the Agreement is terminated, and in 2015/16 the Rate of Restoration for all Mothers' Centres was the amount to be deducted for reversals is:

Adjusting the Cohort 1 Outcome Payment for the Standing Charges already paid

5. The Cohort 1 Outcome Payment must also be adjusted for the total instalments of the Standing Charge paid in the relevant Financial Year up to the date of termination.

For example, if 4 Organisation Service Centres were in operation in the 2016/17 Financial Year as at 21 December 2016 when the Agreement is terminated the total instalments of the standing charge paid under Part A of this Payment Schedule would be 4 instalments of the quarterly charge: This amount would be deducted from the Cohort 1 Outcomes Payment due.

NB: any instalments of the Standing Charge paid to Centres that closed since the end of the last Financial Year and the date of termination would have been included in the adjustment to the payments associated with closure of the Centre(s) and will not be included in this adjustment.

Adjusting the Cohort 1 Outcome Payment for any Standing Charge due

6. The adjustment for any instalments of the Standing Charge which are due but have not been paid as at the date of termination would be calculated as per Part A of this Schedule on a pro rata basis and added to the adjusted Cohort 1 Outcomes Payment calculated above.

Using the example immediately above the amount would be:

NB: any instalments of the Standing Charge due to Centres that closed since the payment of the last instalment of the Standing Charge and the date of termination would have been included in the adjustment to the payments associated with closure of the Centre(s) and will not be included in this adjustment.

Calculating the total Cohort 1 Outcome Payment

7. The total Cohort 1 Outcome Payment due in the case of termination by the Department under clause 25.1, or for termination by the Organisation under clause 26.3 of this Agreement will therefore be:

Cohort 1 Outcome Payment – Reversals Deduction – Standing Charge paid + Standing Charge due

Calculating the total amount to paid to the Organisation

8. The total amount payable to the Organisation for a termination under clause 25.1 or for a termination by the Organisation under clause 26.3 of this Agreement will be:

Total Cohort 1 Outcome Payment + total Cohort 2 Outcome Payment + total Cohort 3 Outcome Payment.

9. The Organisation will within 2 Months of date of termination issue the Department with:
- (a) an invoice for the total amount payable to the Organisation for termination by the Department under clause 25.1 or termination by the Organisation under clause 26.3 calculated in accordance with this Payment Schedule; and
 - (b) the Independent Certifier's report prepared in accordance with the requirements of this Agreement including this Payment Schedule.
10. Subject to the Department:
- (a) being satisfied as to the contents of the Independent Certifier's report;
 - (b) that the invoice is valid and correctly reflects the total amount payable to the Organisation for the Department's termination under clause 25.1 or the Organisation's termination under clause 26.3 and
 - (c) if required by the Department, the parties having executed a deed of release in accordance with clauses 27.9 or 27.10, as applicable,
- the Department will pay the amount payable within 2 Months of receipt of the invoice.

PART K: TERMINATION PAYMENT UPON TERMINATION FOR FORCE MAJEURE EVENT (CLAUSE 18) AND FOR TERMINATION BY MUTUAL AGREEMENT AFTER REVIEW OF THE COUNTERFACTUAL RATE OF RESTORATION (CLAUSE 17.5)

The following amounts will be payable to the Organisation in the event that either party terminates this Agreement for a Force Majeure Event in accordance with clause 18 (Force Majeure) or in the event that the parties agree to terminate following review of the Counterfactual Rate of Restoration at the end of the Initial Period under clause 17.5.

Agreed Closure Costs

1. Subject to this Agreement (including this Payment Schedule), the Department, upon termination for a Force Majeure Event or where the parties agree to terminate under clause 17.5, will pay to the Organisation the Agreed Closure Costs in accordance with Part C of this Schedule for each Operating Organisation Service Centre the Organisation elects to immediately close as a result of the termination. This amount will be adjusted by the proceeds of sale of assets purchased when the Centre was opened if the Department paid the Opening Costs for the Centre.

For example, if the Department paid the Opening Costs for the Centre and \$15,000 is received from the sale of assets purchased for the Centre, the Closure Costs payable upon termination and closure of the Centre will be reduced by \$15,000.

Calculating the Outcome Payment payable for Cohorts 2 and 3

2. The Cohort 2 Outcome Payment and Cohort 3 Outcome Payment payable for the Financial Year up to the date of termination under clause 18 (Force majeure) or clause 17.5 by mutual

agreement will be the pro rata amount of the maximum Outcome Payments for Cohort 2 and Cohort 3 that would be payable for the Financial Year in which the termination occurs in accordance with Part B of this Payment Schedule.

For example, if the termination occurs in December in the 2016/17 Financial Year and the Organisation was operating 7 Organisation Service Centres at the date of termination, the maximum amount payable for that year if the termination did not occur would be . . . for each Organisation Service Centre in respect of Cohort 2 and the amount of . . . for each Organisation Service Centre in respect of Cohort 3. The termination has occurred halfway through the Financial Year therefore, the pro rata amount in the event of the termination is 50% of the maximum amounts payable for both Cohort 2 and 3.

The total Outcome Payment for Cohort 2 and Cohort 3 on termination for a Force Majeure Event or by mutual agreement under clause 17.5 would therefore be:

NB: Organisation Service Centres that closed during the period since the end of the last Financial Year and the date of termination and for which cohort 2 and 3 payments were made upon their closure, will not be included in the calculation of the Cohort 2 and 3 Outcome Payment for termination under this Part K.

Calculating the Outcome Payment payable for Cohort 1

3. The amount payable to the Organisation upon termination for a Force Majeure Event under clause 18 (Force majeure) or upon termination by mutual agreement under clause 17.5 will also include an Outcome Payment for Cohort 1 which will be calculated using the formula:

$$\text{Cohort 1 Outcome Payment} = P \times Q$$

Where P is the net number of Children and Young Persons (CYP) in Cohort 1 Families referred to the Organisation who, as at the date of termination, are still in OOHC and whose Families are receiving a Service from the Organisation under this Agreement and who are expected to be Restored based on the average Rate of Restoration for all Mothers' Centres in the period since the Referral date to the date of termination. The net number is calculated using the formula:

$$\text{Net CYP} = \text{Total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of termination} \times \text{average Rate of Restoration for all Mothers' Centres since the Referral Date} - [\text{average Counterfactual Rate of Restoration since the Referral Date} \times \text{total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of termination}]$$

Where Q is the amount in Table 2: Cohort 1 Outcomes Payment Look-up Table: payments per net Restorations in Part B of this Payment Schedule for the Financial Year in which the termination occurs and with reference to the average Rate of Restoration for all Mothers' Centres since the Referral Date.

For example, if this Agreement is terminated by the Department for a Force Majeure Event with a date of termination of 21 December 2016 and as at this date there are a total of 80 Children and/or Young Persons in Cohort 1 who are also in OOHC and whose Families are receiving a Service from the Organisation and the average Rate of Restoration for all Mothers' Centres since the Referral Date is 59% and the average Counterfactual Rate of Restoration since the Referral Date is 25%, the amount payable is:

NB: Restorations and Unsuccessful Referrals associated with Organisation Service Centres that closed during the period since the end of the last Financial Year and the date of termination and for which payment has been made as a result of the closure will not be included in the calculation of the Cohort 1 Outcome Payment under this Part K.

4. The Cohort 1 Outcomes Payment must be adjusted for reversals and the Standing Charge amounts paid and due as at the date of termination.

Adjusting the Cohort 1 Outcome Payment for reversals

5. The adjustment for reversals will be as set out in item 4 of Part B of this Payment Schedule where the number of Prior Financial Year Reversals refers to the number of Reversals: (a) which occurred during the period between the end of the Financial Year immediately before the date of termination, and the date of termination; and (b) which occurred not more than 12 months after the recorded date of Restoration, and (c) where the Restoration took place in the Financial Year immediately prior to the Financial Year in which the termination of the Agreement occurred.

The amount to be deducted for each reversal is obtained from Table 3: Reversal Deduction Look-up Table: amount to deduct for each reversal using the Financial Year in which the Restoration occurred and the Rate of Restoration for all Mothers' Centres in the Financial Year of the Restoration, as described in Part B of this Payment Schedule.

For example, if 2 Children had returned to OOHC since 1 July 2016 and before 21 December 2016 when the Agreement is terminated, and in the 2015/16 Financial Year the Rate of Restoration for all Mothers' Centres was 59% the amount to be deducted for reversals is:..

Adjusting the Cohort 1 Outcome Payment for the Standing Charge already paid

6. The Cohort 1 Outcome Payment must also be adjusted for all instalments of the Standing Charge paid as at the date of termination by deducting the aggregate of all instalments of the Standing Charge paid in the relevant Financial Year up to the date of termination.

For example, if 4 Organisation Services Centres had been operating in the 2016/17 Financial Year as at 21 December 2016 when the Agreement is terminated for a Force Majeure Event, the total amount of instalments of the Standing Charges paid under the terms of Part A of this Schedule would have been: . This amount would be deducted from the Cohort 1 Outcome Payment due.

NB: any instalments of the Standing Charge paid to Centres that closed since the end of the last Financial Year and the date of termination would have been included in the adjustment to the payments associated with closure of the Centre(s) and will not be included in this adjustment.

Adjusting the Cohort 1 Outcome Payment for any Standing Charge due

7. The adjustment for any Standing Charge amount which is due but not paid as at the date of termination would be calculated as per Part A of this Schedule on a pro rata basis and added to the adjusted Cohort 1 Outcome Payment due. Using the example above the amount would be:

NB: any instalments of the Standing Charge due to Centres that closed since the payment of the last instalment of the Standing Charge and the date of termination would have been included in the adjustment to the payments associated with closure of the Centre(s) and will not be included in this adjustment.

Additional amounts included in Cohort 1 Outcome Payment

8. In addition, the Organisation will advise and provide evidence satisfactory to the Department of the following:
- (a) the principal amount outstanding as at the date of termination under the Loan Agreement;
 - (b) the interest owed under the Loan Agreement based on the average returns to investors at the date of termination;
 - (c) any associated Break Costs arising directly from termination of the Loan Agreement;

- (d) the foregone return to the Organisation based on the average Rate of Restoration achieved by the Mothers' Centres since the Referral Date and the average net Restorations per annum since the Referral Date to the date of termination; and
- (e) the total amounts received by the Organisation from the Department under the terms of this Agreement that have not been spent and are not committed to liabilities directly associated with this Agreement.

If the aggregate of the amounts in items 8(a), (b), (c), and (d) is greater than zero, the Cohort 1 Outcome Payment payable to the Organisation under this Part K to this Payment Schedule will be adjusted by the amount calculated using the following formula:

$$\text{Adjustment Amount} = [8(a) + 8(b) + 8(c) + (8(d)/2)] - 8(e)$$

Any amount payable under this item 8 of Part K of this Payment Schedule is subject to the Department being reasonably satisfied that the additional amount claimed under this item 8 is actually incurred or suffered by the Organisation as a direct result of the termination for Force Majeure or the mutual agreement to terminate under clause 17.5 and to any cap on the amount payable mentioned elsewhere in this Agreement (eg Break Costs).

NB: the Department will only contribute up to half the capped amount agreed for Break Costs under this Part K as reflected in the formula above.

For example, if the total amount: 8(a) + (b) + (c) + [8(d)/2] above is and the total amount in item 8(e) above is the Cohort 1 Outcome Payment payable under this Part K will be increased by

Additional amount deducted from Cohort 1 Outcome Payment

- 9. In addition, where the termination is for a Force Majeure Event, the Organisation will advise and provide acceptable evidence to the Department of the total amount the Organisation will, or is likely to, receive under any insurance claim which the Organisation is entitled to make associated with the Force Majeure Event. This amount will be deducted from the Cohort 1 Outcome Payment.

Calculating the total Cohort 1 Outcome Payment

- 10. The total Cohort 1 Outcome Payment payable in the case of termination under clause 18 (Force Majeure) or by mutual agreement under clause 17.5 would therefore be:

Cohort 1 Outcome Payment – Reversals Deduction – Standing Charge paid + Standing Charge due + additional amount (if any) under item 8 of this Part K of the Payment Schedule – additional amount (if any) under item 9 of this Part K of the Payment Schedule.

Calculating the total amount to paid to the Organisation for termination for a Force Majeure Event or for termination by mutual agreement under clause 17.5

- 11. The total amount payable to the Organisation on termination under clause 18 or by mutual agreement under clause 17.5 will be:

Agreed Closure Costs + total Cohort 1 Outcome Payment + total Cohort 2 Outcome Payment + total Cohort 3 Outcome Payment

- 12. The Organisation will within 2 Months of the date of termination issue the Department with:
 - (a) an invoice for the total amount payable to the Organisation for the termination calculated in accordance with this Payment Schedule;
 - (b) the evidence referred to in items 8 and 9 of this Part K; and
 - (b) the Independent Certifier's report prepared in accordance with the requirements of this Agreement including this Payment Schedule.
- 13. Subject to the Department:
 - (a) being satisfied as to the contents of the Independent Certifier's report;

- (b) that the invoice is valid and correctly reflects the total amount payable to the Organisation for the termination; and
- (c) if required by the Department, the parties having executed a deed of release in accordance with clause 18.7 or 17.7, as applicable,

the Department will pay the amount payable within 2 Months of receipt of the invoice.

PART L: TERMINATION PAYMENT ON TERMINATION BY THE ORGANISATION FOLLOWING REVIEW OF THE COUNTERFACTUAL (CLAUSE 17.4(a) or 17.5)

The following amounts are payable by the Department to the Organisation in the event that the Organisation terminates this Agreement following review of the Counterfactual under clause 17.4(a) or 17.5

Agreed Closure Costs

1. Subject to this Agreement (including this Payment Schedule), the Department, upon termination by the Organisation under clause 17.4(a) or 17.5, will pay to the Organisation the Agreed Closure Costs in accordance with Part C of this Schedule for each Operating Organisation Service Centre the Organisation elects to immediately close as a result of the termination. This amount will be adjusted by the proceeds of sale of assets purchased when the Centre was opened if the Department paid the Opening Costs for the Centre.

For example, if the Department paid the Opening Costs for the Centre and \$15,000 is received from the sale of assets purchased for the Centre, the Closure Costs payable upon termination and closure of the Centre will be reduced by \$15,000.

Calculating the Outcome Payments for Cohort 2 and Cohort 3

2. The Cohort 2 Outcome Payment and Cohort 3 Outcome Payment payable by the Department for the Financial Year up to the date of termination by the Organisation under clause 17.4(a) or 17.5 of this Agreement will be the pro rata amount of the maximum Outcome Payment in respect of Cohort 2 and Cohort 3 that would otherwise be payable for the Financial Year in which the termination occurs in accordance with Part B of this Payment Schedule.

For example, if the termination occurs in December in the 2016/17 Financial Year and the Organisation was operating 7 Organisation Service Centres at the date of termination, the maximum amount payable for that year if the termination had not occurred would be for each operating Organisation Service Centre in respect of Cohort 2 and the amount of for each operating Organisation Service Centre in respect of Cohort 3. The termination has occurred halfway through the Financial Year therefore, the pro rata amount in the event of termination is 50% of the maximum amount payable for both Cohort 2 and 3.

The total Outcome Payment for Cohort 2 and Cohort 3 on termination by the Organisation under clause 17.4(a) or 17.5 would therefore be:

NB: Organisation Service Centres that closed during the period since the end of the last Financial Year and the date of termination and for which Cohort 2 and 3 payments were made upon their closure, will not be included in the calculation of the Cohort 2 and 3 Outcome Payment for termination under this Part L.

Calculating the Outcome Payment for Cohort 1

3. The amount payable to the Organisation upon termination by the Organisation under clause 17.4(a) or 17.5 will also include an Outcome Payment in respect of Cohort 1 which will be calculated using the following formula:

$$\text{Cohort 1 Outcome Payment} = P \times Q$$

Where P is the net number of Children and Young Persons (CYP) in Cohort 1 Families referred to the Organisation who, as at the date of termination, are still in OOHC and whose Families

are receiving a Service from the Organisation under this Agreement and who are expected to be Restored based on the average Rate of Restoration for all Mothers' Centres in the period since the Referral Date to the date of termination. The net number is calculated using the formula:

$$\text{Net CYP} = \text{Total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of termination} \times \text{average Rate of Restoration for all Mothers' Centres since the Referral Date} - [\text{average Counterfactual Rate of Restoration since the Referral Date} \times \text{total number of CYP in Cohort 1 and in OOHC receiving a Service at the Organisation Service Centre at the date of termination}]$$

Where Q is the amount in Table 2: Cohort 1 Outcome Payment Look-up Table: payments per net Restoration in Part B of this Payment Schedule for the Financial Year in which the termination occurs and with reference to the average Rate of Restoration for all Mothers' Centres since the Referral Date.

For example, if this Agreement is terminated by the Organisation under clause 17.4(a) or 17.5 with a date of termination of 21 December 2016 and as at this date there are a total of 80 Children and Young Persons in Cohort 1 who are in OOHC and whose Families are receiving a Service from the Organisation and the average Rate of Restoration for all Mothers' Centres since the Referral Date is 59% and the average Counterfactual Rate of Restoration since the Referral Date is 25%, the amount payable is:

4. The Cohort 1 Outcome Payment must be adjusted for reversals and the Standing Charge amounts paid and due as at the date of termination.

NB: Restorations and Unsuccessful Referrals associated with Organisation Service Centres that closed during the period since the end of the last Financial Year and the date of termination and for which payment has been made as a result of the closure will not be included in the calculation of the Cohort 1 Outcome Payment under this Part L.

Adjusting the Cohort 1 Outcome Payment for reversals

5. The adjustment for reversals will be as set out above in item 4 of Part B of this Payment Schedule where the number of Prior Financial Year Reversals refers to the number of Reversals: (a) which occurred during the period between the end of the Financial Year immediately before the date of termination, and the date of termination; and (b) which occurred not more than 12 months after the recorded date of Restoration, and (c) where the Restoration took place in the Financial Year immediately prior to the Financial Year in which the termination of the Agreement occurred.

The amount to be deducted for each reversal is obtained from Table 3: Reversal Deduction Look-up Table: amount to deduct for each reversal using the Financial Year in which the Restoration occurred and the Rate of Restoration for all Mothers' Centres in the Financial Year of the Restoration, as described in Part B of this Payment Schedule.

For example, if 2 Children had returned to OOHC since 1 July 2016 and before 21 December 2016 when the Agreement is terminated, and in 2015/16 the Rate of Restoration for all Mothers' Centres was 59% the amount to be deducted for reversals is:

Adjusting the Cohort 1 Outcome Payment for the Standing Charges already paid

6. The Cohort 1 Outcome Payment must also be adjusted for the total instalments of the Standing Charge paid in the relevant Financial Year up to the date of termination.

For example, if 4 Organisation Service Centres were in operation in the 2016/17 Financial Year as at 21 December 2016 when the Agreement is terminated the total instalments of the standing charge paid under Part A of this Payment Schedule would be 4 instalments of the quarterly charge: This amount would be deducted from the Cohort 1 Outcome Payment due.

NB: any instalments of the Standing Charge paid to Centres that closed since the end of the last Financial Year and the date of termination would have been included in the adjustment to the payments associated with closure of the Centre(s) and will not be included in this adjustment.

Adjusting the Cohort 1 Outcome Payment for any Standing Charge due

7. The adjustment for any instalments of the Standing Charge which are due but have not been paid as at the date of termination would be calculated as per Part A of this Schedule on a pro rata basis and added to the adjusted Cohort 1 Outcome Payment calculated above.

Using the example immediately above the amount would be:

NB: any instalments of the Standing Charge due to Centres that closed since the payment of the last instalment of the Standing Charge and the date of termination would have been included in the adjustment to the payments associated with closure of the Centre(s) and will not be included in this adjustment.

Calculating the total Cohort 1 Outcome Payment

8. The total Cohort 1 Outcome Payment due in the case of termination by the Organisation under clause 17.4(a) or 17.5 of this Agreement will therefore be:

Cohort 1 Outcome Payment – Reversals Deduction – Standing Charge paid + Standing Charge due

Calculating the total amount to paid to the Organisation

9. The total amount payable to the Organisation for a termination by the Organisation under clause 17.4(a) or 17.5 of this Agreement will be:

Agreed Closure Costs + total Cohort 1 Outcome Payment + total Cohort 2 Outcome Payment + total Cohort 3 Outcome Payment.

10. The Organisation will within 2 Months of date of termination issue the Department with:
- (a) an invoice for the total amount payable to the Organisation for termination by the Organisation under clauses 17.4(a) or 17.5 calculated in accordance with this Payment Schedule; and
 - (b) the Independent Certifier's report prepared in accordance with the requirements of this Agreement including this Payment Schedule.

11. Subject to the Department:
- (a) being satisfied as to the contents of the Independent Certifier's report;
 - (b) that the invoice is valid and correctly reflects the total amount payable to the Organisation for the Organisation's termination under clauses 17.4(a) or 17.5; and
 - (c) if required by the Department, the parties having executed a deed of release in accordance with clauses 17.7 as applicable,

the Department will pay the amount payable within 2 Months of receipt of the invoice.

PART M: INDEPENDENT CERTIFIER'S REPORT (CLAUSE 21)

1. The Department and the Organisation must each provide the information they are required to provide to the Independent Certifier to enable the Independent Certifier to prepare his/her report within 10 Business Days of the end of the Financial Year for which any payment is due.
2. The Independent Certifier must determine and report on the following for the Financial Year (or any part of Financial Year) for which payment is due based on information and data supplied by the Organisation and the Department and in accordance with this Agreement including this Payment Schedule:
 - (a) for Cohort 1:

- i. the total number of Intra-Year Reversals that occurred during the relevant Financial Year at all Organisation Service Centres;
 - ii. the total of number of Prior Financial Year Reversals that occurred during the relevant Financial Year at all Organisation Service Centres;
 - iii. Rate of Restoration for all Mothers' Centres;
 - iv. total number of Restorations for all Organisation Service Centres in operation during the relevant Financial Year in aggregate and for each Organisation Service Centre;
 - v. total number of Unsuccessful Referrals from all Organisation Service Centres in operation during the relevant Financial Year in aggregate and for each Organisation Service Centre;
 - vi. net Restorations
- (b) for Cohort 2: the number of Outcomes delivered for Cohort 2 at each Organisation Service Centre in operation during the relevant Financial Year;
 - (c) for Cohort 3: a determination as to whether the Organisation provided Services to Cohort 3 Families at each of the Organisation Service Centres in operation during the relevant Financial Year;
 - (d) the amount of the Outcome Payments for Cohort 1, 2 and 3 respectively due under this Payment Schedule;
 - (e) such other information and/or matters as may be agreed between the parties in writing from time to time; and
 - (f) such other information and/or matters as the Independent Certifier may reasonably consider to be relevant.
3. The Independent Certifier must in providing his/her report include details in relation to the determination of the matters in item 2 of this Part M, setting out the evidence used in the determination and the formula or method by which the matters were determined.
 4. The Independent Certifier must provide his/her final report to the Organisation within 10 Business Days of receipt of the relevant data from the Department and the Organisation.
 5. In the event of termination of the Agreement or closure of an Organisation Service Centre, the Independent Certifier will be required to certify the data and information required to calculate the amounts payable by the Department to the Organisation in the relevant Part of this Payment Schedule. In addition, the report will include details of the determination of the data, information and calculations relating to the payments. The report will be submitted within the timeframes set out in the relevant Part of this Payment Schedule.
 6. Either party may dispute the findings in the Independent Certifier's report within 20 Business Days of receipt of the report.
 7. The process for disputing any report by the Independent Certifier is as set out in the Operations Manual.
 8. Any agreement on the variations to time-frames for payment as set out in this Payment Schedule must be reached following the process in the Operations Manual.

**SCHEDULE 4
TRANSITION-IN**

Not Used

