



Draft Determination

Application for authorisation AA1000447

lodged by

The Uniting Church in Australia National Assembly

in respect of a National Insurance Program with a number of Synods to collectively negotiate, procure and maintain insurance and insurance-related products and services

Authorisation number: AA1000447

Date 2 August 2019

Commissioners:

Keogh

Ridgeway

Summary

The ACCC proposes to grant authorisation to enable separate legal entities that comprise the Uniting Church in Australia to collectively negotiate, procure and maintain insurance products and services.

The ACCC proposes to grant authorisation for six years.

The ACCC considers that the collective arrangements are likely to result in public benefits, including transaction cost savings and contracts that better reflect the UCA entities' needs following more informed negotiations with brokers. Public detriments are likely to be limited.

The ACCC invites submissions on the application and in relation to this draft determination by 19 August 2019, and expects to release a final determination in September or October 2019.

1. The application for authorisation

- 1.1. On 26 June 2019, the Uniting Church in Australia National Assembly by UCA Assembly Limited (**UCANA**) lodged an application for authorisation AA1000447¹ with the Australian Competition and Consumer Commission (the **ACCC**).
- 1.2. UCANA is seeking authorisation for the establishment of a National Insurance Program (**NIP**). The NIP will operate as a vehicle through which the separate legal entities that comprise the Uniting Church in Australia (UCA) would collectively negotiate, procure and maintain insurance and insurance-related products and services for the primary purpose of indemnifying and protecting the assets, revenues, activities and potential legal liabilities of UCANA, and a number of Synods (including their constituent boards, agencies, presbyteries, congregations and other groups within their care) (the **Proposed Conduct**). The NIP will be established as a joint venture between UCANA and the relevant Synods, created by a 'Co-Operation Agreement'.
- 1.3. UCANA is seeking authorisation for six years.
- 1.4. Authorisation provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits. As set out below, the UCA is comprised of a number of separate legal entities, and accordingly they consider that there is some risk that the proposal to establish a NIP may breach competition laws unless it is authorised.

2. Parties to the Proposed Conduct

- 2.1. While in practice the UCA operates as a single organisation and has adopted a single Constitution and set of Regulations governing the management and operations of the UCA, due to the manner in which the UCA was created it is comprised of a number of separate legal entities (including UCANA and a number of Synods) which work together in the style of a federation to undertake the business of the UCA. There are more than 400 agencies, institutions and parish missions that provide services including aged care, housing and homelessness services, children's services,

¹ This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

indigenous services, addiction services, mental health programs, disability services and financial counselling.

- 2.2. UCANA² is the national council of the **UCA**,³ with part of its role being to make guiding decisions on the tasks and authority to be exercised by the other parts of UCA.
- 2.3. The Synods are the regional councils of UCA (each their own statutory corporation) and are responsible for general oversight, direction and administration of worship, witness and service for their respective regions. Synods include their respective 'Associated entities' under the Co-operation Agreement, including, property trusts, boards, schools, presbyteries, congregations and any other separate legal entities for which each Synod has oversight or effective control.
- 2.4. The parties to the Proposed Conduct are:
 - UCANA
 - the Synods in each state or territory of Australia other than South Australia and Western Australia (the Relevant Synods)⁴
 - all other legal entities that comprise UCA controlled by the Relevant Synods.
- 2.5. Particular nominated entities along with the Synods of South Australia and Western Australia and the legal entities that comprise UCA they control, are excluded from the proposed operation of the NIP and are not included as part of this application (Excluded Entities).

3. Rationale for the Proposed Conduct

- 3.1. UCANA and the Relevant Synods are not-for-profit organisations and engage in a variety of missions, including activities in the broad areas of education, community care and religion.
- 3.2. As part of their responsibilities in undertaking these activities (and maintaining and protecting their properties, whether owned, leased, or otherwise occupied, out of which these activities are operated), UCANA and the Relevant Synods are required to maintain certain corporate insurances for themselves and their local churches, regional presbyteries, and other agencies and groups within their care.
- 3.3. The aim of the Proposed Conduct is to achieve efficiencies and cost savings for UCANA and the Relevant Synods by way of a central procurement and administration process for acquiring insurance and related goods and services. UCANA submits that the insurance premium savings for the NIP are estimated to be 15-20%. Over the course of five years, it estimates that the savings in terms of both premiums and the reduction in broker and claims fees will be substantial.

4. ACCC assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the *Competition and Consumer Act 2010* (Cth) (the **Act**).

² Pursuant to clause 56 of The Uniting Church in Australia Constitution.

³ The Uniting Church in Australia was created on 22 June 1977 after the Congregational Union in Australia, the Methodist Church of Australasia and the Presbyterian Church of Australia were joined together pursuant to legislative instrument.

⁴ NSW/ACT Synod, Vic/Tas Synod, Northern Synod, and Queensland Synod.

- 4.2. UCANA sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).
- 4.3. In making its assessment of the Proposed Conduct, the ACCC considers that:
- the relevant areas of competition are likely to be the provision of insurance products and insurance brokering services at a national level, and the provision of community based services at a local or regional level.
 - absent the Proposed Conduct, it is likely that UCANA and each of the Relevant Synods will individually purchase insurance policies and associated services on a stand-alone basis.

Public benefits

- 4.4. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.⁵

- 4.5. UCANA submits that the Proposed Conduct will lead to public benefits including, but not limited to:
- transaction cost savings
 - greater input into insurance contracts
 - enhancement in the supply of goods and services by the UCA to, not only its congregation, but to the broader community, including through the services it delivers through UnitingCare.
- 4.6. The ACCC's assessment of the likely public benefits from the Proposed Conduct follows.

Transaction cost savings

- 4.7. UCANA submits that the Proposed Conduct is likely to reduce transaction costs for UCANA and the Relevant Synods as a result of sharing the cost of:
- obtaining professional advice
 - tendering for and acquiring broker services
 - acquiring the services of assessors, actuaries, lawyers, valuers and claims management.

⁵ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

- 4.8. UCANA submits that the joint procurement will allow UCA to ensure a nationally consistent approach to insurance related matters, and will assist it to respond collectively to insurance related matters.
- 4.9. The ACCC considers that the Proposed Conduct is likely to result in public benefit in the form of transaction cost savings.
- 4.10. Generally, transaction costs can be lower for participants in a negotiation process where a single process is utilised, such as this collective NIP arrangement, compared to a situation where multiple negotiations and contractual processes are necessary.

Greater input into insurance contracts

- 4.11. UCANA submits that the Proposed Conduct will increase their leverage when negotiating contractual terms and conditions with insurance brokers. It may facilitate the negotiation of insurance cover on broader and more bespoke terms and conditions, particularly around claims handling, remuneration, limitations of liability and scope of services.
- 4.12. Further, UCANA submits that insurance policy terms and conditions that better reflect the exposure of UCANA and the Relevant Synods are likely to deliver improved incentives for innovation and efficiency of contractual terms and conditions.
- 4.13. UCANA also submits that by centralising the procurement and administration process they may be able to access insurance providers that were not previously accessible for individual entities or that may not have been as competitively priced.
- 4.14. The ACCC accepts that the parties to the Proposed Conduct are likely to be better informed of the relevant market conditions, which is likely to improve their input into contractual negotiations to achieve more efficient outcomes.
- 4.15. The ACCC notes that any increase in competition through new insurance options becoming available is likely to result in additional public benefit.

Public detriments

- 4.16. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁶

- 4.17. UCANA submits that little, if any public detriment or impact on competition is likely to result from the Proposed Conduct, due to UCANA and the Relevant Synods comprising a very small proportion of purchasers of insurance and insurance related products.
- 4.18. UCANA notes that there is very little, if any, geographical overlap between the various activities of the Relevant Synods. There may be some overlap between the functions of UCANA and the Relevant Synods where the services provided by UCANA are similar to those provided by the Relevant Synods, however they are conducted on a not-for-profit basis.

⁶ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

4.19. The ACCC considers that the Proposed Conduct will give rise to limited, if any, public detriments, due to the following:

- There is limited competition between UCANA and the Relevant Synods, and the Proposed Conduct is unlikely to impact competition.
- The acquisition of insurance products by UCANA and the Relevant Synods represents a small proportion of overall general insurance purchases. Competition between insurance brokers and insurance providers is likely to be unaffected.
- A Synod may elect to arrange certain policies and/or insurance related service contracts on a separate stand-alone basis if there are commercial reasons to do so, and with the NIP Executive Committee's⁷ consent.
- The parties to the collective arrangements may opt-out of the arrangements with 18 months written notice to the NIP Executive Committee.
- Whether insurance brokers deal with the parties to the Proposed Conduct is voluntary.

Balance of public benefit and detriment

4.20. The ACCC is satisfied that the Proposed Conduct is likely to result in public benefits from transaction cost savings, and from more efficient contracts by providing greater input into contractual negotiations, and that these public benefits would outweigh the minimal, if any, detriment to the public from the Proposed Conduct.

Length of authorisation

4.21. UCANA has sought a 6 year authorisation to enable the NIP to operate for a full 5 years, which they submit is necessary to obtain the efficiencies and costs savings, and recover their costs associated with establishing the NIP.

4.22. The ACCC considers it appropriate to grant authorisation for 6 years considering its initial assessment of the public benefits and detriments likely to result from the Proposed Conduct.

5. Draft determination

The application

5.1. On 26 June 2019, UCANA lodged application AA1000447 with the ACCC, seeking authorisation under subsection 88(1) of the Act.

5.2. UCANA is seeking authorisation for the establishment of a National Insurance Program (**NIP**). The NIP will operate as a vehicle through which the separate legal entities that comprise the Uniting Church in Australia (UCA) would collectively negotiate, procure and maintain insurance and insurance-related products and services for the primary purpose of indemnifying and protecting the assets, revenues, activities and potential legal liabilities of UCANA, and the Relevant Synods (including their constituent boards, agencies, presbyteries, congregations and other groups

⁷ The Co-operation Agreement provides for the establishment of the NIP Executive Committee, comprising a representative of each of the relevant Synods and UCANA, with one or two independent members. The NIP Executive Committee will be responsible for procuring the NIP Insurance.

within their care). The NIP will be established as a joint venture between UCANA and the Relevant Synods, created by a 'Co-Operation Agreement'.

- 5.3. UCANA is seeking authorisation for itself and on behalf of the Relevant Synods, and all the legal entities that comprise UCA controlled by the Relevant Synods.
- 5.4. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 5.5. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the proposed conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the proposed conduct.
- 5.6. For the reasons outlined in this draft determination, based on the information before it the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.7. Accordingly, the ACCC proposes to grant authorisation.

Conduct which the ACCC proposes to authorise

- 5.8. The ACCC proposes to grant authorisation AA1000447 to UCANA, the Relevant Synods and the legal entities that comprise UCA which are under the control of the Relevant Synods, for the establishment of a National Insurance Program (**NIP**). The NIP will operate as a vehicle through which the separate legal entities that comprise UCA would collectively negotiate, procure and maintain insurance and insurance-related products and services for the primary purpose of indemnifying and protecting the assets, revenues, activities and potential legal liabilities of UCANA, and the Relevant Synods (including their constituent boards, agencies, presbyteries, congregations and other groups within their care). The NIP will be established as a joint venture between UCANA and the Relevant Synods, created by a 'Co-Operation Agreement'.
- 5.9. This conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 5.10. The ACCC proposes to grant authorisation AA1000447 for six years.
- 5.11. The proposed authorisation is in respect of the Co-Operation Agreement as it stands at the time authorisation is granted a copy of which is annexed to the draft determination. Any changes to the Co-operation Agreement during the term of the proposed authorisation would not be covered by the proposed authorisation.
- 5.12. For the avoidance of doubt, the ACCC does not propose to grant authorisation to the 'Excluded Entities'⁸ listed in the Co-operation Agreement or to any other parties who join the Co-operation Agreement after authorisation is granted to engage in the conduct described in paragraph 5.8.

⁸ SA Synod, WA Synod, The Newington College, Epworth Foundation, Epworth Hospitals, Wesley College, The University of Sydney, and Haileybury College.

5.13. This draft determination is made on 2 August 2019.

6. Next steps

- 6.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

Co-Operation Agreement

The Uniting Church In Australia National Insurance Program

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Annexure A28

Deed

Date	
Parties	
Background	Refer to Schedule 1
A.	In accordance with the terms of the Basis of Union and the Uniting Church Acts, The Uniting Church In Australia is comprised of a number of separate legal entities, including but not limited to the Parties to this Agreement.
B.	The National Assembly is the national council of The Uniting Church In Australia. Part of the role of the National Assembly is to be responsible for making guiding decisions on the tasks and authority to be exercised by other parts of The Uniting Church In Australia, such as the Synods.
C.	The Synods are the regional councils of The Uniting Church In Australia. The Synods are responsible for the general oversight, direction and administration of the Church's worship, witness and service in their respective region.
D.	As part of their responsibilities, all the Parties are required to maintain certain insurances for themselves and the local churches, regional presbyteries, and other groups within their care. The cost to the Parties of obtaining these insurances is not insubstantial.
E.	The NIP is intended to operate as a national insurance buying group with the aim of achieving efficiencies and cost savings for the Parties.
F.	The Parties are aware of the provisions of Part IV of the CCA and its potential application to the conduct of the Parties in undertaking the NIP.
G.	Subject to the issuing of a grant of authorisation by the ACCC to undertake the NIP, the Parties have agreed to enter into the NIP on the terms of this Agreement.

Operative Part

The parties agree that:

1. Definitions and interpretation

1.1 Definitions

In interpretation of this Deed unless the context otherwise requires the following words and expressions shall have the following meanings and the following principles of construction shall apply:

ACCC means the Australian Competition and Consumer Commission;

Agreement means this document including any annexures and schedules;

Associated Entities means the respective Property Trusts, boards, schools, presbyteries, congregations and any other separate legal entities for which each Synod has oversight or otherwise has effective control;

Basis of Union means the document defined as such in the Uniting Church Acts;

CCA means the *Competition and Consumer Act 2010* (Cth);

Current Account shall mean the account recording the balance of remuneration, profit or loss as the case may be owing to or by either party;

Excluded Entities means and includes all legal persons and entities listed in Schedule 4, subject to the operation of clause 5.2 of this Agreement, and Excluded Entity means any one of them;

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

NIP means the National Insurance Program, being the joint undertaking between the Parties on the terms and conditions, and for the purposes, set out in this Agreement;

NIP Executive Committee means the committee of management constituted pursuant to clause 6 of this Agreement;

NIP Executive Committee Charter means the document annexed at Schedule 2 as may be varied from time to time by the NIP Executive Committee;

Parties means and include all legal persons and entities listed in Schedule 1 and also the successors or administrators (if any) of those legal persons and entities, and Party means any one of them;

SA Synod has the same meaning as the term "the Synod" as defined in section 5 of the *The Uniting Church in Australia Act 1977* (SA);

Self-Managed Insurance Fund means a dedicated capital fund operated by each Synod which:

- (a) selectively retains (underwrites) a proportion of risk not otherwise transferred to the external insurance market (including below deductible claims and losses of the relevant Synod's externally placed insurance programs);
- (b) only retains risks on behalf of the parent organisation and is not subject to the regulatory controls of the Australian Prudential Regulation Authority;
- (c) is funded through calculated annual charges collected from Synod entities through the annual insurance premium allocation process; and
- (d) is subject to annual external financial audits as well as periodic actuarial revaluation;

Synod Insurance Managers means suitably qualified persons employed to set and implement the insurable risk strategy of each Synod including, but not limited to, insurable risk profiling, oversight and management of insurance programs, insurance claims, and delivery of insurance related systems, services and processes including (where appropriate) the operation of Self-Managed Insurance Funds;

Synods means the NSW/ACT Synod, Vic/Tas Synod, Queensland Synod and Northern Synod collectively, and Synod means any one of them;

Uniting Church Acts means *Uniting Church in Australia Act 1977* (NSW), *Uniting Church in Australia Act 1977* (ACT), *The Uniting Church in Australia Act 1977* (SA), *The Uniting Church in Australia Act 1977* (Vic), *Uniting Church in Australia Act 1977* (Qld), *Uniting Church in Australia Act 1977* (Tas), *Uniting Church in Australia Act 1976* (WA) and *Uniting Church in Australia Act 1977* (NT); and

WA Synod has the same meaning as the term "the Synod" as defined in section 5 of the *Uniting Church in Australia Act 1976* (WA).

1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes any gender;
- (d) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (e) a reference to person includes:
 - (i) a body corporate, an unincorporated body or other entity;
 - (ii) a reference to that person's executors, administrators, successors, permitted assigns and substitutes including; and
 - (iii) a person to whom this agreement is novated;
- (f) a reference to clause is to a clause of this agreement;
- (g) a reference to a schedule or annexure is to a schedule or annexure to this agreement;
- (h) a reference to a document includes a reference to:
 - (i) anything on which there is writing, marks, figures, symbols or perforations that have meaning for a person qualified to interpret them; and
 - (ii) anything from which sounds, images or writings are capable of being reproduced with or without the aid of any other device;
- (i) a reference to a specific document is to that document as amended, novated, supplemented, varied or replaced;
- (j) a reference to a thing including but not limited to a right, includes a reference to a part of that thing;
- (k) a reference to legislation includes but is not limited to a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument under it;
- (l) a reference to conduct includes but is not limited to, an omission, statement or undertaking whether or not in writing;
- (m) a provision of this agreement must not be construed adversely to a party on the grounds that the party drafted that provision;

- (n) an agreement, representation or warranty in favour of two or more people is for the benefit of them jointly and severally;
- (o) an agreement, representation or warranty on the part of two or more people binds them jointly and severally;
- (p) a reference to business day is a reference to any day which is not a Saturday, Sunday, public holiday or bank holiday within Sydney, New South Wales;
- (q) a reference to month is a reference to a calendar month;
- (r) a reference to year is a reference to a calendar year;
- (s) a reference to writing includes any mode of representing and reproducing words, figures, drawings or symbols in a visible form; and
- (t) if a period of time runs to or from a given date, act or event, then the time is calculated exclusive of the date, the act or event.

2. National Insurance Program Co-Operation and Purpose

2.1 Agreement and commencement of NIP

The Parties agree that they shall work together and shall continue to work together from the date of and as provided for in this Agreement until the NIP is concluded or otherwise terminated as hereinafter provided, while reserving at all times their independence from each other in all other respects.

2.2 Purpose of NIP

The Parties propose and intend:

- (a) to form a national insurance buying group to be known by the name "National Insurance Program";
- (b) to set up a committee to be known as the NIP Executive Committee with representatives from all Parties to implement and manage the NIP;
- (c) to use the NIP to procure at a national level insurance services for and on behalf of the Parties and their Associated Entities, including but not limited to brokerage services, claims management services, analytical, actuarial and alternate risk financing studies, data management, technology services, and any other services which may be required from time to time in connection with the implementation and management of the NIP and insurance services generally, with the aim of achieving efficiencies and cost savings for all Parties;
- (d) to fund the cost of the NIP from the annual insurance cost savings; and
- (e) to distribute any surplus insurance cost savings generated by the NIP

subject to and upon the terms and conditions of this Agreement.

2.3 Co-Operation between Parties

The Parties agree that at all times they will:

- (a) operate in accordance with the ethos and policy of The Uniting Church in Australia and the decisions of the NIP Executive Committee so far as they do not conflict with the Uniting Church Acts;
- (b) seek to minimise duplication of services provided by the NIP; and
- (c) at all times cooperate and collaborate respectfully with each other so as to better achieve the purposes of the NIP.

2.4 Limit of parties' liability

Each Party shall be responsible only for such part or proportion of the costs, expenses, risks and liability resulting from the NIP as hereinafter provided. Notwithstanding anything to the contrary herein contained, neither this Agreement nor any agreement referred to herein nor the acts or omissions of the Parties or of either of them, shall result, nor are they intended to result, in the creation of a partnership or other relationship whereby a Party shall be held responsible or liable for any act or omission of the other Party either jointly or otherwise, or shall permit the sharing of profits, or shall authorise either Party to pledge the credit of the other Party, or shall impair the independent status of either Party or shall create any trust.

2.5 Mutual indemnities

Each Party shall and does hereby indemnify and hold harmless every other Party and the councillors, directors officers, employees, agents and representatives of such other Party from and against any liabilities, costs, losses, claims, suits and damages arising out of any negligent or otherwise wrongful act or omission of the indemnifying Party or of any of its respective councillors, directors, officers, employees, agents or representatives done, omitted or undertaken on behalf of the indemnifying Party, whether arising out of any assumption of any obligation or responsibility by the indemnified Party or by its councillors, directors, officers, employees, agents or representatives for or on behalf of the indemnifying Party, or arising otherwise.

2.6 Exclusion of indemnity

Notwithstanding anything herein contained the provisions of clause 2.5 shall have no application to any act done or any obligation or responsibility assumed by a Party or by any of its, directors, officers, employees, agents or representatives at the request of the NIP Executive Committee.

2.7 Mutual covenant

Each Party covenants and agrees with the other Party to be just and faithful in all its activities and dealings with every other Party and otherwise to perform its obligations implied as well as expressed under the terms of this Agreement.

3. Principles of Co-Operation

3.1 NIP Guiding Principles

The Parties acknowledge the following:

- (a) As a collective national insurance program, the NIP is intended to benefit all participants by delivering cost savings and optimised insurance coverage.
- (b) The NIP is intended to replace the stand-alone insurance arrangements which each of the Parties has in place for and on behalf of themselves and each of their Associated Entities as at the date of this Agreement.
- (c) While it is intended that the NIP will further foster and promote national collaboration between the various parts of the Uniting Church In Australia, the NIP will also recognise and cater for the regional needs of each of the Synods.
- (d) The NIP is intended to be commercially sustainable, and is proposed to be self-funding in accordance with the terms of this Agreement.
- (e) The NIP is intended to deliver measurable cost savings and operational efficiencies to each of its participants.

4. Term of the NIP

4.1 Commencement of Agreement

- (a) This Agreement commences on the date on which it is executed by the last Party.
- (b) Notwithstanding clause 4.1(a) above, the Parties agree and acknowledge that the operational provisions of this Agreement which bring the NIP into existence will not come into force until the earlier of:
 - (i) the date that the ACCC grants interim authorisation; and
 - (ii) the date that the ACCC grants a final determination,in respect of each operate provision of this Agreement pursuant to Division 1 of Part VII of the CCA.
- (c) Further to clause 4.1(b) above, and for the avoidance of doubt, the Parties agree that the grant of ACCC authorisation of the NIP is a condition precedent to the operational provisions of this Agreement coming into force, and that if ACCC authorisation of the NIP is not granted (or is at any time revoked, ceased, or varied such that any essential term of this Agreement is no longer authorised) this Agreement will be terminated in accordance with the provisions of clause 11.

4.2 ACCC Authorisation

The Parties agree that:

- (a) the National Assembly is authorised to make an authorisation application in respect of the NIP on behalf of the Parties with the ACCC; and
- (b) if such an application has not been made as at the date of this Agreement:
 - (i) the National Assembly must make that application with the ACCC within 14 days of the date of this Agreement; and
 - (ii) each Synod must do any and all things reasonably necessary to enable the National Assembly to meet its obligations under clause 4.2(b)(i) above.

4.3 Period of Term

This Agreement will end on the later to occur of:

- (a) the expiration of five (5) years from the date on which the first NIP Broker is appointed; and
- (b) the expiration of five (5) years from the date on which the conditions set out at clause above 4.1(b) were met.

4.4 Formal Review of the NIP and Option to Renew

- (a) Following the conclusion of the fourth year (year 4) of the NIP, the NIP Executive Committee will undertake a formal review of the NIP by comparing the outcomes achieved against the objectives of the original business case for the NIP.
- (b) The Parties each have the option to renew the NIP subject to the following conditions being satisfied:
 - (i) each Party wishing to renew the NIP serves on the NIP Executive Committee a written notice requesting the renewal of the NIP (such notice not being able to be withdrawn by that Party once given) not earlier than 2 years and not later than 18 months prior to the date of the expiration of this Agreement pursuant to clause 4.3 above;
 - (ii) the National Assembly and not less than three (3) other Parties provide the notice specified in clause 4.4(b)(i);
 - (iii) the ACCC either:

- (A) confirm in writing that any existing authorisation granted pursuant to Division 1 of Part VII of the CCA in respect of the NIP will continue to apply to each operative provision of the agreement for the proposed further term; or
 - (B) grant a new interim authorisation or final determination in respect of each operative provision of the agreement for the proposed further term
- subject to any legal advice obtained by either the NIP Executive Committee or the Assembly Standing Committee of the National Assembly confirming that any such revised ACCC approval is necessary; and
- (iv) in the opinion of the NIP Executive Committee, the formal review referred to at 4.4(a) above demonstrates the continued feasibility of the NIP. .
- (c) Any agreement for a further term will be on the same terms and conditions as this Agreement mutatis mutandis including that:
 - (i) the further term will commence on the date after the expiration of this Agreement pursuant to clause 4.3 above;
 - (ii) the further term will end on:
 - (A) the expiration of five (5) years from the date on which the further term commences; or
 - (B) any other date as may be agreed in writing by the parties to the further term at the time the agreement for the further term is executed;
 - (iii) the agreement provides that each party has the right to exit the NIP subject to:
 - (A) not less than 18 months prior to the date on which a party intends to leave the NIP, providing the Assembly Standing Committee of the National Assembly and the NIP Executive Committee written reasons explaining the basis for the relevant party seeking to exercise its right to leave the NIP;
 - (B) the relevant authorised representative or representatives of the party meeting with the Assembly Standing Committee of the National Assembly at that committee's request; and
 - (C) the Assembly Standing Committee of the National Assembly issuing written approval to the relevant party to exit the NIP, with such approval not to be unreasonably withheld; and
 - (iv) the agreement will be terminated in the event:
 - (A) one or more parties chooses to exercise their right to exit the NIP; and
 - (B) the National Assembly in its discretion determines that the NIP is no longer viable.

5. Parties

5.1 Parties bound by Agreement

Each Party, including the Associated Entities of each Synod but excluding those Excluded Entities listed at Schedule 4, shall be bound by the terms of this Agreement.

5.2 New Entrants to NIP

Where an Excluded Entity or any other legal person or entity not already bound by the terms of this Agreement wishes to join the NIP:

- (a) that legal person or entity must provide written notice to both the NIP Executive Committee and the Assembly Standing Committee of the National Assembly of its intention to join the scheme not less than 18 months prior to the relevant insurance period including:
 - (i) written reasons explaining the basis on which they wish to join the NIP;
 - (ii) details of the current underwriter and existing insurance program, risk profile, insurance needs, and relevant financial information of the new legal person or entity;
 - (iii) where the proposed new entrant is not the SA Synod or the WA Synod (an any other Synod), evidence of written approval from the Synod in which the legal person or entity is located (or where the legal person or entity is located in Western Australia or South Australia, written approval from the WA Synod or SA Synod respectively) consenting to the proposed inclusion of that legal person or entity in the NIP; and
 - (iv) any other information that the NIP Executive Committee and/or the Assembly Standing Committee of the National Assembly may request;
- (b) both the NIP Executive Committee and the Assembly Standing Committee of the National Assembly must pass resolutions consenting to the joinder of the new legal person or entity to the NIP subject to the conditions precedent set out in this clause 5.2 being met (those resolutions not to be unreasonably withheld);
- (c) that legal person or entity must agree to and enter into a Deed of Accession in the form annexed at Annexure A to this Agreement, with the intention that they will be bound by the terms of this Agreement in the same manner as the Parties;
- (d) where the prospective new entrant is not the SA Synod or the WA Synod, that legal person or entity acknowledges that:
 - (i) where they are an entity operating within a single state or territory, they will be represented on the NIP Executive Committee by the Synod for their respective geographical region; or
 - (ii) they will be represented on the NIP Executive Committee by the National Assembly where:
 - (A) they are a national entity and not within the oversight of a Synod;
 - (B) they are under the oversight of the SA Synod or the WA Synod in circumstances where the SA Synod or WA Synod (as relevant) continue to be an Excluded Entity;
 - (C) for any reason the relevant Synod is no longer a Party to this Agreement or otherwise does not have an appointed representative on the NIP Executive Committee

and that they will not be entitled to appoint a separate independent representative to the NIP Executive Committee or have any right to vote at NIP Executive Committee meetings;
- (e) in recognition of the financial contribution made by the Parties to establish the NIP, that legal person or entity must pay a NIP joining fee with that fee and the method of payment to be determined at the discretion of the NIP Executive Committee from time to time;
- (f) the ACCC either:
 - (i) confirm in writing that any existing authorisation granted pursuant to Division 1 of Part VII of the CCA in respect of the NIP will continue to apply to each operative provision of the Agreement after the joinder of the new legal person or entity; or

- (ii) grant a new interim authorisation or final determination in respect of each operative provision of the Agreement having taken into consideration the joinder of the new legal person or entity,

subject to any legal advice obtained by either the NIP Executive Committee or the Assembly Standing Committee of the National Assembly confirming that any such revised ACCC approval is necessary; and

- (g) in the event that the new entrant is the SA Synod or WA Synod, then once clauses 5.2(a) to 5.2(f) above have been satisfied the NIP Executive Committee is required to pass a resolution in accordance with clause 14.8 amending the definition of Synod in this Agreement to include that entity.

5.3 Parties required to obtain approval to enter into insurance outside NIP

It is intended by the Parties that insurance policies will be sought on a consolidated "blanket" basis, whereby the policies obtained under the NIP cover the rights and interests of all Parties. Where a Party wishes to elect to obtain its own insurance, or enter into insurance related service contracts, outside of the NIP in relation to a particular aspect of its affairs, that Party must:

- (a) provide written notification to the NIP Executive Committee before the relevant insurance allocations for the period in question have been calculated, and not later than the cut-off date for the relevant period of insurance as may be specified from time to time by the NIP Executive Committee; and
- (b) provide at the time of notification written reasons setting out the basis on which the request is made, addressing the following:
 - (i) whether there are any compelling commercial reasons for the proposed course of action, and if so what these reasons are;
 - (ii) what, if any, unique and/or proprietary risks of the Party will be included by the stand-alone policy and/or insurance related service contract;
 - (iii) how the proposed course of action is likely to affect the Party's underlying risk profile; and
 - (iv) any other information which the NIP Executive Committee may request,

and may only engage in conduct to obtain its own insurance, or enter into insurance related service contracts, if and when the NIP Executive Committee provide to that Party approval to do so in writing (such approval to not be unreasonably withheld).

6. NIP Executive Committee

6.1 Establishment of the NIP Executive Committee

There shall be established a NIP Executive Committee for the determination or approval of matters which under this Agreement, and in particular the terms of the NIP Executive Committee Charter, are to be determined or approved by such NIP Executive Committee.

6.2 Role and Responsibilities of the NIP Executive Committee

Pursuant to the terms of the NIP Executive Committee Charter, the purpose, role and responsibilities of the NIP Executive Committee include, but are not limited to, the following:

- (a) be the focus of the implementation of the NIP as a consultative and cooperative group;
- (b) develop the business case and implementation timetable for the NIP;
- (c) uphold the guiding principles of the NIP as set out at clauses 2 and 3 of this Agreement;

- (d) implement and maintain a national risk and insurance register for the NIP and insurances arranged by it, and assist and enable the Parties to enter and maintain any data relating to their respective risk and insurance profile on that register;
- (e) undertake periodic risk assessments by way of insurable risk profiling; and
- (f) provide an annual report to all Parties, including (but not limited to) discussion of the following matters:
 - (i) budget and forward planning; and
 - (ii) performance of the NIP against key performance indicators (such as a 'Total Cost of Insurable Risk' index).

6.3 Composition of the NIP Executive Committee

- (a) The National Assembly and each Synod is entitled and required to appoint one (1) person to sit as their authorised representative on the NIP Executive Committee.
- (b) The National Assembly and the Synods together may, from time to time, appoint up to a maximum of two (2) persons to sit on the NIP Executive Committee as independent members.

6.4 Appointment and replacement of authorised representatives

Upon execution of this Agreement, the National Assembly and each Synod shall by notice in writing to the others appoint an authorised representative, and thereafter from time to time may remove and/or replace the respective representative by notice in writing to the NIP Executive Committee to the intent that the National Assembly and each Synod shall always have one authorised representative appointed and holding office as a member of the NIP Executive Committee.

6.5 Appointment and replacement of independent members

The National Assembly and each Synod may by unanimous consent in writing appoint independent members to the NIP Executive Committee, and thereafter from time to time may remove and/or replace the respective independent member by unanimous consent with notice in writing to be provided to the NIP Executive Committee and the relevant independent member.

6.6 Alternate representatives

- (a) The National Assembly and each Synod is entitled and required to appoint an alternate representative to attend, participate in and vote at NIP Executive Committee meetings in place of that entity's authorised representative.
- (b) In the event of there being any independent members of the NIP Executive Committee, each independent member is entitled (but not obliged) to appoint a suitably qualified alternate person to attend, participate in and vote at NIP Executive Committee meetings in his or her place.

6.7 Chairman

Meetings of the NIP Executive Committee shall be chaired on a rotational basis by the representatives of each of the Synods and the National Assembly in accordance with the roster set out in the NIP Executive Committee Charter. If at any meeting the chairperson is not present within 15 minutes of the time appointed for holding the same, the members of the NIP Executive Committee shall choose someone of their number (excluding any independent members which may be present) to be chairman of such meeting. Meetings of the NIP Executive Committee cannot be chaired by an independent member of the NIP Executive Committee.

6.8 Meetings

The members of the NIP Executive Committee may meet together for the dispatch of business, adjourn or otherwise regulate their meetings and proceedings as they think fit, but must meet not less than six (6) times a year and each meeting held must not be any more than three (3) calendar months apart.

6.9 Quorum and conduct of meetings

Except as otherwise provided four (4) members of the NIP Executive Committee, not more than one (1) of whom is an independent member, shall be a quorum. A member who is an alternate member for one or more of the other members may, in addition to giving his own vote at a meeting of the NIP Executive Committee, give one vote on behalf of each other member whom he represents as an alternate member at the meeting and who is not personally present. A member of the NIP Executive Committee may and the chairperson shall at the request of any such member at any time summon a meeting of the NIP Executive Committee. An alternate member shall be counted in a quorum at a meeting at which the member appointing him is not present but a quorum shall not be constituted solely by persons who are alternate members.

6.10 Use of technology

If all of the members consent, the members may participate in a meeting of the NIP Executive Committee by means of any technology allowing all persons participating in the meeting to hear each other at the same time. Any member participating in such a meeting is for the purposes of this Agreement taken to be personally present at the meeting. The consent of a member to the use of technology pursuant to this clause 6.10 may be a standing consent.

6.11 Equality of voting rights

Except as otherwise hereinbefore provided questions arising at any meeting of the NIP Executive Committee shall be decided by:

- (a) in the case of an uneven number of members, a simple majority (being 50% of the members present rounded up to the next whole number); and
- (b) in the case of an even number of members, 50% of the members present plus one (1).

6.12 Deadlocks

If the NIP Executive Committee cannot agree on any matter then a special meeting of the NIP Executive Committee shall be convened by the chairperson to consider further the matter on which the NIP Executive Committee cannot agree. Such further meeting shall take place within seven (7) days of the meeting at which the NIP Executive Committee could not agree as aforesaid. In the event that the NIP Executive Committee cannot agree on such matter at the further meeting then the matter shall be referred to dispute resolution pursuant to the provisions of clause 13.

6.13 Right of appeal to Audit Finance & Risk Committee of National Assembly

Where there is disagreement between two or more Synods which is not able to be appropriately dealt with by clause 6.12, or notwithstanding clause 6.21 where a Synod disagrees with a decision of the NIP Executive Committee, and if the General Secretaries of the respective Synods have met but been unable to come to a resolution, a Synod may request in writing that the chairperson of the NIP Executive Committee refer the matter to the Audit Finance & Risk Committee of the National Assembly for review (that referral not to be unreasonably withheld). Any decision made by the Audit Finance & Risk Committee of the National Assembly in accordance with this clause 6.13 will be binding on the Parties. Any disagreement at NIP Executive Committee level involving the National Assembly, or where the

National Assembly disagrees with a decision of the NIP Executive Committee, will be dealt with in accordance with the provisions of clause 13 of this Agreement.

6.14 Consultants

The National Assembly and each Synod shall be entitled to have present at any meeting of the NIP Executive Committee such consultants as they each may deem necessary. Any such consultants may attend NIP Executive Committee meetings but are not members of the NIP Executive Committee and may not actively participate in or vote at those meetings.

6.15 Minutes

The NIP Executive Committee shall cause minutes of all resolutions and proceeding of all meeting of the NIP Executive Committee to be duly entered in books provided for that purpose. The NIP Executive Committee shall cause the minutes of every meeting of the NIP Executive Committee to be signed by the chairperson of such meeting or by the chairperson of a succeeding meeting and minutes purporting to have been so signed shall be evidence of the proceedings to which such minutes relate.

6.16 Convening of meetings

The chairperson may from time to time convene meetings of the NIP Executive Committee whenever they consider it necessary or desirable so to do and shall if requested by notice in writing by any representative convene such meeting within five (5) working days of receipt of such notice. Should the chairperson fail to so convene such a meeting the representative who requested such a meeting may convene it in the manner hereinafter set out for convening meetings of the NIP Executive Committee.

6.17 Notice of meetings

Notwithstanding anything to the contrary herein contained no less than two (2) working days' notice in writing shall be given to all Parties and any independent members of any meeting of the NIP Executive Committee but such notice may be waived if all representatives are present at a meeting and agree to waive such notice.

6.18 Adjourned meetings

If no quorum is present within one (1) hour from the time appointed for any meeting then the representatives present or one of them nominated for that purpose at that meeting shall notify in writing the representatives not so present that the meeting shall stand adjourned until the same day in the next week at the same time and place (or such other time and place as the chairperson may decide) and if at that postponed meeting a quorum is not present within one half hour from the time appointed for the meeting, the representatives present shall, notwithstanding clause 6.9, be deemed to constitute a quorum with full power to decide any questions or issues as if they comprised all the representatives.

6.19 Powers of NIP Executive Committee

The NIP Executive Committee shall have power to establish guidelines and make policy decisions to give effect to the provisions of this Agreement subject to any express provisions herein contained and, subject to appropriate resolutions being passed by the NIP Committee in accordance with the terms of this Agreement and those resolutions being recorded in writing, shall have the power to delegate to any one or more representatives of the Synods as may be considered necessary from time to time in order to implement the NIP.

6.20 NIP Executive Committee reporting lines and reporting requirements

The NIP Executive Committee is to act in accordance with the reporting lines and reporting requirements set out in the NIP Executive Committee Charter.

6.21 Parties bound by decisions

Subject to the operation of clause 5, each Party shall be bound by the decisions of the NIP Executive Committee which are within its authority and which are made in accordance with this Agreement.

6.22 Dissolution of NIP Executive Committee

The NIP Executive Committee may be dissolved by the National Assembly and the Synods at any time:

- (a) upon the General Secretary (or equivalent) of each and every Synod and the National Assembly passing an ordinary resolution to that intent;
- (b) where there is no more than fourteen (14) days between the date of the first and last of these resolutions to be passed; and
- (c) signed copies of each of these resolutions have been served on both the NIP Executive Committee and the Assembly Standing Committee of the National Assembly no more than seven (7) days after the date of the last resolution to be passed.

Where the NIP Executive Committee is dissolved in accordance with this clause 6.22, the NIP will be terminated in accordance with the provisions of clause 11 of this Agreement.

7. Funding of NIP**7.1 Provisions of funds**

The NIP is to be funded on a cost recovery basis in accordance with the Cost Allocation Model annexed at Schedule 3. To the extent that it may be necessary for the National Assembly to provide monies necessary to meet the costs of the NIP from their own resources (whether those expenses have been incurred before or after the date of this Agreement), any such amounts are to be repaid to the National Assembly by the other Parties in proportion to each Parties' interest in the NIP as set out in the Cost Allocation Model.

7.2 Monies to be paid on receipt of invoice

Noting that the National Assembly will (in accordance with clause 9.1(h) of this Agreement) be the contracting party for any and all agreements entered into as part of the NIP, each Party is to make its contributions to the NIP to the National Assembly on receipt of an invoice issued by the National Assembly in accordance with the terms of the Cost Allocation Model annexed at Schedule 3.

7.3 Application of cost savings

Any cost savings generated by the NIP will be received by the Parties as reduced premiums in accordance with the Cost Allocation Model and how those savings are allocated is a matter each Party in accordance with its own budgeting protocols.

8. Accounts and records**8.1 NIP records**

The NIP Executive Committee and National Assembly shall cause proper books of account to be kept wherein shall be entered full particulars of all monies paid or received in the course of the NIP and of all such other matters, transactions and things relating to the NIP as are usually entered in books of account by persons engaged in a business of a similar character to the NIP.

8.2 Place records kept

Such books of account and all papers and documents belonging or referring to the NIP shall be kept at a place to be determined by the NIP Executive Committee and each of the Parties shall at all times have free access to examine such books of account, papers and documents and shall be at liberty to make extracts therefrom and to make copies thereof.

8.3 NIP accounts

As soon as practicable after the thirtieth day of June in every year the NIP Executive Committee in conjunction with the National Assembly shall cause an account to be prepared in accordance with accounting principles in order to calculate and determine in respect of the financial year which ended on that date the total operating costs of the NIP and the estimated insurance cost savings (if any) achieved for each Party to the NIP.

9. Role and Obligations of the Parties

9.1 National Assembly

The National Assembly agrees that it will:

- (a) prepare a governance framework for the NIP;
- (b) prepare, in consultation with the NIP Executive Committee, the budget and financial reporting for the NIP;
- (c) provide oversight and direction for the NIP through the Assembly Audit Finance & Risk Committee;
- (d) act as convenor for all NIP Executive Committee meetings, including recording of minutes and action items;
- (e) subject to the exercise of any appeal rights provided for at clause 13 or elsewhere in this Agreement, accept and implement the decisions of the NIP Executive Committee;
- (f) appoint a National Assembly representative to the NIP Executive Committee in accordance with clause 6.3(a) of this Agreement who has the required level of authority and delegation to implement NIP strategy;
- (g) in accordance with clause 6.13 of this Agreement and as otherwise may be agreed between the Parties, act as a mediator where there may be any conflict (perceived or otherwise) between any of the Synods which could impact the NIP;
- (h) act as the contracting party for any and all agreements entered into as part of the NIP; and
- (i) in consultation with the NIP Executive Committee, coordinate the activities of the NIP as required.

9.2 Synods

The Synods agree that they will:

- (a) commit to and support the NIP for the term of the NIP as set out at clause 4 of this Agreement;
- (b) appoint a Synod representative to the NIP Executive Committee in accordance with clause 6.3(a) of this Agreement who has the required level of authority and delegation (equivalent to the delegations given to the current Synod Insurance Managers as at the date of this Agreement) to implement NIP strategy (including broker instructions as appropriate) based upon recommendations approved at Synod level;

- (c) treat any document signed by their respective General Secretary in connection with the NIP as having been approved by the Synod;
- (d) provide all necessary underwriting data and information which might otherwise be required from time to time by the NIP Committee and National Assembly to enable the negotiation, placement, and administration of NIP coverage and/or associated NIP services;
- (e) subject to the exercise of any appeal rights provided for at clause 6.13 or elsewhere in this Agreement, accept and implement the decisions of the NIP Executive Committee;
- (f) work with and assist the role of any external professional advisors to the NIP (including but not limited to brokers, insurers, actuaries, insurer panel lawyers, claims managers and assessors) which may be appointed from time to time by the National Assembly in accordance with the decisions of the NIP Executive Committee;
- (g) pursuant to clause 5.3 of this Agreement, not engage with or seek commercial terms from the external insurance market without the express prior written agreement of the NIP Executive Committee; and
- (h) enter and maintain the following datasets within any risk and insurance database which is used by the NIP for the placement, renewal and administration of external insurance coverage in accordance with the data specification agreed by the NIP Executive Committee, including but not limited to the following:
 - (i) historical and current incident, notification and claim records;
 - (ii) historical and current insurance policy records;
 - (iii) property asset records;
 - (iv) vehicle fleet records; and
 - (v) exposure and underwriting data captured for the placement and renewal of NIP coverage.

10. Insurance Allocations, Selections and Limits

10.1 NIP Cost Allocations

The Parties agree that the allocation of premium costs as between the Parties will be undertaken in accordance with the Cost Allocation Model annexed at Schedule 3 of this Agreement.

10.2 Self-Insured Retentions

Each Party must select its own level of self-insured retentions and, where appropriate, maintain existing one or more Self-Managed Insurance Fund. Any Self-Managed Insurance Fund maintained by a Party must be controlled directly by that Party and may not be maintained by any Associated Entities of any Party (other than any Excluded Entities).

10.3 Limits

Subject to the express approval in writing of the NIP Executive Committee, each Party may choose its own sub-limit of indemnity and/or liability in the event such options become commercially available through the NIP.

11. Termination

11.1 Termination of NIP

The NIP shall continue until the end of the term specified in clause 4.3 of this Agreement or such later time as shall have been determined by the Parties in accordance with the provisions of this Agreement.

11.2 Other causes for termination

- (a) Upon the happening of any of the following events, any Party to this Agreement shall be entitled to terminate their involvement in the NIP by giving to the other Parties seven (7) days' notice of its intention so to do, and where as a result of a Party's withdrawal from the NIP in accordance with this clause 11.2 the National Assembly in its discretion determines that the NIP is no longer viable then the NIP arising out of this Agreement shall be terminated upon the expiry of such notice:
 - (i) a receiver being appointed of the assets of the undertaking of any other Party;
 - (ii) a petition being presented (and not withdrawn within fourteen (14) days) for the winding up of any other Party;
 - (iii) an official manager being appointed of any other Party;
 - (iv) a liquidator or provisional liquidator being appointed in respect of any other Party;
 - (v) any other Party not being able to pay its debts as they become due;
 - (vi) the failure of any other Party to remedy any breach hereunder within fourteen (14) days of being given notice to remedy the same by the Party.
- (b) Further to clause 4.1(c) of this Agreement, where the NIP Executive Committee determine that ACCC authorisation of the NIP is required, in the event that authorisation is revoked, ceased, or varied such that any essential term of this Agreement is no longer authorised, then the NIP arising out of this Agreement will be terminated immediately.

11.3 Effect of termination

Any termination shall be without prejudice to any prior accrued rights or obligations of any Party.

12. Force majeure

12.1 No liability for force majeure

A Party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than to pay money) under this Agreement caused by:

- (a) act of God;
- (b) war, riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance;
- (d) power surge or failure or breakdown of plant, machinery or equipment;
- (e) shortage of labour, transportation, fuel, power, plant, machinery, equipment or materials; or
- (f) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application,

that is not foreseen or caused or is beyond the control of the Affected Party.

12.2 Notification of Events

The Affected Party must notify each other Party as soon as practical of any anticipated delay or failure caused by an event referred to in clause 12.1 (**Event**).

12.3 Obligation suspended

The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event.

12.4 Termination

If:

- (a) performance of an obligation is prevented by an Event; or
- (b) a delay caused by the Event exceeds 30 days,

any Party may terminate this Agreement at the expiration of not less than three (3) months' notice to the other Parties.

12.5 Refund on termination

If a Party terminates this Agreement under clause 12.4 all money previously paid under this Agreement for which no goods, services or other consideration has been provided must be refunded within 30 days after termination.

12.6 Partial delivery

If any Event limits a Party's ability to perform an obligation, that Party may partially perform that obligation to an extent that is reasonable under the circumstances.

12.7 Good Faith

The Parties must at all times during the currency of this Agreement act towards each other with good faith.

13. Dispute resolution

13.1 Amicable Negotiation

In the event of any dispute or difference arising between two or more of the Parties in relation to this Agreement and to which clause 6.13 does not otherwise apply (**Dispute**), the Parties to the Dispute shall, in the first instance, appoint their respective designated representatives to meet and negotiate in good faith to resolve the Dispute. The representatives so appointed must have authority to make decisions and take all other actions necessary to resolve the Dispute.

13.2 Commencement of Process

For the avoidance of doubt, a Dispute shall be taken to exist when one Party, in good faith, serves upon the other Parties and the NIP Executive Committee a notice which accurately and comprehensively identifies the subject matter of the Dispute and to which of the Parties the Dispute relates. The giving of such a notice shall be a condition precedent to the commencement of all the processes under this clause (whether by way of formal negotiation, mediation or litigation) for the resolution of the Dispute.

13.3 Reference to Mediation

- (a) If the Parties to the Dispute are unable to successfully resolve the Dispute within 15 business days from the commencement of the first of the meetings referred to in clause 13.1, any Party to the Dispute may, by written notice served upon the other

Parties to the Dispute and (regardless of whether they are a Party to the Dispute in question) the National Assembly, require the matter to be referred for resolution to an independent mediator.

- (b) The independent mediator will be appointed by the National Assembly, whether or not the National Assembly is a Party to the Dispute in question.
- (c) The Parties to the Dispute shall co-operate to facilitate the conclusion of the mediation within a further 15 business days.

13.4 Costs of Mediation

The costs of mediation shall be borne equally by the Parties to the Dispute.

13.5 Mediation Compulsory

The Parties to the Dispute agree that if they are unable to successfully resolve the Dispute by way of negotiation in accordance with clause 13.1 they must resort to mediation as a means of resolution of the Dispute before any other process or proceeding may be taken in order to effect that resolution.

13.6 Failure of Mediation

If the Parties to the Dispute comply with the steps set out in this clause and still fail to resolve the Dispute, then in respect of the subject matter of that Dispute each Party is free to pursue any lawful remedy against one or any of the other Parties previously identified as a Party to the Dispute including the bringing of formal legal proceedings.

13.7 Survival

The provisions of this clause 13 continue to bind the parties following the termination of this Agreement.

14. General

14.1 No assignment permitted

No Party shall assign or part with or be relieved of any of its rights, powers or obligations hereunder or the benefit of this Agreement and no Party shall sell or mortgage its estate or interest (if any) in the Land or any part thereof without the prior written consent of the other Party.

14.2 No fees charged

No Party shall be entitled to charge any fee or commission in respect of any work or thing done in respect of the Project except as expressly provided in this Agreement.

14.3 No agency created

No Party shall act as or purport to act as the agent or make any promise or representations on behalf of the other Party without its express written approval.

14.4 Further acts and debts

Each Party shall do execute acknowledge and deliver all and every such further acts, deeds, guarantees, agreements, covenants, assignments and assurances as shall be reasonably required for the purposes and intention of this Agreement.

14.5 No merger

None of the terms or conditions of, nor any act matter or thing done under or by virtue of or in connection with, this Agreement or any other agreement nor the termination of this Agreement shall operate as a merger of any of the rights and remedies of the Parties in or under this Agreement but such rights and remedies shall at all times continue in full force and effect.

14.6 Exclusion of statutory provisions

Unless application is mandatory by law, no statute proclamation, order, regulation or moratorium whether present or future shall apply to this Agreement so as to abrogate extinguish impair diminish further delay or otherwise prejudicially affect any rights powers, remedies or discretion of or accruing hereunder to the Parties or to either of them.

14.7 Waiver

No waiver of any breach of this Agreement or any of the terms hereof shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach.

14.8 Variations

The Parties may from time to time vary or modify any provision of this Agreement by resolution passed by the NIP Executive Committee in accordance with the terms of this Agreement. No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any party from its terms, is in any event of any force or effect unless it is confirmed in writing by the Parties and, where legal advice has been obtained by either the NIP Executive Committee or the Assembly Standing Committee of the National Assembly to the effect that the proposed variation or modification required a revised ACCC approval to be obtained, the ACCC either:

- (a) confirm in writing that any existing authorisation granted pursuant to Division 1 of Part VII of the CCA in respect of the NIP will continue to apply to each operative provision of the agreement for the proposed further term; or
- (b) grant a new interim authorisation or final determination in respect of each operative provision of the agreement for the proposed further term.

Such variation, modification, waiver or consent is effective only to the extent for which it may be made or given.

14.9 Consideration GST-exclusive

It is the intention of the Parties that any consideration for a supply under this Agreement should be received by the supplier exclusive of GST.

14.10 Payment of GST

The recipient of a supply must pay the supplier an amount equal to the supplier's GST on the consideration at the same time as the consideration is paid. The supplier must issue a tax invoice before the recipient is obliged to pay the GST.

14.11 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts when executed and taken together will constitute this Agreement. In proving this Agreement is binding on a Party, it is necessary only to produce a counterpart of this Agreement executed by that Party.

14.12 Governing Law and jurisdiction

This Agreement is governed by and construed in accordance with the laws from time to time in force in New South Wales and the parties hereto irrevocable submit to the non-exclusive jurisdiction of the Courts of that State and any Courts competent to hear appeals from those Courts.

14.13 Severability

If any provision of this Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature or materials terms of this Agreement.

14.14 Entire Agreement

This Agreement constitutes the entire understanding between the Parties and no prior representations, warranties, guarantees or other terms or conditions, whether express or implied and whether oral or in writing in relation to the subject matter of this Agreement shall be of any force of effect except to the extent that they are contained in, referred to or varied pursuant to this Agreement.

Schedule 1

Parties

UCA Assembly Limited ACN 000 007 447 of Level 10, 222 Pitt Street, Sydney NSW 2000, for **The Uniting Church in Australia – National Assembly ABN 16 939 630 947** of Level 10, 222 Pitt Street, Sydney NSW 2000

(National Assembly)

The Uniting Church In Australia Property Trust (NSW) ARBN 134 487 095 of Level 3, 222 Pitt Street, Sydney NSW 2000 for **The Uniting Church In Australia Synod Of NSW & ACT ABN 82 492 408 686** of Level 3, 222 Pitt Street, Sydney NSW 2000

and

The Uniting Church In Australia Property Trust (Australian Capital Territory) ARBN 053 246 218 of Level 3, 222 Pitt Street, Sydney NSW 2000

(together NSW/ACT Synod)

The Uniting Church in Australia Property Trust (Victoria) as constituted pursuant to section 12 of the *Uniting Church in Australia Act 1977* (Vic) of 130 Little Collins Street, Melbourne VIC 3000, for **The Uniting Church In Australia Synod of Victoria and Tasmania ABN 39 703 442 582** of 130 Little Collins Street, Melbourne VIC 3000

and

The Uniting Church in Australia Property Trust (Tas.) as constituted pursuant to section 10 of the *Uniting Church in Australia Act 1977* (Tas) of 130 Little Collins Street, Melbourne VIC 3000

(together Vic/Tas Synod)

The Uniting Church In Australia Property Trust (Q.) ARBN 142 498 780 of 60 Bayliss Street, Auchenflower QLD 4066, for **The Uniting Church In Australia Queensland Synod ABN 25 548 385 225** of 60 Bayliss Street, Auchenflower QLD 4066

(Queensland Synod)

The Uniting Church in Australia Property Trust (N.T.) as constituted pursuant to section 5 of the *Uniting Church in Australia Act 1977* (NT) of 2 Railway Street, Parap NT 0821, for **The Uniting Church In Australia Norther Synod ABN 44 834 585 067** of 2 Railway Street, Parap NT 0821

(Northern Synod)

Schedule 2

NIP Executive Committee Charter

Schedule 3

Cost Allocation Model

The cost of the NIP will be allocated based upon fair and reasonable terms determined by and approved by consensus of the NIP Executive Committee from time to time as appropriate. In establishing appropriate cost allocation modelling for the NIP, the NIP Executive Committee will take into consideration (but not limited to) the following factors:

1. each Party's proportional interest in the NIP;
2. advice from external providers and advisors (such as insurance underwriters, insurance brokers and actuaries) contained in recommendations and reports in relation to rating factors and allocation of NIP costs;
3. the breakdown of cost of external insurance premiums, and how these may be reflective of the property asset holding, gross revenue, historical claims experience and risk profile of each Party;
4. broker and other professional consulting fees; and
5. data management costs.

Excepting the National Assembly, it is the responsibility and obligation of each Party to reallocate its NIP costs (including any additional operating expenses incurred directly by that Party in connection with the NIP) within its own organisation to its constituent entities as it deems appropriate.

Schedule 4
Excluded Entities

Name	Details
SA Synod and its Associated Entities	See clause 1.1
WA Synod and its Associated Entities	See clause 1.1
Newington College	<p>200 Stanmore Road, 115 and 129 Cambridge Street Stanmore NSW 2048</p> <p>115 129 Cambridge Street Stanmore NSW 2048</p> <p>129 Cambridge Street Stanmore NSW 2048</p> <p>26 Northcote Road Linfield NSW 2070</p>
Wesley College, The University of Sydney	<p>Western Avenue The University of Sydney NSW 2006</p>
Epworth Foundation, Epworth Hospitals	<p>85 Wilson Street Brighton VIC 3186</p> <p>888 Toorak Road Camberwell VIC 3124</p> <p>29 Simpson Street East Melbourne VIC 3002</p> <p>1 Arnold Street Box Hill VIC 3128</p> <p>166 Clarendon Street East Melbourne VIC 3002</p> <p>320 Victoria Parade East Melbourne VIC 3002</p> <p>1 Epworth Place Waurin Ponds VIC 3216</p> <p>50 Burwood Road Hawthorn VIC 3122</p> <p>89 Bridge Road Richmond VIC 3121</p>

	48 Kagan Drive Berwick VIC 3806 Suite 4, 355 Main Street Lilydale VIC 3140 28-30 Ryot Street Warrnambool VIC 3280
Haileybury College	855 Springvale Road Keysborough VIC 3173

Executed as a deed

Executed by **UCA Assembly Limited**
(ACN 000 007 447) in accordance with
section 127 of the *Corporations Act 2001*
(Cth):

.....
Director

.....
Director/Secretary

.....
(Print) Full Name

.....
(Print) Full Name

**The Common Seal of The Uniting Church
In Australia Property Trust (NSW)**
(ARBN 134 487 095) was hereunto affixed
on the day of 20
pursuant to a resolution of the Trust at a
duly convened meeting in the presence of:

.....
Member

.....
Member

**The Common Seal of The Uniting Church
In Australia Property Trust (Australian
Capital Territory)** (ARBN 053 246 218) was
hereunto affixed on the day of
20 pursuant to a resolution of the Trust at
a duly convened meeting in the presence of:

.....
Member

.....
Member

**The Common Seal of The Uniting Church
in Australia Property Trust (Victoria)**
was hereunto affixed on the day of
20 pursuant to a resolution of the Trust at
a duly convened meeting in the presence of:

.....
Member

.....
Member

**The Common Seal of The Uniting Church
in Australia Property Trust (Tas.)**

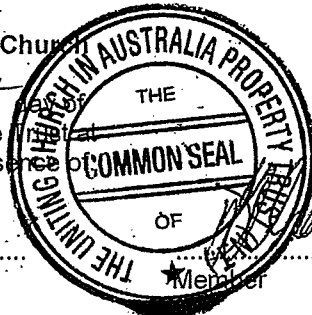
was hereunto affixed on the day of
20 pursuant to a resolution of the Trust at
a duly convened meeting in the presence of:

.....
Member.....
Member**The Common Seal of The Uniting Church
in Australia Property Trust (Q.)**

(ARBN 142 498 780) was hereunto affixed
on the day of 20
pursuant to a resolution of the Trust at a
duly convened meeting in the presence of:

.....
Member.....
Member**The Common Seal of The Uniting Church
in Australia Property Trust (N.T.)**

was hereunto affixed on the 21st day of Feb
2019 pursuant to a resolution of the Trust at
a duly convened meeting in the presence of:

.....
Member

Annexure A

Deed Poll of Accession

This Deed Poll

By [insert name] ARBN [insert ARBN or ACN] of [insert address] for [insert name] ABN [insert ABN] of [insert address]

(Acceding Party)

Recital

This Deed is supplemental to the Co-Operation Agreement dated [insert date] between UCA Assembly Limited ACN 000 007 447 of Level 10, 222 Pitt Street, Sydney NSW 2000, for The Uniting Church in Australia – National Assembly ABN 16 939 630 947 of Level 10, 222 Pitt Street, Sydney NSW 2000, and others (**Co-Operation Agreement**).

Operative Part

1. The Acceding Party:
 - (a) confirms that it has been supplied with a copy of the Co-Operation Agreement; and
 - (b) covenants with all present parties to the Co-Operation Agreement (whether original or by accession) to observe, perform and be bound by all the terms of the Co-Operation Agreement to the intent and effect that the Acceding Party will be deemed with effect from the later of:
 - (i) the date on which the Acceding Party pays any amount due in accordance with clause 5.2(e) of the Co-Operation Agreement; and
 - (ii) the date on which the Acceding Party executes this Deedto be a Party to the Co-Operation Agreement.
2. Terms defined in the Co-Operation Agreement have the same meaning when used in this Deed.
3. This Deed is governed by and construed in accordance with the laws of New South Wales.

Executed and delivered as a deed poll on

[insert execution format]