



**DEPARTMENT OF COMMUNITIES AND JUSTICE
NSW**

**Program Level Agreement -
Family Preservation and Restoration**

**The Crown in right of the State of New South Wales, acting
through the
Department of Communities and Justice**

AND

«*Provider_name*»

«*ABN*»

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Contract Particulars

Program: Family Preservation

Program Level Agreement: «Program_PLA_ID»

Item 1: Name: **The Crown in Right of the State of New South Wales**, acting through the Department of Communities and Justice (**DCJ**)

ABN: [36 433 875 185]

Contact: [Briana Jurgeit]

Telephone: [Telephone Number]

Name: «Provider_name»

ABN: «ABN»

Contact: «Contact_CEO»

Telephone: «Telephone»

Item 2: Category of Services	Type of service Family Preservation	Start Date «Pres st dt»
Item 3: Service End Date	30 June 202[x]	
Item 4: Meetings to review Service Provider's performance	Monthly	
Item 5: Contract Manager of the Service Provider:	«CM_for_ SP»	
Item 6: DCJ Representative:	«DCJ_CM»	
Item 7: Contract Version:	July 2022	

Program Level Agreement - Family Preservation Program

Date: This Agreement will be deemed to take effect on 1 October 2022.

Background

- A. DCJ has prepared the Permanency Support Program.
- B. The Permanency Support Program requires the provision of some or all of the following categories of services:
 - a. Family Preservation Services;
 - b. Foster Care;
 - c. Aboriginal Foster Care;
 - d. Intensive Therapeutic Transitional Care;
 - e. Intensive Therapeutic Care Home;
 - f. Therapeutic Sibling Option Placement;
 - g. Therapeutic Supported Independent Living;
 - h. Supported Independent Living; and
 - i. Therapeutic Home Based Care
 - j. Intensive Therapeutic Care Significant Disability
- C. This Agreement is intended to govern only the Family Preservation Services and DCJ wishes to enter into this Agreement with the Service Provider to secure outcomes-based Preservation Services to support the Permanency Support Program.
- D. The Service Provider has agreed to provide the Family Preservation Services under the Permanency Support Program
- E. DCJ will pay the Service Provider for the Family Preservation Services required to support the Permanency Support Program in accordance with the terms and conditions set out in the Funding Deed, (to which the Service Provider is also a party) and this Agreement.
- F. DCJ and the Service Provider have agreed to enter into this Agreement in respect of the Family Preservation Services in support of the Permanency Support Program.

Definitions

In this Agreement, unless the context requires otherwise:

- a. all terms defined in the Funding Deed will, unless the context requires otherwise, have the same meanings when used in this Agreement;
- b. the following terms will, unless the context indicates a contrary intention or used in the Funding Deed, have the following meanings when used in this Agreement; and
- c. additional definitions applicable to the Family Preservation Services may be provided in the Schedules and Appendices to this Agreement.

Agreement means this Program Level Agreement and includes all Schedules and Appendices attached hereto.

Contract Particulars means the particulars set out under the heading “Contract Particulars”, above.

Business Day means any day that is not a Saturday, Sunday or public holiday in the State of New South Wales.

Contracted Volume has the meaning given to it in Schedule 3 of this Agreement.

Default Event means:

- a. any of the events set out at clause 19.1 of the Funding Deed;
- b. the Service Provider fails to perform any of its obligations under this Agreement to the satisfaction of DCJ;
- c. the Service Provider is in material breach of any of its obligations under this Agreement;
- d. the Service Provider fails to notify DCJ of a Notification Requirement 3 or more times in any Quarter;
- e. the Service Provider changes the composition of the board of directors and/or members of its senior management which may be a Change in Control and:
 - i. does not notify DCJ of the Change in Control within 10 Business Days after becoming aware of the Change in Control; or
 - ii. if such notice is given, DCJ reasonably believes that the Change in Control will have a material adverse impact on the ability of the Service Provider to deliver the Services;
- f. the Service Provider, a Subcontractor, an employee or agent of the Service Provider or a Subcontractor engages in fraud, collusion or dishonest conduct in performing their obligations under this Agreement;
- g. a representation or warranty given by the Service Provider is found to be materially incorrect or misleading, or a financial audit report discloses fraudulent, false, misleading or negligent reporting by the Service Provider in respect of any financial statements or invoices or other books or records of the Service Provider;
- h. where the Service Provider also delivers statutory out-of-home-care services under a separate agreement with DCJ and
 - the Service Provider's OCG accreditation with the Children's Guardian is suspended, cancelled, revoked or required to be surrendered or withdrawn under applicable Law and DCJ forms the opinion, based on information relating to the foregoing, that it would not be appropriate for the Service Provider to continue providing the Family Preservation Services under this Agreement;
- i. any other event described as a Default Event in this Agreement.

DCJ Representative means the Person specified in Item 6 of the Contract Particulars.

Funding Deed means the deed between DCJ and the Service Provider (in respect of the Family Preservation Services), titled “Funding Deed”. For clarity, for the purpose of this Agreement, the Funding Deed and this Agreement must be read together, and the rights and obligations of the parties must be construed accordingly even although the same Funding Deed may apply to the Service Provider while the Service Provider provides other services under the Permanency Support Program.

OCG means the Children's Guardian (as defined in the Funding Deed).

Performance Outcomes and Data Reporting Framework means the document set out at Schedule 2.

Program Level Agreement means this Agreement.

Quarter means every three-calendar month period commencing on a Quarterly Date, except as follows:

- a. the first Quarter following the Service Start Date will be the period from the Service Start Date until the day before the first Quarterly Date following the Service Start Date; and
- b. the last Quarter of the Term will be the period from the last Quarterly Date during the Term until the Service End Date.

Quarterly Date means every 1 January, 1 April, 1 July and 1 October of each year during the Term.

Services or Family Preservation Services means the services to be delivered by the Service Provider under this Agreement and as set out in Schedule 1.

Service Payment means the payments made by DCJ to the Service Provider under this Agreement and, where the context requires, has the same meaning as the term Funds as defined in the Funding Deed.

Term means the period starting from the Service Start Date and ending with the Service End Date.

Operative part

1 Terms

1.1 Commencement and duration

- a. This Agreement commences on the Service Start Date and, unless terminated earlier, continues until the Service End Date.
- b. DCJ may, in its absolute discretion, extend the Service End Date by providing written notice to the Service Provider prior to the Service End Date setting out the revised Service End Date.

1.2 Terms of this Agreement

- a. In the event of any conflict or inconsistency between this Agreement and the Funding Deed, the provisions of the Funding Deed will, unless this Agreement states otherwise, prevail to the extent of such conflict or inconsistency in accordance with the order of precedence set out in clause 26.3 of the Funding Deed.

1.3 Effect of termination of Funding Deed

If:

- a. on or before the Service End Date, the Funding Deed is terminated; and
- b. on such termination, a new Funding Deed commences;

the new Funding Deed will form part of the terms and conditions of this Agreement on the basis set out in that Funding Deed.

2 Services

2.1 Performance of the Services

- a. The Service Provider must perform the Services :
 - i. on and from the Service Start Date;
 - ii. in accordance with the terms of this Agreement, including, Schedule 1 and Schedule 2 of this Agreement;using resources and Personnel with the skills and qualifications required under this Agreement and as may be required by Law.

3 Additional Service Provider obligations

3.1 Service Provider's other obligations not affected

- a. The Service Provider acknowledges and agrees that, because:
 - i. it may be required by other parts of this Agreement to perform certain activities and accept certain responsibilities (including Schedule 1);
 - ii. it may also have obligations to DCJ in respect of delivering the Services under this Agreement, the Funding Deed or any other funding arrangement that it has entered into with DCJ; and
 - iii. it may also have obligations in respect of the OCG or under applicable Law

the performance of obligations of the Service Provider under this Agreement remain unaffected.

- b. The Service Provider acknowledges and agrees that, because:
 - i. it is required by other parts of this Agreement to provide certain plans, programs, protocols, policies, procedures, strategies, reports or notifications to DCJ (including the quality and performance management framework);
 - ii. it may also have obligations to DCJ in respect of performance reporting, performance reviews and audits under this Agreement or the Funding Deed or any other funding arrangement that it has entered into with DCJ; and
 - iii. it may also have obligations in respect of the OCG or under applicable Law,the Service Provider's failure to refer to any plan, program, protocol, policy, procedure, strategy, report, review, audit or notification referred to herein does not affect those obligations unless specifically agreed to by the DCJ Representative in writing.

3.2 Accreditation and approvals warranty

- a. DCJ acknowledges that at the date of this Agreement there is no requirement for the Service Provider to be accredited with the Children's Guardian by reason of the Family Preservation Services to be provided by the Service Provider under this Agreement ..
- b. Subject to the acknowledgement referred to in clause 3.2(a), the Service Provider warrants to DCJ that it has all accreditations and approvals (if any) required for it and its Personnel to deliver the Family Preservation Services.
- c. If applicable and if requested, the Service Provider must submit to DCJ its accreditation status or other qualifications and any reports on its ongoing accreditation and qualifications as soon as possible .
- d. Where applicable in relation to the Family Preservation Services, the Service Provider must ensure that all Subcontractors have all accreditations, qualifications and approvals as required by applicable Law to provide the Family Preservation Services or any part of those services .

3.3 Personnel Working with Children

The Service Provider must ensure that Personnel (including Subcontractor Personnel) obtain a "working with Children check clearance" before commencing any Child-Related Work forming part of the Family Preservation Services.

4 Payments

4.1 Payment during the Term

- a. In respect of the Family Preservation Services performed by the Service Provider and for each Quarter on and from the Service Start Date, DCJ will pay the Service Provider the Service Payment:
 - i. as set out in this clause 4;
 - ii. calculated in accordance with Schedule 3 of this Agreement;
 - iii. as otherwise determined to be payable by DCJ; and
 - iv. in advance.

4.2 Service Payments

- a. On or before the first Business Day of each Quarter during the Term, DCJ will:
 - i. calculate the Service Payment for that Quarter; and
 - ii. by the 5th Business Day of that Quarter, make the Service Payment and issue the RCTI.
- b. DCJ and the Service Provider acknowledge that they (or in the case of DCJ, an entity on behalf of DCJ) are registered for GST when they enter into this Agreement and that each party will notify the other party if it (or the relevant entity) ceases to be so registered.
- c. Neither payment of the Service Payments by DCJ to the Service Provider nor the issuing of any RCTI is evidence that the Family Preservation Services have been carried out by the Service Provider in accordance with this Agreement and is to be taken as payment on account only.
- d. DCJ may, in any RCTI, correct any error in any previous RCTI issued by DCJ.

4.3 Reconciliation of Service Payments

- a. Commencing in Quarter 1 of Year 2 of this Agreement, DCJ will prepare a reconciliation of the Family Preservation Services actually performed by the Service Provider in the previous Financial Year against the Family Preservation Services which were paid for by DCJ in relation to the previous Financial Year in order to determine:
 - i. the actual Family Preservation Services provided, reconciled against the estimated Family Preservation Services to be provided in that Financial Year; and
 - ii. the actual cost of the Family Preservation Services that the Service Provider performed, reconciled against the estimate of the cost of those Family Preservation Services to be provided in the Financial Year showing:
 - A. an itemisation of any applicable GST; and
 - B. the total amount that should have been payable in respect of the Family Preservation Services actually performed in the Financial Year reconciled against the amount that was actually paid as the estimate for that Financial Year.
- b. Subject to clause 4.4(a), where the amount that should have been paid in respect of the Family Preservation Services actually performed in the previous Financial Year is:
 - i. greater than the amount which was paid in respect of that Financial Year, this additional amount must be itemised as part of the Service Payment for the current Quarter and be added to the Service Payment; or
 - ii. less than the amount which was paid in respect of that Financial Year, this amount must be itemised as part of the Service Payment for the current Quarter and be deducted from the Service Payment.

4.4 Payment adjustments

- a. Unless a prior written arrangement has been agreed between the Service Provider and DCJ, before the date of this Agreement, the Service Payment will be adjusted to the extent and in the manner described in Schedule 3 of this Agreement to reflect the

agreed principle that DCJ will pay for the quantum and quality of the Family Preservation Services actually provided.

4.5 *Format and details of financial data reporting*

- a. The Service Provider must provide its financial reporting data in the format specified by DCJ and must provide details of all categories of expenditure upon request, reconciliation and otherwise as advised by DCJ to the Service Provider from time to time, including in relation to final reconciliation at the termination or expiry of the Agreement, to enable DCJ to determine how Funds were expended.

4.6 *Indexation of payments*

- a. The parties acknowledge and agree that DCJ will develop an annual indexation mechanism during the first year of the Term which will apply to payments to be made to the Service Provider in the second and any subsequent years of the Term. The annual indexation mechanism will be determined by DCJ in its absolute discretion, but such mechanism may be consistent with:
 - i. an existing system of indexation utilised by DCJ; or
 - ii. any other system of indexation provided to DCJ by any other department or body of the NSW Government which is applied across all DCJ funding programs and may change from time to time.

5 *Quality and Performance*

5.1 *Requirements of the Service Provider*

- a. The Service Provider must collect information as set out in Schedule 2 to this Agreement.

5.2 *Provision of information by the Service Provider*

- a. The Service Provider must, upon DCJ's reasonable request, provide to DCJ any information required by DCJ in relation to any data required to be collected by the Service Provider under Schedule 2 of this Agreement.

5.3 *Performance Meetings*

- a. The Contract Manager and the DCJ Representative (as specified in the Contract Particulars) must meet at the frequency specified at Item 4 of the Contract Particulars to monitor and review the Service Provider's performance under this Agreement and Schedule 2. The Service Provider's Contract Manager must contact the DCJ Representative to instigate this review.

6 Variations

6.1 *Sector consultation*

- a. The parties agree that DCJ may, for the purpose of flexibility in the delivery of the Family Preservation Services, require an increase, decrease or change in the quantity of Family Preservation Services to be delivered by the Service Provider.
- b. The Service Provider agrees that from time to time, DCJ may consult with stakeholders in the Program in relation to the terms of this Agreement or the delivery of the Family Preservation Services.
- c. DCJ will consider the outcomes of any consultations carried out under clause 6.1(b) prior to directing a Variation under this clause 6.1, but DCJ is not required to implement any of the matters arising from those consultations.

6.2 *Proposal*

- a. Either DCJ or the Service Provider may in writing propose to the other a variation to:
 - i. any provision of this Agreement or the Schedules; or
 - ii. the Family Preservation Services (**Variation**).
- b. Where DCJ is the party proposing the Variation, it will provide to the Service Provider a notice of intent to direct a Variation (**Variation Notice**).
- c. Where the Service Provider is the party proposing the Variation, DCJ will consider the proposed Variation, and it will either:
 - i. provide the Service Provider with a Variation Notice; or
 - ii. respond to the Service Provider in writing that the proposed Variation is unacceptable having regard to the impact of achieving the Permanency Support Program objectives.
- d. When DCJ issues a Variation Notice it will include the:
 - i. date that the Variation will become effective;
 - ii. timing for the implementation of the Variation; and
 - iii. such other matters as are required to give effect to the Variation.
- e. The parties agree to sign any Variation Notice once it becomes effective in accordance with clause 6.2(d).

6.3 *Valuation*

- a. If a Variation under clause 6.2 results or may result in changes to the Service Payment, the valuation of that Variation will be determined:
 - i. with reference to the applicable rates as set out in Schedule 3 of this Agreement; or
 - ii. where there are no applicable rates set out in Schedule 3, as reasonably determined by DCJ.
- b. Any changes required to the Service Payments as a result of a Variation must apply on and from the effective date of the Variation in accordance with clause 6.2(d).

6.4 *Omissions*

- a. If a Variation set out in a Variation Notice omits or deletes any part of the Family Preservation Services, DCJ may carry out these Family Preservation Services itself or engage another Service Provider to do so.

6.5 *Variation to increase the Contracted Volume*

- a. In addition to the requirements of this clause 6, any Variation Notice which proposes to increase the Service Provider's Contracted Volume for any Family Preservation Services provided under the Agreement ('Contracted Volume Increase') must be directed in accordance with this clause 6.5.
- b. The Service Provider must determine whether it is capable of implementing the Contracted Volume Increase and give written notice to DCJ of such determination no later than 5 Business Days following the date of the issue of the Variation Notice.
- c. If the Service Provider gives notice to DCJ that it is capable of accepting a Contracted Volume Increase in response to a Variation Notice under clause 6.5(a), the Contracted Volume Increase will become effective on the date which is 40 Business Days following the date of the issue of the Variation Notice.
- d. If the Service Provider gives notice to DCJ that it is incapable of accepting a Contracted Volume Increase, subject to clause 6.6 of this Agreement, the Contracted Volume will remain unchanged.
- e. The provisions of this clause 6.5 will not apply to any Contracted Volume Increases that are to take place before 30 June 2023 unless the Service Provider satisfies DCJ that Service Provider, through no fault or neglect on its part, is not able to perform the Services in respect to such Contracted Volume Increase.

6.6 *Variation to decrease Contracted Volume*

- a. Subject to clause 6.6(b), DCJ may direct a Variation to decrease the Service Provider's Contracted Volume for Family Preservation Services.
- b. If DCJ proposes a Variation to reduce Contracted Volumes allocated to the Service Provider and the reduction has the effect of reducing the number of Actual Vacancies (as that term is defined in Schedule 3) in respect of Baseline Packages that are part of the Contracted Volumes, DCJ agrees that the Baseline Package Fee will not, before 30 June 2023, be reduced by the number of the Actual Vacancies that are the subject of the reduction. This arrangement will apply to the Service Provider only if there is in place the written arrangement between the Service Provider and DCJ, referred to in clause 4.4(a) of this Agreement. After 30 June 2023, any Variation to reduce Actual Vacancies in respect of Baseline Packages will result in a concomitant reduction in the Baseline Package Fee for the reduced Baseline Packages unless DCJ determines otherwise in its sole and absolute discretion.

7 Termination and Performance Improvement Plan

7.1 Termination of this Agreement

- a. The provisions of clause 19 of the Funding Deed apply, in accordance with its terms, to this Agreement.
- b. Without prejudice to the rights of DCJ, if a Default Event occurs, (other than a Default Event set out in clause 19.1(d), (e), (f), (g), (h), (k) or (m) of the Funding Deed), DCJ may at its sole and absolute discretion direct the Service Provider to prepare and submit to DCJ for its approval a Performance Improvement Plan.

7.2 Performance Improvement Plan

- a. If the Service Provider is directed by DCJ to prepare and submit to it a Performance Improvement Plan, the following provisions will apply:
 - i. the Service Provider must submit the Performance Improvement Plan to DCJ within 10 Business Days from the date the Service Provider receives the direction from DCJ;
 - ii. DCJ will use its reasonable efforts to complete its review of the Performance Improvement Plan as soon as reasonably practicable, and the Service Provider agrees to respond to any queries raised by DCJ and to attend any meetings, whether in person or by telephone, regarding the Performance Improvement Plan;
 - iii. DCJ will advise the Service Provider as soon as reasonably practicable whether or not it approves the Performance Improvement Plan;
 - iv. if DCJ notifies the Service Provider that it approves the Performance Improvement Plan, the provision of clause 7.2(b) will apply to the Performance Improvement Plan; and
 - v. if following the consultation process referred to in clause 7.2(a)(ii) above, DCJ notifies the Service Provider that it does not approve the Performance Improvement Plan, DCJ will at the same time give notice to the Service Provider of such reasonable changes DCJ requires the Service Provider to make to the Performance Improvement Plan and the provisions of clause 7.2(a) will apply to the Performance Improvement Plan, as varied by the changes notified by DCJ.
- b. The Service Provider must immediately implement the Performance Improvement Plan once it is approved by DCJ.
- c. In addition to DCJ's right of audit under clause 5 of the Funding Deed, DCJ may attend any premises owned or operated by the Service Provider, or request any information from the Service Provider, to conduct an audit of the Service Provider's compliance with the Performance Improvement Plan to which clause 7.2(b) applies.
- d. Following an audit pursuant to clause 7.2(c), and/or in the event that DCJ in its sole discretion determines that the Service Provider has failed to comply with the Performance Improvement Plan, DCJ may, at its sole and absolute discretion:
 - i. direct the Service Provider to prepare a further Performance Improvement Plan, in which case the provisions of this clause 7.2 will apply to that Performance Improvement Plan;
 - ii. reduce or cap the Contracted Volume of the Service Provider in respect of any of the Services; or

- iii. terminate this Agreement in accordance with clause 19.1(n) of the Funding Deed.

8 No assignment

- a. A party cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party.

9 Counterparts

- a. This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

10 Legal expenses and stamp duty

- a. Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- b. Each party must pay all stamp duty assessed on or in relation to this Agreement and any instrument or transaction required by or necessary to give effect to this Agreement.

11 Invalidity

- a. A word or provision must be read down if:
 - i. this Agreement is void, voidable, or unenforceable if it is not read down;
 - ii. this Agreement will not be void, voidable or unenforceable if it is read down; and
 - iii. the provision is capable of being read down.
- b. A word or provision must be severed if:
 - i. despite the operation of clause 11(a), the provision is void, voidable or unenforceable if it is not severed; and
 - ii. this Agreement will be void, voidable or unenforceable if it is not severed.
- c. The remainder of this Agreement has full effect even if clause 11(b)(i) or 11(b)(ii) applies.

12 Waiver

- a. A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delays by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

13 Governing law and jurisdiction

- a. The laws applicable in New South Wales govern this Agreement.
- b. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Executed as an Agreement

Signed by

.....
Print Full Name of Authorised representative

.....
Position of Authorised Representative

and

.....
Print Full Name of Authorised representative

.....
Position of Authorised Representative

as authorised representatives for
«Provider_name»
ABN: «ABN»

who warrant that they are duly authorised to execute this document on behalf of
«Provider_name»
ABN: «ABN»

.....
Signature of Authorised Representative

.....
Signature of Authorised Representative

.....
Date

.....
Date

Signed by

.....
Print Full Name of Authorised representative

as authorised representative for the
Department of Communities and Justice
in the presence of:

Signature of Authorised Representative

Signature of Witness

Position of Authorised Representative
.....

Print Full Name of Witness
.....

Date
.....

.....

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