

Communities and Justice



The Crown in Right of the State of New South Wales
acting through the
Department of Communities and Justice, Strategy, Policy and
Commissioning

AND

[Service Provider]

Funding Deed

«IDXXXX»

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FUNDING DEED

Parties

The Crown in right of the State of New South Wales, acting through the Department of Communities and Justice, Strategy, Policy and Commissioning (ABN 36 433 875 185) of [insert address] Sydney NSW 2000 (DCJ);

and

[insert Service Provider], ABN [insert] of [insert address] (Service Provider).

Background

- A. DCJ provides funding for permanency support services for Children and Young Persons and their families in accordance with the Care Act.
 - B. The Service Provider wishes to provide permanency support services, within its area of operations.
 - C. DCJ may provide Funds to the Service Provider for a Program or multiple Programs, in accordance with the terms and conditions set out in this Deed and any Program Level Agreement.
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Operative Provisions

1. Term

1.1 Commencement

This Deed commences on the date it is signed by both parties.

1.2 Effect of termination of Deed on Program Level Agreement

Subject to DCJ expressly notifying the Service Provider to the contrary in writing, if this Deed is terminated any Program Level Agreement in force under this Deed will come to an end on the same date.

2. Program Level Agreement

2.1 Formation of a Program Level Agreement

If DCJ wishes to engage the Service Provider to be available to provide Services for a Program, DCJ and the Service Provider must enter into a separate Program Level Agreement.

2.2 Terms of a Program Level Agreement

- (a) The terms and conditions of each Program Level Agreement entered into by DCJ and the Service Provider in accordance with clause 2.1 will be the terms and conditions set out in that executed Program Level Agreement, as read together with this Deed.

- (b) The Service Provider acknowledges that DCJ may provide funding to other persons to perform the same or similar activities and services as the Service Provider, on such terms and conditions as may be agreed between DCJ and that other person.

2.3 No guarantee

- (a) The Service Provider acknowledges that nothing in this Deed guarantees that DCJ will:
 - (i) direct the Service Provider to provide any minimum level of Services, or any Services at all; or
 - (ii) pay any minimum amount of Funds to the Service Provider, or any Funds at all, except where Services are required to be provided by the Service Provider.

3. Obligations of the Service Provider

3.1 Performance of Program and Services

- (a) If DCJ and the Service Provider enter into a Program Level Agreement, the Service Provider, either by itself or with Sub-contractors approved under the Program Level Agreement, must be available to provide all of the Services required for that Program, from the Service Start Date until the Service End Date.
- (b) The Service Provider must provide the Services in accordance with:
 - (i) the requirements of any associated Program Level Agreement and this Deed;
 - (ii) its constitution or equivalent document;
 - (iii) all applicable Laws, accreditation requirements, and Policies; and
 - (iv) all applicable professional ethics, principles and standards.
- (c) The Service Provider must encourage and enable Clients to whom Services are provided and, where appropriate, their guardians or advocates, to exercise their rights. In particular, the right to:
 - (i) obtain other assistance or services, which the Service Provider must inform its Clients about;
 - (ii) privacy and to be treated with respect and dignity;
 - (iii) negotiate how Services are delivered to them; and
 - (iv) have access, without fear, to an effective complaints mechanism.
- (d) The Service Provider must:
 - (i) Keep and implement a complaints procedure document outlining its procedure for dealing with complaints about the Services and make it available for viewing by any person on request;
 - (ii) Provide DCJ with a copy of its complaints procedure document on request; and

- (iii) Keep an up to date register of complaints and make the register and information about how the complaint was resolved available to DCJ on request.

3.2 Personnel

- (a) The Service Provider must ensure that all Personnel engaged in providing Services are properly authorised, trained and experienced to provide the Services.
- (b) The Service Provider acknowledges that it is solely responsible for:
 - (i) All Personnel employed or otherwise supported from the Funds or engaged in relation to the Services; and
 - (ii) The payment of all wages, entitlements, superannuation, payroll and other tax and associated costs applicable to the Personnel.
- (c) The Service Provider acknowledges that as a Designated Agency, its Principal Officer is responsible for authorising its Personnel who will be responsible for working with or caring for Children and Young Persons, including where Personnel are contractors or volunteers.
- (d) The Service Provider must ensure that its Principal Officer authorises all relevant Personnel of the Service Provider who will provide care to Children and Young Persons in relation to the Services as required under applicable Law.
- (e) The Service Provider acknowledges that it is an “employer” for the purposes of section 9 of the CPWC Act. The Service Provider must ensure that all mandatory employment screening (referred to in the CPWC Act as the “working with children check clearance”) has been undertaken on all Personnel engaged to work in “child-related work” (as defined in the CPWC Act), prior to such Personnel performing any such work.
- (f) The Service Provider represents and warrants to DCJ that the Service Provider’s process of recruitment requires that working with children checks, national criminal record checks, probity checks and other checks required by Law are completed before all volunteers, Authorised Carers, employees and contractors (including any staff provided via any Subcontractor) commence work with the Service Provider.
- (g) The Service Provider must ensure that a person who is or becomes a Barred Person, or a person who is otherwise undesirable to work with children:
 - (i) does not undertake child-related work under this Deed or a Program Level Agreement; and
 - (ii) is not the Principal Officer or an Officer of the Service Provider.
- (h) The Service Provider must ensure that it and its Personnel do not engage in any conduct that may bring DCJ into disrepute or lead to Reputational Proceedings being commenced.
- (i) DCJ may object to any Personnel allocated by the Service Provider to perform the Services where the Service Provider’s Personnel has engaged in misconduct or cannot perform the inherent requirements of the Services. Where DCJ objects to any Personnel, the Service Provider agrees not to allocate such Personnel to the Services.
- (j) DCJ may object to any Officer of the Service Provider where the Officer is the subject of a Notification Requirement under clause 3.4 and DCJ reasonably

considers that the Officer's continued holding of that office would affect the Service Provider's ability to provide the Services.

- (k) Where DCJ objects to the Service Provider's Personnel or Officer under clause 3.2(h) or 3.2(j), a senior executive from DCJ will consult with the Service Provider about the objection, and provide reasons for the objection.
- (l) Without limiting any other term of this Deed or Program Level Agreement, DCJ may require the immediate removal of Personnel from undertaking any function or role in relation to the Services where, in DCJ's reasonable opinion, the Personnel represents an unacceptable risk to any Client.

3.3 Service Provider must comply with all applicable Laws

- (a) The Service Provider must comply with all conditions of its accreditation as a Designated Agency and otherwise with all Laws, including in relation to required notifications to the Children's Guardian, engagement of Personnel, and other regulatory requirements.
- (b) If the Service Provider is a "Schedule 1 entity" within the meaning of the Children's Guardian Act it must ensure that all of the obligations under Part 4 are met.
- (c) Nothing in this Deed or any Program Level Agreement shall be read as derogating from any obligation of the Service Provider or its Personnel to comply with any applicable Law.

3.4 Notification Requirements

- (a) In addition to any notification requirements imposed on it by Law, the Service Provider must fulfil all Notification Requirements to DCJ under this Deed and in any Program Level Agreement or Policy notified to the Service Provider.
- (b) A notification given to DCJ by the Service Provider under a Notification Requirement must:
 - (i) be in writing, in addition to any verbal report;
 - (ii) be made in accordance with the timeframe specified or where no timeframe is specified, as soon as reasonably practicable;
 - (iii) to the DCJ representative or unit specified, or where not specified, to the DCJ Representative for the Program Level Agreement;
 - (iv) include the relevant matters that are the subject of the Notification Requirement and include as many details as possible regarding those matters;
 - (v) specify the parties who are the subject of or impacted by the Notification Requirement; and
 - (vi) include a copy of any information provided to the Children's Guardian or any other Authority.
- (c) DCJ may amend or update the required time frames, recipients or other details of Notification Requirements by notice in writing to the Service Provider.
- (d) DCJ may provide for additional Notification Requirements in any Program Level Agreement or any Policy notified to the Service Provider.

- (e) Nothing in this Deed or any Program Level Agreement shall operate to limit or interfere with the Service Provider's notification or other obligations under any Law.
- (f) In the event of a critical event as defined in the Critical Events Policy, the Service Provider must comply with the notification and other requirements of the Critical Events Policy.
- (g) The Service Provider must notify DCJ of any Reportable Conduct Scheme investigation at the same time as it is required to notify the Children's Guardian and must provide DCJ with copies of related records and reports in relation to the investigation as provided to the Children's Guardian;
- (h) The Service Provider must notify DCJ, immediately in writing, if:
 - (i) Services for a particular Program will not be ready to commence within 60 days from the Service Start Date;
 - (ii) Services for a particular Program have not been operating for a period of 5 consecutive Business Days or more, including during the Christmas holiday period, during which the Services are required to be provided;
 - (iii) a Service Outlet for a Program may not be accessible to Clients for five, or more, consecutive days on which Services would normally be provided; or
 - (iv) Services required for a particular Program have ceased to be provided or the Service Provider is unable or unwilling to provide the Services for a particular Program.
- (i) The Service Provider must notify the DCJ Representative for this Deed and the DCJ Representative for each Program Level Agreement immediately:
 - (i) of any non-compliance with applicable work, health and safety Laws;
 - (ii) of any Alleged Misconduct or Serious Incident;
 - (iii) of any data breach under clause 15.2(a);
 - (iv) of any actual or proposed action in relation to an Insolvency Event;
 - (v) if the Service Provider changes its bank account details; or
 - (vi) of any current, pending or threatened Reputational Proceedings.
- (j) The Service Provider must notify the DCJ Representative for this Deed and the DCJ Representative for each Program Level Agreement as soon as reasonably practicable:
 - (i) if the Service Provider changes its legal status;
 - (ii) of any change in the Service Provider's accreditation status or any new conditions placed on its accreditation as a Designated Agency;
 - (iii) if the Service Provider changes its ABN or ACN;
 - (iv) if the Service Provider changes its business name;
 - (v) if the Service Provider changes its address;
 - (vi) of any change of Officer of the Service Provider;
 - (vii) of any change to the Principal Officer of the Service Provider;

- (viii) of any Claim or likely Claim, against the Service Provider, the Service Provider's Personnel or any Officer of the Service Provider relating to this Deed or the Program Level Agreement; or
- (ix) on becoming aware of any criminal charge against any Personnel or Officer.

3.5 *Changes to Service Provider's constitution or Change of Control*

- (a) In relation to a proposed change to the Service Provider's constitution or equivalent document or any Change of Control:
 - (i) the Service Provider must provide DCJ with written notification at least 10 Business Days prior to the changes being submitted for approval at an Annual General Meeting or effected by any other legal process; and
 - (ii) if DCJ objects on reasonable grounds in writing within 5 Business Days of receiving such notification, the Service Provider must not proceed with such changes.
- (b) In the event that the Service Provider has made a change referred to in this clause and DCJ has either objected on reasonable grounds, or, if it was not informed of the change prior to it being effected, DCJ would have had reasonable grounds to object, DCJ may exercise any rights available to it under this Deed or the relevant Program Level Agreement, including a right of termination.
- (c) For the purposes of this clause, DCJ would have reasonable grounds to object if the change:
 - (i) will or may affect the Service Provider's ability to provide the Services or meet its obligations under this Deed or any Program Level Agreement; or
 - (ii) would have affected DCJ's original decision to approve Funds.

3.6 *Investigations*

The Service Provider agrees to provide all reasonable assistance (including providing all information requested by DCJ) to DCJ for any audit and/or in respect of any investigation or inquiries DCJ chooses to undertake in respect of any Notification Requirement or any other report as required by Law.

3.7 *Accessibility and inclusion*

- (a) The Service Provider may only exclude people from an identified Client Group (set out in the Program Level Agreement) where the Service Provider can demonstrate to the reasonable satisfaction of DCJ that the exclusion is supported by a Client assessment of current risk and that it has made reasonable attempts to manage that identified risk.
- (b) The Service Provider must provide Services in a way which provides reasonable access to all people in the identified Client Group (set out in the Program Level Agreement), regardless of race, gender, age, pregnancy, marital status, disability, sexual preference, religion, cultural background, sexual identity or health status. The provision of reasonable access may require the use of interpreters and translators for Clients from diverse linguistic and cultural backgrounds.
- (c) Without derogating from any provisions of a Program Level Agreement regarding the environment or premises where Services are provided, the

Service Provider must take reasonable action to ensure that all Service Outlets are physically accessible to people with disabilities, having regard to the circumstances of a particular case, including:

- (i) the needs of the Client;
 - (ii) the consequences for the Client of exclusion from Services;
 - (iii) the financial circumstances of the Service Provider; and
 - (iv) the estimated cost of ensuring accessibility.
- (d) The Service Provider must use best endeavours to ensure that the Services are culturally accessible to Aboriginal and/or Torres Strait Islander Persons having regard to the diversity of needs of such persons, including the needs of persons from urban, regional and remote areas.
- (e) Where the Client or Client Group for the Services are Aboriginal and/or Torres Strait Islander Persons, the Service Provider must use best endeavours to engage relevant individuals, families, cultural custodians, clan and language groups, community organisations, communities and/or representatives deemed appropriate by the community in the design, provisions, and evaluation of the Services so that the Services are appropriate to local community and cultural needs.
- (f) The Service Provider must provide DCJ with evidence of compliance with this clause 3.7 upon request.

3.8 Child Safety – Service Provider’s minimum obligations

- (a) The Service Provider acknowledges that in performing the Services it will have care, supervision or authority over Children and Young Persons who are its Clients and that it is an organisation that is ‘responsible for a child’ within the meaning of Part 1B, Division 2 of the *Civil Liability Act 2002* (NSW).
- (b) The Service Provider must ensure that it:
- (i) is appropriately accredited and has implemented and maintained sufficient safeguards to provide early warning of and prevent child abuse;
 - (ii) has recruiting methods that are sufficiently stringent so as to identify and dismiss any applicants at risk of perpetrating child abuse;
 - (iii) has notification systems by which children, parents, and others can notify authorities and DCJ about any signs of child abuse;
 - (iv) has sufficient induction and training programs for all Personnel including all staff, Subcontractors, volunteers and Authorised Carers;
 - (v) has sufficient protocols in place to prevent high risk situations; and
 - (vi) will ensure that its Personnel, including Subcontractors and volunteers, will comply with the Child Safety Standards as well as all other relevant child safety standards and policies and all applicable Laws.
- (c) The Service Provider must provide proof of its compliance with clause 3.8(b) to DCJ:
- (i) prior to execution of any Program Level Agreement;
 - (ii) annually during the Service Period; and

- (iii) at any other time within 30 days of written notice to the Service Provider.
- (d) In addition to its record retention obligations under section 170 of the Care Act and clause 11.1(d) of this Deed, the Service Provider must, within 60 Business Days of a Child or Young Person ceasing to be in the care of the Service Provider for any reason or ceases to be in Out-of-home-care, deliver a copy of all records relating to the Child or Young Person to DCJ. Records in electronic format must be delivered in PDF format, or in any other format specified by DCJ.

3.9 WHS obligations

- (a) The Service Provider acknowledges that, despite any approval, request or requirement of DCJ, the Service Provider has, and must maintain, the sole management and control of:
 - (i) the provision of goods and services under any Program Level Agreement;
 - (ii) the manner in which work under the Program Level Agreement is carried out and completed; and
 - (iii) all matters arising from or connected with the carrying out and completion of the work under the Program Level Agreement that give rise or may give rise to any risk to health or safety.
- (b) To the extent required by the Safety Legislation, DCJ hereby appoints the Service Provider a principal contractor and authorises the Service Provider to manage and control the workplace in which the Services are provided, to the extent necessary to enable the Service Provider to discharge the responsibilities and duties imposed on a principal contractor under the relevant Safety Legislation.
- (c) The Service Provider:
 - (i) must comply with all relevant Safety Legislation; and
 - (ii) must (and must ensure that any Subcontractors engaged to carry out work on its behalf) at all times identify and exercise all necessary precautions for the health and safety of all persons including its Personnel, all Subcontractor's Personnel, DCJ's employees and members of the public who may be affected by any work under a Program Level Agreement.

3.10 Obligations relating to Intervening Events

- (a) The Service Provider agrees to notify DCJ if it is, or reasonably believes that it is, prevented from performing its obligations due to an Intervening Event.
- (b) The notice under clause 3.10 must contain details of the Intervening Event including the extent to which the Intervening Event has affected or may affect the Service Provider's obligations under this Deed or a Program Level Agreement.
- (c) The Service Provider agrees to take all reasonable steps to remove, overcome or minimise the effects of an Intervening Event on the performance of its obligations under this Deed or any Program Level Agreement.
- (d) DCJ may arrange for another service provider to carry out the Services while the Services are suspended due to an Intervening Event, without being liable to the Service Provider.

3.11 Cooperation and assistance

- (a) The Service Provider agrees to cooperate and assist DCJ in relation to:
 - (i) any request for information or records;
 - (ii) any review, investigation or audit; and
 - (iii) any performance review;as contemplated by this Deed or any Program Level Agreement; and
- (b) DCJ's request for accurate, complete and timely information to support responses to parliament, Ministerial inquiry or the NSW Ombudsman.
- (c) The Service Provider agrees to provide full and free access to its records and Personnel as necessary to assist DCJ in relation to the activities under this clause 3.11.

3.12 Other obligations

The Service Provider must:

- (a) ensure that the provisions of a Program Level Agreement are reflected in the Service Provider's service standards and other relevant policies and that these documents are readily available to Personnel and Clients of the Service Provider;
- (b) provide input to DCJ's planning processes (where requested by DCJ);
- (c) not enter into any arrangements or commitments in relation to a Program which are inconsistent with the Program Level Agreement for that Program; and
- (d) notify DCJ in writing if financial assistance is provided by any other agency or authority in relation to a Program.

4. Research, evaluation and data collection

- (a) The Service Provider must comply with the research, evaluation and data collection requirements of a Program Level Agreement.
- (b) The Service Provider must comply with any request from DCJ for statistical or other data relating to a Program to be used for surveys, research or publications authorised by DCJ. The Service Provider acknowledges and agrees that DCJ may share such data in accordance with its rights and obligations under the *Data Sharing (Government Sector) Act 2015* (NSW)
- (c) If the Service Provider makes a written request to DCJ, DCJ will provide the Service Provider with a copy of any public information or report compiled by DCJ as a result of any surveys or research referred to in clause 4(b), within 28 days of the Service Provider's request.
- (d) The Service Provider must promptly notify DCJ if it, or any third party, intends to conduct research into activities to which any Funds have been applied. The Service Provider agrees that any such research must comply with any applicable Policies in relation to ethical or other standards applicable to external researchers.

- (e) Without limiting the foregoing, the Service Provider agrees to collect and provide the following information to DCJ:
 - (i) all information required to report on the Service Provider's performance under any Program Level Agreement;
 - (ii) information relating to the delivery of the Services;
 - (iii) information in accordance with any data collection requirements notified to the Service Provider from time to time; and
 - (iv) information required for surveys or research authorised by DCJ.

5. Performance audits and review

5.1 Audits

- (a) DCJ may conduct an audit of the Service Provider's compliance with this Deed or a Program Level Agreement, as set out in this clause.
- (b) DCJ may attend any premises at which the Service Provider performs Program activities, including Services, to inspect the operation of the Program, as follows:
 - (i) if DCJ wishes to attend a Service Outlet, DCJ will, where practicable, endeavour to provide at least 48 hours prior notice;
 - (ii) if DCJ wishes to attend a Client or Authorised Carer's private home, DCJ may, where practicable, endeavour to provide 14 days prior notice to the Client or Authorised Carer.
- (c) The audit activities referred to in clauses 5.1(a) and 5.1(b) may be undertaken at any time during the Term and at any time during seven years after the expiry or termination of the Program Level Agreement or termination of this Deed. In conducting an audit, DCJ will, where practicable, endeavour to provide the Service Provider with:
 - (i) written notice at least 10 Business Days prior to commencing the audit;
 - (ii) written terms of reference for the audit;
 - (iii) instructions about the Service Provider's obligations during the audit;
 - (iv) a copy of any report arising from the audit; and
 - (v) an opportunity to respond to any audit report.
- (d) The Service Provider agrees, at no cost or expense to DCJ, to make available to DCJ all requested records and documents upon 10 Business Days written notice from DCJ and provide all reasonable assistance to DCJ in the conduct of the audit under this clause, including any inspections undertaken as part of the audit.
- (e) If DCJ holds serious concerns about the operation of a Program, DCJ reserves the right to, with the approval of the relevant senior executive officer from DCJ, attend premises or inspect records or documents without prior notice to the Service Provider. DCJ will, where practicable, endeavour to provide reasons upon attending the premises or inspecting the records or documents.
- (f) DCJ may appoint an independent third party for the purposes of undertaking an audit (including carrying out any inspections) under this clause.

- (g) Without derogating from any of the provisions of clause 5.2 or any other provisions of this Deed (but subject to the requirements of any applicable Law), Service Provider agrees to provide all information in its possession or control, including copies of all records referred to in this Deed that DCJ may reasonably request so that DCJ may monitor compliance by the Service Provider of its obligations under this Deed and a Program Level Agreement to which this Deed relates.

5.2 Managing performance

- (a) The Service Provider must meet or exceed the Performance Measures for the Services.
- (b) The Service Provider must report on the Service Provider's performance against the Performance Measures, as outlined in the Program Level Agreement, or as otherwise notified to the Service Provider by DCJ, from time to time.
- (c) The Service Provider must participate in all Performance Measurement Cycles.

6. Payment, use and management of Funds

6.1 Payment

- (a) In consideration of the provision of Services in accordance with the requirements of this Deed and the relevant Program Level Agreement, and subject to Parliamentary appropriation, DCJ agrees to pay Funds to the Service Provider, in accordance with the provisions of this Deed and the Program Level Agreement.
- (b) The Service Provider agrees to:
 - (i) immediately deposit and keep all Funds that DCJ pays to it in an account with an Australian branch of an established bank, building society or credit union that is solely controlled by the Service Provider and allows for the Funds to be separately identified;
 - (ii) notify DCJ on request of its account details for the purposes of paying the Service Provider the Funds or if the Service Provider's account details change; and
 - (iii) comply with any other requirements in respect of the Funds as may be stated in the relevant Program Level Agreement.
- (c) Funds paid to the Service Provider by DCJ remain the property of DCJ, and are held on trust by the Service Provider on behalf and for the benefit of DCJ, until the Services are delivered to the reasonable satisfaction of DCJ and for the avoidance of doubt, Funds do not need to be placed in a trust account.
- (d) The Service Provider agrees that payment of all or part of the Funds is not an admission by DCJ that the Service Provider has met its obligations under this Deed or the relevant Program Level Agreement.

6.2 Use of the Funds

- (a) Unless DCJ otherwise provides its prior written consent, the Service Provider agrees to:
 - (i) use the Funds only:
 - a. to provide the Services, and in accordance with the relevant Program Level Agreement and, where applicable, this Deed;
 - b. to procure Assets required for the Services in accordance with the relevant Program Level Agreement and clause 9 of this Deed;
 - c. in accordance with any budget and budget conditions stated in the relevant Program Level Agreement; and
 - d. in accordance with any time periods stated in the relevant Program Level Agreement.
 - (ii) not commit any Funds for expenditure that is likely to occur after the Service End Date.
- (b) Unless otherwise expressly provided for in the relevant Program Level Agreement, the Service Provider is responsible for all costs and expenses in relation to the Services and the performance of its obligations under this Deed and the relevant Program Level Agreement.

6.3 Interest

The Service Provider agrees that it will:

- (a) use and deal with any interest earned on the Funds as if that interest is part of the Funds;
- (b) use interest earned on the Funds for the purposes of the relevant Program Level Agreement; and
- (c) report to DCJ on the amount of any interest earned on the Funds.

6.4 Increases in the Funds

- (a) DCJ may, in its discretion, increase the amount of the Funds or any Service Payment under a Program Level Agreement from time to time without a variation to the relevant Program Level Agreement to reflect the agreed principle that DCJ will pay for the quantum and quality of the Services actually provided.
- (b) DCJ may make an Indexation increase of the Funds to the Service Provider from time to time, without a variation to the relevant Program Level Agreement. For the purposes of this clause 'Indexation' means a percentage increase of Funds as determined by DCJ.

6.5 Additional contributions from third parties

The Service Provider must notify DCJ, in writing, within 10 Business Days if any funding is provided to the Service Provider by any other agency or authority in relation to the facilitation of the Services.

6.6 Set off

Despite anything to the contrary in this Deed or any Program Level Agreement, DCJ may at any time deduct, from amounts otherwise payable to the Service Provider, any

debt or amount due from the Service Provider to DCJ or any claim to money which DCJ may have against the Service Provider whether for damages or otherwise. DCJ may recover any shortfall from the Service Provider as a debt immediately due and payable.

7. Financial Reporting

7.1 Organisational Level

- (a) Subject to clause 7.1 if the Service Provider is required by Law to prepare audited financial statements, the Service Provider must provide DCJ with copies of such audited financial statements, within four months of the end of each Financial Year during the Term.
- (b) Any audited financial statements provided to DCJ in accordance with clause 7.1(a) must be accompanied by an audit certificate signed by an auditor who is registered with the Australian Securities and Investments Commission. The auditor must be independent of the Service Provider and must not have any financial interest in the Service Provider. The audit certificate must include a statement that the audit has been completed in accordance with Australian Accounting and Auditing Standards.
- (c) Subject to clause 7.2(b), if the Service Provider is not required by Law to prepare audited financial statements, the Service Provider must provide DCJ with special purpose financial statements, within four months of the end of each Financial Year during the Term including:
 - (i) a statement of financial position;
 - (ii) a statement of financial performance or statement of profit and loss and other comprehensive income;
 - (iii) notes to the financial statements; and
 - (iv) a responsible person's declaration about the statement and notes in accordance with the *Australian Charities and Not-for-profit Commission Regulation 2013* (NSW) or any other applicable regulatory requirement.
- (d) The Service Provider must include in its financial statements any additional funding provided by DCJ to the Service Provider (outside of this Deed or a Program Level Agreement), within four months of the end of each Financial Year during the Term.

7.2 Program Level Agreements

- (a) The Service Provider must provide a detailed comparative income and expenditure statement:
 - (i) for Funds received under each Program Level Agreement valued at above \$25,000;
 - (ii) to include any additional funds provided by DCJ related to the same Program Level Agreement; and
 - (iii) within four months of the end of each Financial Year during the Term or as required or agreed with DCJ upon expiry or termination of the Program Level Agreement.
- (b) The Service Provider must comply with all financial reporting requirements set out in a Program Level Agreement and as otherwise contained in policies

advised by DCJ from time to time in respect of Funds paid to the Service Provider under a Program Level Agreement.

- (c) The Service Provider must provide to DCJ a certificate (using a DCJ provided template) in relation to the expenditure of all Funds under each Program Level Agreement:
 - (i) certifying that the Funds have been properly spent, in accordance with the requirements of each Program Level Agreement;
 - (ii) signed by two members of the Service Provider's board of management (or equivalent); and
 - (iii) within four months of the end of each Financial Year during the Term or as required or agreed with DCJ upon expiry or termination of the Program Level Agreement.
- (d) Notwithstanding any other clause in this Deed, the parties acknowledge and agree that clauses 7.1 and 7.2(a),(b) and (c) are of no force and effect and are not binding on the Service Provider unless and until a Program Level Agreement is executed by Service Provider and DCJ.
- (e) The Service Provider must ensure the detailed comparative income and expenditure statement reconciles with the organisational financial statements being provided as per clause 7.1 above.

8. Withholding and Return of Funds

8.1 Withholding Funds

- (a) DCJ may withhold Funds (or part of Funds) required to be paid under a Program Level Agreement if:
 - (i) DCJ forms the reasonable opinion that the Funds are not required by the Service Provider in the performance of its obligations under a Program Level Agreement because of Unspent or Uncommitted Funds;
 - (ii) the Service Provider has not delivered all or any part of the Services to the reasonable satisfaction of DCJ; or
 - (iii) the Service Provider has not complied with its obligation in clause 7,and such Funds may be withheld until the event causing DCJ to withhold the Funds is remedied to the reasonable satisfaction of DCJ by the Service Provider.
- (b) If DCJ has determined to withhold Funds under clause 8.1(a), DCJ will provide written notification to the Service Provider, as soon as possible after the determination is made.
- (c) Notwithstanding any withholding of Funds, the Service Provider must continue to fulfil its obligations under a Program Level Agreement.
- (d) Nothing in this clause 8.1 prevents DCJ from taking any other action in relation to a failure by the Service Provider to deliver the Services or fulfil other obligations under this Deed or a Program Level Agreement to the reasonable satisfaction of DCJ.

8.2 Rollover of Unspent or Uncommitted Funds during the Term

- (a) Service Provider may rollover Unspent or Uncommitted Funds during the Term

Subject to clause 8.2(b) – (d) of this Deed, and any special conditions noted in Item 7 of the Contract Particulars of a Program Level Agreement, the Service Provider may rollover Unspent or Uncommitted Funds for expenditure on the Services in the following Financial Year or Years during the Term of a Program Level Agreement.

(b) Approval process

- (i) If the Service Provider wishes to rollover Unspent or Uncommitted Funds, it must request DCJ's prior written approval using the form or template and during the timeframe specified by DCJ.
- (ii) DCJ will not consider any request to rollover Unspent or Uncommitted Funds under clause 8.2(b)(i) unless such request meets the following requirements:
 - a. The amount of Unspent or Uncommitted Funds requested to be rolled over is not more than 2% of the Funds paid to the Service Provider under the Program Level Agreement for the previous Financial Year; and
 - b. DCJ is reasonably satisfied that the amount of Unspent or Uncommitted Funds requested to be rolled over will be expended on the Services in the following Financial Year or Years of the Term of the Program Level Agreement.
- (iii) If a request to rollover Unspent or Uncommitted Funds under clause 8.2(b)(i) meets the requirements of clause 8.2(b)(ii), DCJ will determine whether to approve or not approve the request having regard to:
 - a. the information provided by the Service Provider to support the request, which should include;
 - A. the justification, need and expected outcome;
 - B. the type of proposed expenditure, purpose and amount; and
 - C. the amount of Unspent or Uncommitted Funds reported from any previous Financial Year;
 - b. the period of the Term remaining within the contract lifecycle; and
 - c. any other information in DCJ's absolute discretion.
- (iv) DCJ may determine whether to approve or not approve the request in its absolute discretion.
- (v) Within a reasonable time following receipt of a request to rollover Unspent or Uncommitted Funds under clause 8.2(b)(i), DCJ will provide written notice to the Service Provider that the request:
 - a. does not meet the requirements for consideration under clause 8.2(b)(ii); or
 - b. is approved under clause 8.2(b)(iii), and include any conditions of approval; or

c. is not approved under clause 8.2(b)(iii).

(c) Treatment of Unspent or Uncommitted Funds that are not rolled over

- (i) If the Service Provider does not request DCJ's approval to rollover Unspent or Uncommitted Funds in accordance with clause 8.2(b), the Service Provider must return all Unspent or Uncommitted Funds in accordance with clause 8.3.
- (ii) If DCJ notifies the Service Provider that the Service Provider's request to rollover Unspent or Uncommitted Funds under clause 8.2(b)(i) does not meet the requirements for consideration under clause 8.2b(ii) or is not approved under clause 8.2(b)(iii), the Service Provider must promptly (and in any case not more than 20 Business Days after receiving such written notice from DCJ), repay or procure the repayment to DCJ of all of the Unspent or Uncommitted Funds.
- (iii) If DCJ notifies the Service Provider that the Service Provider's request to rollover Unspent or Uncommitted Funds under clause 8.2(b)(i) is approved under clause 8.2(b)(iii) and there is any surplus amount of Unspent or Uncommitted Funds that exceeds the amount of Unspent or Uncommitted Funds approved by DCJ for rollover, the Service Provider must promptly (and in any case not more than 20 Business Days after receiving such written notice from DCJ) repay or procure the repayment to DCJ of that surplus amount of Unspent or Uncommitted Funds.

(d) Service Provider obligations in respect of rolled over Unspent or Uncommitted Funds

The Service Provider must, in respect of any Unspent or Uncommitted Funds rolled over in accordance with this clause 8.2:

- (i) only expend those Funds for the purpose of delivering the Services in accordance with this Deed, the relevant Program Level Agreement and any conditions of approval notified to it by DCJ under clause 8.2(b)(v);
- (ii) report on those Funds under clause 7 of this Deed and in accordance with the reporting and reconciliation requirements of the relevant Program Level Agreement; and
- (iii) in accordance with clause 8.3, return any of those Funds which at the expiry or termination of the relevant Program Level Agreement are Unspent or Uncommitted Funds.

(e) For the avoidance of doubt, Unspent or Uncommitted Funds cannot be rolled over into another agreement with DCJ and must be returned to DCJ at expiry or earlier termination of a Program Level Agreement in accordance with clause 8.3 of this Deed.

8.3 *Return of Unspent or Uncommitted Funds*

- (a) Subject to clause 8.2, if at the end of each Financial Year during the Term, or on the expiry or earlier termination of a Program Level Agreement, there are any Funds that:
 - (i) are Unspent or Uncommitted Funds; or
 - (ii) cannot be shown to the reasonable satisfaction of DCJ to have been spent or committed in accordance with this Deed or the relevant Program Level Agreement,

the Service Provider must promptly (and in any case not more than 20 Business Days after receiving a written notice from DCJ), repay or procure the repayment to DCJ of those Funds.

- (b) If at any time, in the reasonable opinion of DCJ, any Funds have been used, spent or committed by the Service Provider other than in accordance with this Deed or the relevant Program Level Agreement, the Service Provider must promptly (and in any case not more than 20 Business Days after receiving a written notice from DCJ), repay or procure the repayment to DCJ of those Funds.

9. *Assets*

9.1 *Acquisition and ownership*

- (a) The Service Provider must not purchase or lease any High Cost Asset without the prior written approval of DCJ.
- (b) The Service Provider must not purchase or lease any Asset from a Related Party without the prior written approval of DCJ.
- (c) The Service Provider agrees that any Assets purchased with the Funds provided by DCJ under this Deed or any associated Program Level Agreement are the property of DCJ and are held in trust by the Service Provider on behalf and for the benefit of DCJ unless otherwise agreed by DCJ.
- (d) The Service Provider agrees that if any Assets are owned by a third party then it must ensure that the terms of any lease arrangement are consistent with clause 9.3 ('Service Provider's responsibilities for Assets'), and clauses 9.4 ('Sale, disposal or encumbrance of Assets') and 9.5 ('Dealing with Asset on termination') do not apply.

9.2 *Asset register*

During the Term the Service Provider must maintain a written Asset register, in the template or format specified by DCJ from time to time, which must record, in respect of each Asset:

- (a) the date of Asset purchase or lease and the name of any applicable supplier or lessee;
- (b) Asset description;
- (c) unique Asset ID number and serial number;
- (d) the address at which the Asset is located;
- (e) the Asset purchase price or total lease cost;

- (f) if the Asset is leased, the type and term of lease;
- (g) the amount of Funds contributed to purchase the Asset;
- (h) the current value of the Asset (purchase price minus depreciation);
- (i) where relevant, whether the Asset is subject to any approved encumbrances, and details of those encumbrances;
- (j) where relevant, the details of any Asset disposals including reason for disposal, disposal method, disposal date, to whom it was disposed and sale price; and
- (k) any other details reasonably required by DCJ from time to time.

9.3 Service Provider's responsibilities for Assets

During the Term, the Service Provider must:

- (a) use any Asset for the Services or other purposes consistent with the Services. Such use must be supervised and controlled by the Service Provider's Personnel, who must ensure that the first priority for use of the Asset is the Services;
- (b) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause, without the prior written approval of DCJ;
- (c) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
- (d) maintain all Assets in good working order;
- (e) maintain appropriate insurance in respect of any Assets;
- (f) be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Asset;
- (g) maintain a register of Assets in the form and recording the details described in clause 9.2; and
- (h) provide a copy of the Asset register to DCJ within four months of the end of each Financial Year during the Term, or when otherwise requested by DCJ.

9.4 Sale, disposal or encumbrance of Assets

- (a) The Service Provider must obtain prior written approval from DCJ before selling, encumbering, or otherwise disposing of an Asset.
- (b) If the Service Provider obtains approval to sell or dispose of an Asset, the Service Provider must, at the direction of DCJ:
 - (i) pay to DCJ within 20 Business Days of the date of the sale or disposal, the written down value of the Asset using the Australian Taxation Office depreciation rates to calculate the depreciation of the Asset;
 - (ii) pay to DCJ within 20 Business Days of the date of the sale or disposal, the proceeds of the sale or disposal of the Asset, less an amount equal to the sum of the Service Provider's proportionate contribution to the purchase price of the Asset and the Service Provider's reasonable costs of sale or disposal of the Asset; or
 - (iii) only use the funds derived from the sale or disposal of the Asset for a purpose approved in writing by DCJ.

9.5 Dealing with Assets on expiry or termination

- (a) At the expiration or termination of a Program Level Agreement (which is the last Program Level Agreement for which the Asset is used), the Service Provider must, at the direction of DCJ:
 - (i) pay to DCJ within 20 Business Days of the date of the sale or disposal of an Asset, the written down value of the Asset using the Australian Taxation Office depreciation rates to calculate the depreciation of the asset;
 - (ii) sell the Asset for the best price reasonably obtainable and pay to DCJ, within 20 Business Days of the date of the sale, the proceeds of the sale, less an amount equal to the sum of the Service Provider's proportionate contribution to the purchase price of the Asset and the Service Provider's reasonable costs of sale of the Asset; or
 - (iii) use the Asset on such terms and conditions as may be approved in writing by DCJ.

9.6 Previously acquired assets

- (a) Any assets acquired under any previous funding arrangement between DCJ and the Service Provider must be treated as an Asset for the purposes of this Deed.

10. GST

- (a) Any amount referred to in this Deed or a Program Level Agreement which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST, unless indicated otherwise.
- (b) If GST is imposed on a supply made under or in connection with this Deed or a Program Level Agreement, the consideration provided for that supply is increased by the rate at which the GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.
- (c) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this Deed or a Program Level Agreement, the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.
- (d) DCJ will issue a Recipient Created Tax Invoice (RCTI) to the Service Provider (and may do so via pre-paid post, email, or via the Providers Acquittals Portal) within 28 days of each payment.

11. Records and Intellectual Property Rights

11.1 Records

The Service Provider must:

- (a) establish and maintain clear and complete:
 - (i) operational records for each Program;
 - (ii) Care records for each Child or Young Person as required by s 170 of the Care Act;

- (iii) Authorised Carer records including records of all checks and clearances required by Law; and
 - (iv) records of Reportable Conduct investigations and reports;
- in a form that meets appropriate record-keeping standards and the requirements of all applicable Laws and Policies;
- (b) retain the records referred to in clause 11.1(a) throughout the Term and for 7 years after the termination of this Deed, or as otherwise required under applicable Law or specified in writing by DCJ;
 - (c) ensure that, in the event that the Service Provider ceases to operate, the records referred to in clause 11.1(a) are delivered to DCJ in a form specified by DCJ, for ongoing management, or as otherwise required under applicable Law or specified in writing by DCJ;
 - (d) for avoidance of doubt, Designated Agencies funded to provide Out-of-Home-Care services must comply with section 170 of the Care Act and must maintain files of a Child or Young Person for 7 years after ceasing to be responsible for the placement. At the expiration of this period or, if within that period the accredited agency ceases to be a Designated Agency, it must deliver the records to the Secretary, DCJ within 20 Business Days or such other timeframe as agreed in writing with DCJ Records. Records in electronic format must be delivered in PDF format, or in any other format specified by DCJ.
 - (e) The Service Provider must also comply with section 168 of the Care Act which requires it to provide a Child or Young Person who has left care with the Service Provider with a copy of their care records (and to redact them if required) at its own expense if required by the Child or Young Person.

11.2 Disposal of records

Subject always to clause 11.1 and the Service Provider's legal obligations, including under section 170 of the Care Act, if applicable as set out in 11.1(d), the Service Provider must:

- (a) dispose of the records referred to in clause 11.1(a), once they are no longer required to be maintained in accordance with clause 11.1(b) or 11.1(c), in accordance with sound records management practice, or as otherwise specified in writing by DCJ Record Management Services;
- (b) at any time as directed by DCJ, delete all or a specified part of the Personal Information collected and held by the Service Provider or any Personnel in any form (including on any cloud-based platform) as part of the Services within 90 days of receipt of that direction; and
- (c) otherwise delete all Personal Information held by it or by any Personnel as a result of the Services within 30 Business Days of the date of expiry or termination of the relevant Program Level Agreement.

11.3 Intellectual Property Rights

- (a) Any Intellectual Property Rights and title to, or in relation to, the Program Material will vest, upon creation, in the Service Provider.
- (b) The Service Provider grants, and will ensure third parties grant, to DCJ a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, copy, modify and exploit the Program Material.

- (c) If the Services involve or impact on the cultural and intellectual property rights of Aboriginal Persons and/or Torres Strait Islander Persons, the parties recognise the right to respect those rights, and where practicable agree to take measures to protect those rights.

12. Publicity

12.1 Acknowledgement and publicity

- (a) The Service Provider must acknowledge the Funds received from DCJ in its annual report and any publications or material produced as part of a Program or as reasonably requested by DCJ from time to time.
- (b) The Service Provider agrees to notify DCJ before making any press or other announcements, publications or releases relating to this Deed or any Program Level Agreement, unless it is to promote the Services or is required by Law.
- (c) The Service Provider must not use DCJs' logo, without DCJ's prior written approval.
- (d) The Service Provider acknowledges that DCJ or the NSW Government may publicise the awarding of the Funds at any time after they are awarded, including:
 - (i) the Service Provider's name;
 - (ii) the amount of the Funds provided;
 - (iii) the title and brief description of the Services; and
 - (iv) any results or outcomes arising out of the Funds.

12.2 No restriction on advocacy activities

Nothing in this Deed restricts the Service Provider or its Personnel from entering into public debate or advocacy activities, subject to compliance with the obligations set out in this Deed or under any Law in relation to confidentiality, privacy and Conflict of Interest.

13. Conflict of Interest

- (a) The Service Provider warrants to the best of its knowledge after making diligent inquiry on an ongoing basis, that it does not have, and will ensure that its Personnel do not have, any Conflict of Interest.
- (b) The Service Provider must take reasonable steps to identify and manage actual or possible Conflicts of Interest, including by adopting a Conflict of Interests policy, and to ensure that its Personnel comply with such policy.
- (c) If the Service Provider becomes aware of an actual or possible Conflict of Interest the Service Provider must:
 - (i) immediately notify DCJ in writing of the Conflict of Interest, making full disclosure of all relevant information relating to the Conflict of Interest and setting out the steps the Service Provider proposes to take to manage, eliminate, resolve or otherwise deal with the Conflict of Interest; and
 - (ii) take such steps as DCJ may reasonably require of the Service Provider to manage, eliminate, resolve or otherwise deal with the Conflict of Interest to the satisfaction of DCJ.

- (d) If DCJ notifies the Service Provider of an actual or possible Conflict of Interest, the Service Provider agrees to:
 - (i) make full disclosure of all relevant information relating to the Conflict of Interest; and
 - (ii) take such steps as DCJ may reasonably require of the Service Provider to take to manage, eliminate, resolve or otherwise deal with the Conflict of Interest to the satisfaction of DCJ.

14. Confidentiality, information sharing and information security

14.1 Confidentiality

- (a) Except as permitted or required by Law or the order of a court of competent jurisdiction or any Authority (including as set out in clause 14.2), the Service Provider agrees not to disclose to any person other than DCJ any Confidential Information relating to this Deed or a Program Level Agreement, without prior written approval from DCJ.
- (b) For the avoidance of doubt:
 - (i) the terms of this Deed,
 - (ii) the terms of any Program Level Agreement;
 - (iii) the identity of any Subcontractor; and
 - (iv) the amount of Funds paid or payable to the Service Provider under any Program Level Agreement;

are not confidential, except where they include information which is restricted from disclosure by any Law or by order of an Authority, or where the parties otherwise agree in writing.

14.2 Regulatory provisions regarding disclosure of information

- (a) The Service Provider acknowledges that it is subject to, and agrees to comply with, and ensure that its Personnel comply with, all applicable Laws restricting disclosure of information including under:
 - (i) section 76 of the Community Welfare Act 1987 (NSW);
 - (ii) section 45 of the CPWC Act; and
 - (iii) section 254 of the Care Act.
- (b) The parties acknowledge that either party may be permitted or obliged to share and disclose certain information:
 - (i) under Chapter 16A and other relevant provisions of the Care Act;
 - (ii) to satisfy its reporting and notification obligations under the Care Act, the CPWC Act, the Children's Guardian Act and other applicable Laws; andas otherwise require by any Law or by order of any Authority.

14.3 Exchange of information by DCJ with the Children's Guardian

- (a) The Service Provider hereby authorises DCJ to make available to the Office of the Children's Guardian any information relating to the provision of the Services by the Service Provider to any Child or Young Person.
- (b) The Service Provider authorises the Office of the Children's Guardian, its employees and agents to provide to DCJ any information relating to the provision of the Services, including information concerning the safety, welfare and wellbeing of Children and Young Persons, any investigation by the Children's Guardian into the Service Provider, and any findings or report in relation to the Service Provider or its Personnel.

14.4 Information security

- (a) The Service Provider warrants and represents to DCJ that it complies with DCJ's Information Security Policy Suite and that the Service Provider will continue during the Term of this Deed to comply with DCJ's Information Security Policy Suite and any amendments to, or revised versions of, DCJ's Information Security Policy Suite that are issued from time to time.
- (b) The Service Provider agrees to provide to DCJ such evidence as DCJ reasonably requires, including evidence of any external audit, which demonstrates its compliance with DCJ's Information Security Policy Suite at any time during the Term.

15. Privacy

15.1 Privacy obligations

- (a) The Service Provider acknowledges that the information it collects, uses, discloses, retains and stores in relation to the Services may include Personal Information.
- (b) Without limiting any obligation that the Service Provider has under any applicable privacy laws in relation to the Services, the Service Provider must comply with:
 - (i) the PIPP Act as if it were a public sector agency for the purposes of that Act;
 - (ii) the HRIP Act where applicable;
 - (iii) all Policies in relation to the collection and/or handling of Personal Information (including the obtaining of any necessary consents to its use by DCJ or by third parties) as notified in writing to the Service Provider from time to time; and
 - (iv) the *Privacy Act 1988* (Cth) in relation to tax file numbers (TFN).

15.2 Complaints and data breaches

- (a) The Service Provider must immediately (and no later than 48 hours from the time the Service Provider becomes aware of the breach) notify DCJ of any actual or suspected data breach concerning the information it holds in relation to the Services, including but not limited to information concerning Personal Information about any Client;
- (b) The Service Provider will be responsible for, in consultation with DCJ:

- (i) investigating, managing and mitigating any risks to prevent any data breaches in relation to Personal Information in relation to the Services;
- (ii) investigating, managing and resolving all complaints and reporting to the NSW Privacy Commissioner arising from any contravention by it of the PIPP Act including any complaints arising from data breaches in relation to the Services; and
- (iii) managing and reporting actual or suspected breaches under the *Privacy Act 1988* (Cth) in relation to TFN

15.3 Privacy management

The Service Provider will take all reasonable steps to:

- (a) prevent the unauthorised modification, access, use or disclosure of Personal Information;
- (b) store information in New South Wales (NSW), or where it is stored outside of NSW, so that it complies with the NSW Government Cloud Policy;
- (c) require and cause any person with access to the Personal Information to be subject to a criminal record check to ensure they are aware of the Service Provider's obligations under applicable privacy legislation and any other terms of this Deed or any Program Level Agreement relating to Personal Information;
- (d) require and cause any person with access to the Personal Information to be subject to a valid Working with Children Check prior to being given access to Personal Information relating to a Child or Young Person;
- (e) not to publish, use or disclose any Personal Information in any form contrary to the IPPs or HPPs;
- (f) not sell or transfer Personal Information to any third party;
- (g) amend Personal Information if the information is inaccurate, misleading or not up to date and will assist by associating with the information a statement reflecting the inaccuracies if an amendment of the information is not made; and
- (h) subject always to the Service Provider's obligations under clause 11.1 and in particular, clause 11.1(d) (delivery of records to DCJ under s 170 of the Care Act), dispose of Personal Information as required by clause 11.2.

16. End of term arrangements

- (a) At the expiry or termination of this Deed or any associated Program Level Agreement, the Service Provider must:
 - (i) if requested by DCJ, work with DCJ to ensure the orderly transition of Clients to a new service provider;

- (ii) provide the following to DCJ within twenty Business Days of expiry or termination of this Deed or a Program Level Agreement:
 - a. any reports or data due to DCJ under this Deed or a Program Level Agreement, or otherwise requested by DCJ; and
 - b. all Confidential Information relating to this Deed or a Program Level Agreement, in the possession or control of the Service Provider or any Subcontractor.

17. Insurance

- (a) Unless otherwise expressly agreed in writing between the Service Provider and DCJ either before or after the date of this Deed, the Service Provider must have current and adequate insurance appropriate to activities funded under this Deed and all associated Program Level Agreements, including any insurances notified to the Service Provider by DCJ or specified in a Program Level Agreement. The insurance must be maintained to cover any potential liability of the Service Provider (and where applicable a Subcontractor) that might arise in connection with the performance of its obligations under this Deed and all associated Program Level Agreements and must cover liability to any minimum level notified to the Service Provider by DCJ or specified in a Program Level Agreement.
- (b) The Service Provider must, on request, promptly provide to DCJ any relevant insurance policies and certificates of currency for inspection.

18. Indemnity

- (a) To the maximum extent permitted by applicable Law, the Service Provider agrees to indemnify on demand and keep indemnified on demand each of DCJ, the Minister, the State of New South Wales, any office holder, employee, agent, contractor, consultant, delegate or adviser of, or to, DCJ, the Minister and the State of New South Wales, on whose behalf DCJ agrees to hold the benefit of such indemnity on trust (**Indemnified Persons**), from and against any Loss which any of them pays, suffers, incurs or is liable for in connection with or arising from:
 - (i) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Service Provider or its Personnel;
 - (ii) any breach of this Deed or a Program Level Agreement by the Service Provider;
 - (iii) any infringement of Intellectual Property Rights by the Service Provider or any of its Personnel; or
 - (iv) any death, personal injury, loss or damage suffered by any person enjoying or affected by the performance of a Program causes or contributed to by the Service Provider or its Personnel.
- (b) The Service Provider's indemnity in clause 18(a) will be reduced proportionally to the extent that any unlawful, negligent or deliberately wrongful act or omission of the Indemnified Persons caused or contributed to the Loss.

19. Termination

19.1 Termination for cause

If:

- (a) DCJ, by notice in writing, requests the Service Provider to take action in accordance with this Deed or a Program Level Agreement and, after 10 Business Days from the date of the notice (or a longer period specified in the notice), the Service Provider has failed to take such action;
- (b) the Service Provider commits a breach of a material provision of this Deed or a Program Level Agreement and such breach is not in the reasonable opinion of DCJ capable of being remedied;
- (c) the Service Provider commits a breach of a material provision of this Deed or a Program Level Agreement (including a Default Event as defined in the Program Level Agreement) and the breach is, in the reasonable opinion of DCJ, capable of being remedied, it is not remedied to the reasonable satisfaction of DCJ within 10 Business Days from the date when DCJ notifies the Service Provider to remedy the breach;
- (d) the Service Provider suffers an Insolvency Event;
- (e) the Service Provider assigns, or purports to assign, its rights or transfers or purports to transfer any of its obligations, otherwise than as expressly permitted by this Deed or a Program Level Agreement;
- (f) the Service Provider breaches any confidentiality or privacy obligation under this Deed or a Program Level Agreement;
- (g) the Independent Commission Against Corruption, or other Authority, determines that the Service Provider has engaged in corrupt conduct, criminal conduct, or similar activity;
- (h) the Service Provider no longer has the requisite Approvals, including, authorisations, licenses, accreditations, registrations or consents to be legally capable of providing the Services or performing its obligations under this Deed or the Program Level Agreement;
- (i) the Service Provider has failed or neglected to notify DCJ of a Conflict of Interest or Service Provider is unable or unwilling to resolve a Conflict of Interest to the reasonable satisfaction of DCJ or, in the reasonable opinion of DCJ, a Conflict of Interest exists which prevents Service Provider from performing its obligations under this Deed or the Program Level Agreement;
- (j) the Service Provider cannot provide the Services for more than two calendar months due to an Intervening Event;
- (k) DCJ is reasonably satisfied that any statement or representation provided by or made by Service Provider to DCJ to approve the Funds (or any part of the Funds) is incorrect, incomplete, false or misleading in a way which would have affected DCJ's original decision to approve the Funds;
- (l) the Service Provider has a Change of Control that DCJ reasonably believes will have an adverse impact on the decision to pay the Funds or any Part of the Funds or Service Provider's ability to perform its obligations under this Deed or the Program Level Agreement;
- (m) a change to the Service Provider's constitution or equivalent document means that it is no longer eligible to receive the Funds or comply with a Program Level

Agreement, or DCJ reasonably believes that the change will have an adverse impact on the Service Provider's ability to perform its obligations under this Deed or any Program Level Agreement; or

- (n) DCJ is expressly entitled to exercise a right of termination under any other provision of this Deed or a Program Level Agreement,

DCJ may, by written notice to the Service Provider, terminate this Deed, any Program Level Agreement including any Service Delivery Schedule issued under a Program Level Agreement, with immediate effect. Without derogating from the above, DCJ is entitled to exercise its rights under this clause 19.1 if the event or circumstance giving DCJ the right of termination has occurred as a result of the acts or omissions of any Subcontractor and DCJ would have been able to exercise its rights of termination against the Subcontractor if the Subcontractor was a party to this Deed or the relevant Program Level Agreement in place of the Service Provider.

19.2 Termination for convenience

- (a) DCJ may terminate this Deed or any Program Level Agreement for any reason without sanction or penalty on the provision of not less than ninety days' notice, in writing to the Service Provider.
- (b) The Service Provider may terminate this Deed for any reason without sanction or penalty by providing not less than 180 days' notice, in writing to DCJ.
- (c) For clarity (but subject to clause 19.2(d)), neither DCJ nor the Service Provider will be liable in any circumstances to the other for any Loss, including Consequential Loss suffered by the other as a result of the termination of this Deed and a Program Level Agreement under clause 19.2(a) or 19.2(b), as the case may be.
- (d) Neither clause 19.2(a) nor clause 19.2(b) will relieve either party from any liability for any antecedent breaches of this Deed or a Program Level Agreement.

19.3 Consequences of termination

- (a) If DCJ terminates this Deed in accordance with clauses 19.1 or 19.2, any Program Level Agreement in force (including any Service Delivery Schedule issued under a Program Level Agreement) will also terminate at the same time.
- (b) If DCJ terminates a Program Level Agreement, in accordance with clauses 19.1 or 19.2, DCJ shall have the right, at its sole and absolute discretion, (but not the obligation) to terminate this Deed and any remaining Program Level Agreements (including any Service Delivery Schedules issued under a Program Level Agreement) or to agree to this Deed and any other Program Level Agreements remaining force. If DCJ elects to exercise its rights of termination, the provisions of clause 19.3(a) will apply.
- (c) Termination by DCJ under clauses 19.1 or 19.2 does not affect any of DCJ's other rights or remedies.
- (d) If the Service Provider terminates this Deed in accordance with 19.2, any Program Level Agreement in force, (including any Service Delivery Schedule issued under a Program Level Agreement) will also terminate at the same time.
- (e) Each party acknowledges and agrees that it will use its best efforts to exercise its rights under this clause 19 having regard to the best interests of any Children or Young Persons who will be affected by the exercise of such rights.

20. Dispute Resolution

- (a) This clause 20 applies to any dispute which arises between the parties in connection with this Deed or a Program Level Agreement.
- (b) Subject to clause 20(g), each party agrees to not commence or maintain any action or proceedings in any court, tribunal or otherwise without first complying with the process set out in clauses 20(c) to (f).
- (c) If a party considers that a dispute has arisen it may issue a written notice to the other party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (d) After the issue of a Dispute Notice the nominated representatives of the parties stated in the Schedule must promptly, and not later than 5 Business Days after receipt of the Dispute Notice, hold good faith discussions with a view to trying to resolve the dispute.
- (e) If the dispute has not been resolved within 10 Business Days after receipt of the Dispute Notice (or such longer period as agreed by the parties), then the dispute must be referred to the senior representatives of the parties stated in the Schedule who must hold good faith discussions with a view to trying to resolve the dispute.
- (f) If the dispute has not been resolved within 20 Business Days after receipt of the Dispute Notice (or such longer period as agreed by the parties), either party may pursue its rights and remedies under the Agreement as it sees fit.
- (g) Nothing in this clause 20 prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief.
- (h) If, after complying with the process set out in clauses 20(c) to (f), the parties agree to refer the dispute to a form of alternative dispute resolution to seek to resolve the dispute, then each party agrees to bear its own costs in relation to that form of alternative dispute resolution and bear equally the cost of any person engaged to resolve the dispute under any such process.
- (i) Notwithstanding the existence of a dispute, the parties agree to continue to perform their obligations under this Deed and the Program Level Agreement, unless the nature of the dispute renders it impossible to do so.

21. Subcontracting

- (a) The Service Provider may not, without the prior written approval of DCJ, Subcontract any part of a Program Level Agreement to a Subcontractor.
- (b) DCJ may at any time issue a Policy or notice in writing stating that a certain category of Subcontracting is the subject of deemed preapproval for a particular Program, or that specific arrangements for obtaining approval will apply to that category. Otherwise, the Service Provider must apply for approval of Subcontracting in writing in accordance with any application form or other procedure advised by DCJ.
- (c) DCJ may, in its absolute discretion, refuse to approve the Service Provider Subcontracting any part of a Program Level Agreement or may impose any conditions on approval that it considers appropriate.
- (d) Nothing in this Deed or any Program Level Agreement permits the Service Provider to enter in a Subcontract contrary to Law. Any approval granted by

DCJ to any Subcontract is deemed to be ineffective to the extent that the Subcontracting is not permitted by Law.

- (e) The terms and conditions of the Subcontract must be consistent with and incorporate relevant provisions of this Deed and the relevant Program Level Agreement.
- (f) The Service Provider must provide a copy of any draft and executed Subcontract to DCJ at any time on request and must obtain any necessary consent from the Subcontractor to disclose to DCJ such agreement and details of all charging arrangements and other information required by DCJ in relation to the Subcontracting arrangements.
- (g) The Service Provider must ensure that the Subcontractor maintains all records required to be kept under clause 11.1 of this Deed in relation to any Subcontracted Services and that it delivers any records it maintains on behalf of the Service Provider (including those which are the subject of s 170 of the Care Act) to the Service Provider.
- (h) The Service Provider will continue to be bound by, and be responsible for performance of, this Deed and the relevant Program Level Agreement, notwithstanding that part or all of the Program Level Agreement may have been Subcontracted.
- (i) DCJ may at any time require the Service Provider to immediately cease using any Subcontractor on reasonable grounds by notice in writing to the Service Provider and the Service Provider agrees to comply with any such notice.
- (j) The Service Provider agrees that:
 - (i) the Service Provider will be liable for any acts or omissions of any Subcontractor or any employee or agent of the Subcontractor as fully as if they were the acts or omissions of the Service Provider; and
 - (ii) it will indemnify and release DCJ from any Loss resulting from the acts or omissions of any Sub-contractor.

22. GIPA Act

22.1 Disclosure Log (GIPA Act section 25)

The Service Provider acknowledges that DCJ may disclose certain information about this Deed or a Program Level Agreement in accordance with DCJ's obligations under the *GIPA Act*, including making certain information about this Deed or a Program Level Agreement publicly available in any disclosure log of contracts DCJ is required to maintain.

22.2 Register of government contracts (GIPA Act, Division 5, Part 3)

The Service Provider acknowledges that DCJ may disclose information relating to government contracts in relation to its obligations under Division 5, Part 3 of the *GIPA Act*.

22.3 Access to Information (GIPA Act section 121)

- (a) The Service Provider must, within seven Business Days of receiving a written request from DCJ, provide DCJ with immediate access to the following information contained in records held by the Service Provider:

- (i) information that relates directly to the performance of a Program by the Service Provider;
 - (ii) information collected by the Service Provider from members of the public to whom it provides, or offers to provide, activities pursuant to a Program Level Agreement; and
 - (iii) information received by the Service Provider from DCJ to enable it to perform a Program.
- (b) For the purposes of clause 22.2(a), such information does not include:
- (i) information that discloses or would tend to disclose the Service Provider's financing arrangements, financing modelling, cost structure or profit margin;
 - (ii) information that the Service Provider is prohibited from disclosing to DCJ by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (iii) information that, if disclosed to DCJ, could reasonably be expected to place the Service Provider at a substantial commercial disadvantage in relation to DCJ, whether at present or in the future.
- (c) The Service Provider must provide copies of any of the information requested by DCJ in accordance with clause 22.2(a) at the Service Provider's own cost.

23. Warranties

The Service Provider represents and warrants to DCJ that the following warranties are true and correct and not misleading on the commencement of this Deed and for the duration of the Term:

- (a) If it is a body corporate, it is duly incorporated in accordance with the Laws of its place of incorporation, validly exists under those Laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as is being conducted;
- (b) It has the power to enter into and perform its obligations under this Deed and any Program Level Agreement;
- (c) The execution, delivery and performance of this Deed and any Program Level Agreement has been duly and validly authorised by the Service Provider;
- (d) No suit, cause of action, proceeding, application, Claim or investigation is current, pending, threatened or in prospect against it that may have an adverse effect on the performance of this Deed or a Program Level Agreement;
- (e) It has, and will continue to have and to use, the skills, qualifications and experience sufficient to perform the Program and provide the Services in an efficient and effective manner, with a high degree of quality and responsiveness; and
- (f) It has, and will continue to have, skilled, qualified and experienced Personnel who are capable of performing the Program in accordance with the Program Level Agreement.

24. Notices

24.1 Notices

- (a) Any notice given under this Deed shall be in writing and shall be deemed to have been sufficiently served if it is served personally, sent via email, sent by pre-paid post to, or is left at the nominated address of the party as set out in clause 24.2 or such other address as that party may notify from time to time to the other party in writing. The preferred method for the giving of notices under this Deed is via email.
- (b) The notice should identify that it is a notice given under this Deed.

24.2 Addresses of parties

- (a) DCJ's nominated address for delivery of notices under this Deed is:
 - Attention to: [name of DCJ Representative]
 - By email: [insert nominated email]
 - Copy to: [Prudential email address]
 - By courier or post: [insert DCJ postal address]
- (b) The Service Provider's nominated address for delivery of notices under this Deed is:
 - Attention to: [name of Service Provider's Representative]
 - By email: [insert nominated email]
 - By courier or post: [insert Service Provider's postal address]

24.3 Time of delivery

- (a) Subject to 24.3(b), a notice under this Deed will be taken to be delivered as follows:
 - (i) in the case of delivery in person or by courier, when delivered;
 - (ii) in the case of delivery by post within Australia, 5 Business Days after the date of posting, or if it is sent by post outside Australia, fourteen Business Days after the date of posting; and
 - (iii) in the case of email, at the time which it becomes capable of being retrieved by the other party at the email address designed by the other party.
- (b) Where delivery occurs after 5pm or on a non-Business Day in the place it is sent to, the notice will be taken to have been delivered at 9am on the next Business Day there.

25. General

25.1 Relationship between parties

- (a) Nothing in this Deed:
 - (i) constitutes a partnership between the parties; or

- (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

25.2 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Deed.

25.3 Variation

A provision of this Deed can only be varied by a later written document executed by or on behalf of all parties.

25.4 No assignment

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

25.5 Counterparts and execution

This Deed may be executed in any number of counterparts, using electronic signatures (such as those generated by electronic signature programs such as DocuSign or other program approved by DCJ) or inked signature. All counterparts taken together constitute one instrument. Exchange of counterparts may be by electronic exchange of PDF or other digital format.

25.6 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 Deed.
- (b) The Service Provider must pay all stamp duty assessed on or in relation to this Deed and any instrument or transaction required by or necessary to give effect to this Deed.

25.7 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Deed is void, voidable, or unenforceable if it is not read down;
 - (ii) this Deed 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 25.7(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Deed will be void, voidable or unenforceable if it is not severed.

- (c) The remainder of this Deed has full effect even if clause 25.7(b) applies.

25.8 Waiver

A right or remedy created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay 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.

25.9 Survival after termination

Clauses 11, 12, 14, 17, 18, 25.9 and 25.10 continue to apply after expiration or termination of this Deed.

25.10 Governing law and jurisdiction

- (a) The Laws applicable in New South Wales govern this Deed.
- (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.

26. Definitions and interpretation

26.1 Definitions

In this Deed, unless the context indicates a contrary intention, all terms not otherwise defined in this Deed will be as defined in any associated Program Level Agreement and the following terms will have the following meanings:

Aboriginal and **Aboriginal child or young person** have the meanings given in s 5(1) of the Care Act.

Address means a party's address set out in the Notices clause of this Deed.

Affiliate means:

- (a) in relation to a body corporate, each:
- (i) of that body's Related Bodies Corporate;
 - (ii) of that body's directors;
 - (iii) of the persons who have a substantial holding in that body;
 - (iv) relative or spouse of a person identified in paragraphs (a)(ii) and (a)(iii);
 - (v) body corporate that the persons identified in paragraphs (a)(ii), (a)(iii) or (a)(iv) individually or together control (within the meaning of section 50AA of the *Corporations Act 2001* (Cth)); and
 - (vi) body corporate in which the persons identified in paragraphs (a)(ii), (a)(iii) or (a)(iv) individually or together own or hold in aggregate more than 20% of the voting shares; and
- (b) in relation to a trust, each:
- (i) other trust where there is at least one (1) common beneficiary;
 - (ii) other trust where there is a common director on the board of the corporate trustee in each case;
 - (iii) body corporate where the director or shareholder of the body corporate is a beneficiary of the trust; and

- (iv) natural person who is capable of benefitting under the trust; and
- (c) in relation to a natural person, any:
 - (i) spouse of that person or any immediate relative of that person or that person's spouse;
 - (ii) body corporate that the person, that person's spouse or immediate relative of that person or that person's spouse controls (within the meaning of section 50AA of the *Corporations Act 2001* (Cth)); and
 - (iii) body corporate in which the person, that person's spouse or any immediate relatives of that person or that person's spouse individually or together own or hold in aggregate more than 20% of the voting shares.

Alleged Misconduct means an allegation which raises a reasonable suspicion of:

- (a) misconduct in connection with the Funds or the Services, including serious or persistent harassment or bullying; or
- (b) a criminal offence having been committed, including theft, fraud or assault.

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Deed.

Asset means:

- (a) any item of tangible property purchased or leased either wholly or in part with the use of Funds provided under this Deed, that has:
 - (i) a cost value of \$2,000 or more (exclusive of GST) (for purchased Assets); or
 - (ii) a total cost over the term of the lease of \$2,000 or more (for leased Assets); and
- (b) a group of items of tangible property purchased in bulk, either wholly or in part with the use of Funds provided under this Deed, where such items:
 - (i) are identical, substantially identical, or similar in nature, functionality or intended use;
 - (ii) individually have a cost of less than \$2,000 (exclusive of GST); and
 - (iii) as a group has a total cost of \$10,000 or more (exclusive of GST).

Authorised Carer has the meaning given in s 137 of the Care Act.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Barred Person means a "disqualified person", or a person who is subject to an "interim bar" under the CPWC Act; or a "registrable person" as defined in section 3A of the *Child Protection (Offenders Registration) Act 2000*.

Business Day means a day other than Saturday, Sunday or a gazetted public holiday in New South Wales.

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

Change of Control means any change in the Service Provider's direct or indirect beneficial ownership or control.

Child has the meaning given in section 3 of the Care Act.

Child-related work has the meaning given in the CPWC Act and the CWPC Regulation.

Child Safe Standards means the child safe standards administered by the Children's Guardian.

Children's Guardian has the meaning given in the Children's Guardian Act and includes, where the context requires, a reference to the Office of the Children's Guardian (or OCG) under that Act.

Children's Guardian Act means the *Children's Guardian Act 2019* (NSW).

Claim means any claim, demand, proceedings, dispute or complaint of any nature or any kind.

Client or Client Group means any person to whom Services are provided under a Program Level Agreement.

Committed in respect of a Program at a particular date, means Funds paid by or on behalf of DCJ to the Service Provider, that the Service Provider (or Subcontractor) is obliged to pay to a third party in respect of any part of the Services (including the activities) making up the Program.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by DCJ as being confidential; or
- (c) the Service Provider knows or ought to know is confidential, but does not include information that:
 - (d) is or becomes public knowledge, other than by breach of this Deed or a Program Level Agreement;
 - (e) is in the possession of the Service Provider without restriction in relation to disclosure before the date or receipt from Community Services; or
 - (f) has been independently developed or acquired by the Service Provider.

Conflict of Interest means having an interest (whether personal, financial or otherwise) which conflict, or which may reasonably be perceived as conflicting, with the Service Provider's ability to fairly, objectively and independently perform its obligations under this Deed or any Program Level Agreement.

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

- (a) loss of income or revenue;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business; and
- (e) loss of value of any equipment,

and any costs or expenses in connection with the foregoing.

CPWC Act means the *Child Protection (Working with Children) Act 2012* (NSW).

CPWC Regulation means the *Child Protection (Working with Children) Regulation 2013* (NSW).

Critical Events Policy means the Policy concerning the notification and handling of critical events, as updated from time to time.

DCJ Representative means:

- (a) in respect of this Deed, the DCJ representative named in clause 24.2(a) of this Deed or as otherwise notified to the Service Provider in writing; or
- (b) in respect of a Program Level Agreement, the person nominated in the contract particulars for that Program Level Agreement.

DCJ website means the dedicated website maintained by DCJ where policies and processes applicable to Service Providers are to be found, at www.facs.nsw.gov.au/providers or as otherwise advised by DCJ to the Service Provider.

Deed means this Funding Deed.

Default Event means any of the events described in clause 19.1 of this Deed or specified as a Default Event under a Program Level Agreement.

Designated Agency has the meaning given in s 72 of the Children's Guardian Act.

Financial Year means a year commencing on 1 July and ending on 30 June.

Funds in respect of a Program, means the amount or part thereof payable by DCJ under this Deed for the Program, as specified in the relevant Program Level Agreement.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Health Information has the meaning given in section 6 of the HRIP Act.

High Cost Asset means an Asset with a cost of \$10,000 or more (exclusive of GST).

HRIP Act means the *Health Records and Information Privacy Act 2002* (NSW).

Information Security Policy Suite means the information security policies notified by DCJ to the Service Provider from time to time.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in, or in relation to, copyright, trade marks, patents, designs, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic fields, whether non-registrable, registrable or patentable.

Insolvency Event means:

- (a) where the Service Provider is an individual or partnership, including an individual person, he or she or they cannot pay his, her or their debts when they fall due or he, she or they is or are declared bankrupt;
- (b) in relation to a trust:
 - (i) an application or order is sought or made (and is not stayed or dismissed within 20 Business Days after being sought or made) in any court for the property of the trust to be brought into, or administered by, the court or brought under the court's control; or
 - (ii) the assets of the trust are not sufficient to satisfy the trustee's debts when they fall due and in respect of which the trustee has a right to be indemnified out of the assets of the trust; or

- (c) where the Service Provider is a body corporate (within the meaning of the Corporations Act 2001 (Cth)):
 - (i) it is unable to pay its debts when they fall due.
 - (ii) it becomes insolvent or is deemed to become insolvent under applicable Laws
 - (iii) a receiver, receiver and manager, administrator (voluntary or otherwise) provisional liquidator, liquidator, controller or like official is appointed in relation to the Service Provider liquidator has been appointed;
 - (iv) the Service Provider enters into a scheme of arrangement with its creditors;
 - (v) the Service Provider assigns property for the benefit of creditors or a class of creditors;
 - (vi) a winding-up order is made in respect of the Service Provider;
 - (vii) a secured creditor of Service Provider exercises rights to take possession of the Service Provider's assets or a power of sale; or
 - (viii) the Service Provider ceases to carry on business or threatens to do so.

IPPs means the Information Privacy Principles set out in the PIPP Act.

Intervening Event means a circumstance beyond the Service Provider's reasonable control including:

- (d) a fire, flood or natural disaster;
- (e) an explosion;
- (f) an unavoidable accident;
- (g) an act of terrorism; or
- (h) a strike, lockout or other industrial dispute that is not limited to the Service Provider's workplace.

Laws mean, in relation to this Deed, the Program Level Agreement to which this Deed relates, and any matters contemplated under those agreements:

- (a) applicable legislation, ordinances, regulations, by-laws, or subordinate legislation in force from time to time anywhere in Australia and includes the common law as applicable from time to time; and
- (b) any Approval, including any condition or requirement under an Approval.

Loss means any loss, damage, liability, action, suit, Claim, demand, charge, cost or expense of any kind (including reasonable legal costs and expenses on a full indemnity basis), including Consequential Loss.

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

Minister means the Minister for Families, Communities and Disability Services or as otherwise titled from time to time, the Minister administering relevant responsibilities under the Care Act.

Notification Requirement means a notification requirement set out in clause 3.4 of this Deed or in a Program Level Agreement or a Policy notified to the Service Provider.

NSW Government Cloud Policy means the policy of that name issued on behalf of the Crown in right of the State of New South Wales in September 2020 and any updated version or replacement of that policy issued from time to time.

Officer means a person who:

- (a) is an office holder of the Service Provider;
- (b) makes, or participates in making decisions that affect the whole, or a substantial part, of the business of the Service Provider;
- (c) has the capacity to affect significantly the Service Provider's standing;
- (d) has the capacity to manage the Provider and its property;
- (e) participates in the governing body, board of directors or any decision making body of the Service Provider; or
- (f) in accordance with whose instructions or wishes the directors of the Service Provider are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship), whether or not such person is a volunteer or receives payment in respect of his or her role.

Out-of-home-care has the meaning given in section 135 of the Care Act.

Performance Improvement Plan means a performance improvement plan issued to the Service Provider under a Program Level Agreement.

Performance Measurement Cycle means the process for measuring and managing the Service Provider's Performance Measures as set out in DCJ Policies available on the DCJ website, in a Program Level Agreement, or as otherwise notified to the Service Provider.

Performance Measures means the level of service or number of services required to be achieved, as set out in a Program Level Agreement.

Personal Information has the meaning given in s 4(1) of the PIPP Act.

Personnel means officers, employees, Authorised Carers, volunteers, agents or Subcontractors.

PIPP Act means the *Privacy and Personal Information Protection Act 1998 (NSW)*.

Placement Change means any temporary or permanent change to the primary placement or any placement details for a Child or Young Person other than respite.

Policy means any policy, guideline, or code of DCJ or the NSW Government, as amended or replaced from time to time, that are contained on the DCJ website, in a Schedule to the Program Level Agreement or about which DCJ notifies the Service Provider from time to time during the Term.

Principal Officer has the meaning given in s 74 of the Children's Guardian Act.

Program means a program of activity to be undertaken by the Service Provider, as identified in a Program Level Agreement.

Program Level Agreement means a deed of agreement between DCJ and the Service Provider for the funding of a service, entered into in accordance with clause 2 of this Deed.

Program Material means all Material:

- (a) brought into existence for the purpose of a Program Level Agreement or this Deed;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from the Material referred to in paragraphs (a) or (b).

RCTI has the meaning given to "recipient created tax invoice" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth).

Related Party means in relation to an entity or person (the first entity):

- (a) an Affiliate of the first entity or person;
- (b) a subsidiary of the first entity or person;
- (c) an entity of which the first entity is a subsidiary;
- (d) a subsidiary of another entity of which the first entity is also a subsidiary;
- (e) where the first entity is a company, any shareholder, securityholder or manager of the first entity;
- (f) any entity or person that is:
 - (i) controlled (within the meaning of section 50AA of the *Corporations Act 2001* (Cth)) by that first person; or
 - (ii) who is an associate within the meaning of section 50AAA of the *Corporations Act 2001* (Cth)) of that first person; or
- (g) a trustee of any unit trust in relation to which that first entity or person, or any corporation referred to above, directly or indirectly:
 - (iii) controls the right to appoint the trustee;
 - (iv) is in a position to control the casting of more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
 - (v) holds or is in a position to control the disposal of more than one half of the issued units of the trust.

Reportable Conduct Scheme means the Reportable Conduct Scheme administered by the Children's Guardian under the Children's Guardian Act and any regulations or guidelines issued from time to time.

Reputational Proceedings means any inquiry, investigation, conciliation, mediation, arbitration or similar proceedings against the Service Provider, its Personnel or Officer that could, or in DCJ's reasonable opinion has the potential to, have an adverse effect on the reputation of DCJ, the Services or the NSW Government, including any investigation by the Independent Commission Against Corruption.

Safety Legislation means any:

- (a) Laws applicable to work health and safety, environment protection, dangerous goods and electricity safety; and

- (b) directions on safety or notices issued by any relevant authority or any code of practice or compliance code appropriate or relevant to the Services.

Serious Incident means an incident that:

- (a) is likely to impact on the Service Provider's ability to provide the Services or otherwise fulfil its obligations under this Deed or any Program Level Agreement;
- (b) may affect or has affected the Service Provider's obligations, or the Service Provider's performance of its obligations, under this Deed or any Program Level Agreement and requires an emergency response or involves death, serious injury or any criminal activity; or
- (c) has or may attract adverse public interest and attention.

Services means the services to be delivered by the Service Provider under a Program Level Agreement.

Service Delivery Schedule means a service delivery schedule, and any attached orders, that may be issued by DCJ to the Service Provider, and varied by DCJ from time to time, in accordance with a Program Level Agreement.

Service End Date means the end date for Services, specified in the Program Level Agreement.

Service Start Date means the start date for Services, specified in the Program Level Agreement.

Service Outlet means the usual place at which Services will be provided, as specified in the Program Level Agreement.

Services means the services required to perform a Program, as described in a Program Level Agreement.

Subcontract includes entering into a joint venture, partnership or agency relationship with one or more persons.

Term means the period commencing in accordance with clause 1.1 of this Deed and ending on the date on which this Deed is terminated.

Torres Strait Islander and Torres Strait Island child or young person have the meanings given in section 5(1) of the Care Act.

Uncommitted means Funds paid under this Deed or any associated Program Level Agreement that at a particular date cannot be identified in arrangements with third parties as amounts that the Service Provider is contractually obligated to pay in respect of the Program for which those Funds were provided.

Unspent at a particular date means Funds that have not been spent by the Service Provider.

Young Person has the meaning given in section 3 of the Care Act.

26.2 Interpretation

In this Deed, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this Deed or another document includes any document which varies, supplements, replaces, assigns or novates this Deed or that other document.
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Deed.

- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Deed.
- (d) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.
- (e) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.
- (f) **(singular)** the singular includes the plural and vice-versa.
- (g) **(rules of construction)** neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (h) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
- (i) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in New South Wales, Australia, even if the obligation is to be performed elsewhere.
- (j) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally.
- (k) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.
- (l) **(Australian currency)** a reference to dollars or \$ is to Australian currency.
- (m) **(GST)** words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in clauses about GST, and references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and references to an input tax credit extend to any notional input tax credit to which any person is entitled.
- (n) **(GST group)** if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

26.3 Order of precedence

To the extent of any inconsistency between any provisions within the documents listed below, the following order of precedence will apply:

- (a) this Deed;
- (b) the standard operative terms of a Program Level Agreement;
- (c) the Schedules to the relevant Program Level Agreement, excluding the Implementation Plan if any;
- (d) any annexure or attachment to the relevant Program Level Agreement;

- (e) the Implementation Plan Schedule to the relevant Program Level Agreement;
and
- (f) any Service Delivery Schedule.

EXECUTED AS A DEED on [INSERT DATE of execution by both parties]

[Template note: If execution is by docusign or other electronic signature program approved by DCJ, write 'executed by [docusign/other program]' and append certificate of execution for both parties behind this page]

DCJ:

Executed on behalf of **the Crown in Right of the State of New South Wales acting through the Department of Communities and Justice, Strategy, Policy and Commissioning, ABN 36 433 875 185** by its duly authorised representative in the presence of:

Signature of authorised representative

Signature of witness

Name of authorised representative in full

Name of witness in full

Execution by the Service Provider:

Executed as a deed on behalf of **[insert name of Service Provider]**, ABN **[insert]** by its duly authorised representatives:

Signature of authorised representative

Signature of authorised representative

Name of authorised representative in full

Name of authorised representative in full

Note: Ensure signatories have the necessary authority to sign Deed. Relevant legislation applicable to Service Provider (e.g. Corporations Act, CATSI Act, Associations Incorporation Act,) will be pertinent