



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]

Permanency Support Program

Program Level Agreement

«PSP_PLA_IDXXXX»

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Program: **Permanency Support Program**

Program Level Agreement: «PSP_PLA_IDXXXX»

Contract Particulars

<p>Item 1: Parties</p>	<p>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 departmental address]. (DCJ) and [insert Service Provider name and ABN] (Service Provider)</p>	
<p>Item 2: Services</p> <p>[Template note: delete any type of service not to be offered by service provider or write 'N/A' under Start Date for relevant service]</p>	<p>Type of Service</p>	<p>Start Date</p>
	<p>Foster Care</p>	
	<p>Aboriginal Foster Care</p>	
	<p>Interim Care</p>	
	<p>Therapeutic Sibling Option</p>	
	<p>Therapeutic Supported Independent Living</p>	
	<p>Intensive Therapeutic Care Homes</p>	
	<p>Intensive Therapeutic Transitional Care</p>	
	<p>Supported Independent Living</p>	
	<p>Therapeutic Home-Based Care</p>	
	<p>Intensive Therapeutic Care Significant Disability</p>	

<p>Item 3:</p> <p>(a) Service Start Date</p> <p>(b) Service End Date</p>	<p>Service Start Date: [insert]</p> <p>Service End Date: [insert]</p>
<p>Item 4:</p> <p>Service Provider Representative</p>	<p>[insert name, title and contact details]</p>
<p>Item 5:</p> <p>DCJ Representative</p>	<p>[insert name, title [ie contract manager, district] and contact details]</p>
<p>Item 6:</p> <p>Subcontracting preapprovals if any</p>	<p>[Template note: <u>If subcontracting arrangements have been disclosed by the Service Provider at tender and approved by DCJ, list the approved subcontracting arrangements and conditions in this item or where detailed conditions apply, attach the approval letter as Annexure A and insert the words 'As set out in Annexure A'.</u> OR <u>If there are no approved subcontracting arrangements, insert 'Nil'.</u>]</p>
<p>Item 7:</p> <p>Special Conditions</p>	<p>[Template note: Special conditions will be recorded here where required. The 'Public Interest Disclosures' special condition below must be included in accordance with section 82 of the <i>Public Interest Disclosures Act 2022</i> (NSW). Please contact DCJ Legal if you have any questions in relation to this special condition.]</p> <p>1 Public Interest Disclosures</p> <p>1.1 For the purposes only of this clause 1 (Public Interest Disclosures), unless the context otherwise requires:</p> <p>(a) "PID Act" means the Public Interest Disclosures Act 2022; and</p> <p>(b) words and expressions, including the terms 'corrective action', 'public official', 'voluntary public interest disclosure', 'serious wrongdoing', 'relates to an agency' and 'public official associated with' which have a defined meaning in the PID Act have the same meaning as in the PID Act.</p>

	<p>1.2 The Service Provider must ensure that all individuals involved in providing services under this Agreement are made aware of the following:</p> <ul style="list-style-type: none"> (a) that those individuals are public officials for the purposes of the PID Act; (b) how to make a voluntary public interest disclosure (“PID”); (c) DCJ’s public interest disclosure policy (“DCJ PID Policy”), available on the DCJ website at https://dcj.nsw.gov.au/documents/resource-centre/policies/dcj-public-interest-disclosures-policy.pdf or as advised or updated from time to time by DCJ; (d) associated information and resources regarding making of public interest disclosures to DCJ under the DCJ PID Policy and any related materials, which may be made available or updated from time to time by DCJ; and (e) the fact that a person who is dissatisfied with the way in which a voluntary ‘public interest disclosure’ (PID) has been dealt with may be entitled to take further action under the PID Act or another Act or law. <p>1.3 The Service Provider must notify DCJ of a voluntary public interest disclosure of which the Service Provider becomes aware where either:</p> <ul style="list-style-type: none"> (a) the disclosure relates to DCJ; or (b) the maker of the disclosure is known to be a public official associated with DCJ. <p>1.4 The Service Provider must notify DCJ of serious wrongdoing committed, or alleged to be committed, by an individual providing services under this Agreement.</p> <p>1.5 The Service Provider must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public interest disclosure on behalf of DCJ or any other agency.</p> <p>1.6 The Service Provider acknowledges that:</p> <ul style="list-style-type: none"> (a) If DCJ investigates a voluntary public interest disclosure and finds that serious wrongdoing or other misconduct occurred, DCJ has an obligation to take appropriate corrective action under s. 66 of the PID Act; and (b) in addition to any right of termination it has under any other clause of this Agreement or the Funding Deed, DCJ may terminate the Agreement in response to a finding of serious wrongdoing or other misconduct involving the Service Provider or an individual providing services under this Agreement.
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	<p>1.7 If the Service Provider is otherwise permitted to subcontract under this Agreement and subcontracts the Agreement in whole or in part, the Service Provider must ensure that the subcontract contains terms binding the person or body engaged under the subcontract that are equivalent to the terms binding the Service Provider in this cl. 1 (Public Interest Disclosures).</p>
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Background

- A. The parties entered into the Funding Deed on or about [insert date].
- B. DCJ has prepared the Permanency Support Program.
- C. The Permanency Support Program requires the provision of the following categories of services:
 - a. Foster Care;
 - b. Aboriginal Foster Care;
 - c. Interim Care;
 - d. Intensive Therapeutic Transitional Care;
 - e. Intensive Therapeutic Care Home;
 - f. Therapeutic Sibling Option Placement;
 - g. Therapeutic Supported Independent Living;
 - h. Supported Independent Living;
 - i. Therapeutic Home Based Care; and
 - j. Intensive Therapeutic Care Significant Disability
- D. DCJ wishes to enter into contracts with providers of Services to support the Permanency Support Program.
- E. Following a procurement process the Service Provider has been selected to perform one or more of the categories of Services as set out in the Contract Particulars.
- F. DCJ will pay the Service Provider for the Services required to support the Permanency Support Program in accordance with the terms and conditions set out in the Funding Deed and this Agreement.
- G. DCJ and the Service Provider have agreed to enter into this Agreement in respect of the Services in support of the Permanency Support Program.

1. Term and relationship with Funding Deed

1.1 Commencement and duration

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

- (c) If DCJ does not issue a notice pursuant to clause 1.1(b), this Agreement will continue to apply on a Quarter-by-Quarter basis until terminated in accordance with its terms.

1.2 *Effect of inconsistency and relationship with Funding Deed*

- (a) The Service Provider acknowledges that the operative terms of the Funding Deed are incorporated into this Agreement. The rights and obligations of the Service Provider under this Agreement must be construed together with the terms of the Funding Deed.
- (b) In the event of any conflict or inconsistency between this Agreement and the Funding Deed, the provisions of the Funding Deed will prevail to the extent of such conflict or inconsistency in accordance with the order of precedence set out in clause 26.3 of the Funding Deed.

1.3 *Effect of termination of Funding Deed*

If:

- (a) on or before the Service End Date, the Funding Deed is terminated; and
- (b) on such termination, a new Funding Deed comes into operation between the same parties,

the provisions of clause 1.2 will apply to the new Funding Deed.

2. Services

2.1 Performance of the Services

The Service Provider must perform the Services:

- (a) on and from the Service Start Date until the Service End Date;
 - (b) in accordance with Schedule 1 and Schedule 2 of this Agreement; and
 - (c) in compliance with any special condition noted in item 7 of this Agreement,
- using resources and Personnel with the accreditation and skills required under this Agreement, as read together with the Funding Deed.

2.2 *Subcontracting of the Services*

- (a) Subject to clause 2.2(b), the Service Provider must obtain DCJ's approval in writing in accordance with clause 21(a) of the Funding Deed and this clause 2.2 before Subcontracting any of the Services.
- (b) Where a proposed Subcontract is disclosed by the Service Provider to DCJ at tender or pre-contract stage in relation to this Program Level Agreement, DCJ's approval in writing is deemed to have been given if the Subcontract is listed in Item 6 of the Contract Particulars, but not otherwise.

- (c) Any approval to Subcontract granted by DCJ remains subject to the requirements of clauses 13 (Conflict of Interest disclosures) and 21 (general Subcontracting conditions) of the Funding Deed and to any other conditions notified by DCJ in relation to the approval.

3. Implementation Plan if applicable

3.1 Implementation Plan

- (a) Schedule 6 to this Agreement specifies the Implementation Plan which applies to each of the Services to be performed, if applicable.
- (b) The Service Provider:
 - (i) must promptly provide to DCJ any additional information in connection with the Implementation Plan reasonably requested by DCJ; and
 - (ii) warrants that the Implementation Plan is complete and correct and is not false or misleading in any material respect, at the time it is provided to DCJ.

3.2 Matters not addressed in Implementation Plan

If:

- (a) a component of the Services is referred to in Schedule 1 or any other Schedule to this Agreement; and
- (b) the Implementation Plan does not address that component of the Services, then notwithstanding clause 1.3 of this Agreement, the Service Provider must perform that component of the Services in accordance with the requirements of Schedule 1 or any other relevant Schedule to this Agreement.

3.3 Service Provider's other obligations not affected

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

the performance obligations of the Service Provider under this Agreement remain unaffected, and the Implementation Plan does not affect or discharge those obligations unless specifically agreed to by the DCJ Representative in writing as part of developing or updating the Implementation Plan.

- (b) Nothing in this Agreement shall be construed as affecting the Service Provider's obligations to the Children's Guardian or otherwise under Law.

4. Payments

4.1 Payment during the Term

- (a) In respect of each type of Service performed by the Service Provider and for each Quarter on and from the commencement of the Term, DCJ will pay the Service Provider the Service Payment:
 - (i) as set out in this clause 4;
 - (ii) calculated in accordance with Schedule 3 to this Agreement;
 - and
 - (iii) in advance.

4.2 Service Payments

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

4.3 Reconciliation of Service Payments

- (a) Commencing in Quarter 1 of Year 2 of this Agreement, DCJ will prepare a reconciliation of the Services actually performed by the Service Provider in the previous Financial Year against the Services which were paid for by DCJ in relation to the previous Financial Year in order to determine:
 - (i) the actual Services provided, reconciled against the estimated Services to be provided in that Financial Year; and

- (ii) the actual cost of each category of Services that the Service Provider performed, reconciled against the estimate of the cost of those Services to be provided in the Financial Year showing:
 - A. an itemisation of any applicable GST; and
 - B. the total amount that should have been payable in respect of the Services actually performed in the Financial Year reconciled against the amount that was actually paid as the estimate for that Financial Year.
- (b) Where the amount that should have been paid in respect of the Services actually performed in the previous Financial Year is:
 - (i) greater than the amount which was paid in respect of that Financial Year, this additional amount must be itemised as part of the Service Payment for the current Quarter, and be added to the Service Payment; or
 - (ii) less than the amount which was paid in respect of that Financial Year, this amount must be itemised as part of the Service Payment for the current Quarter and be deducted from the Service Payment.

4.4 *Format and details of financial data reporting*

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

4.5 *Funding Deed to apply*

For the avoidance of doubt the Service Provider's obligations in respect of Funds received under this Agreement, including dealings with Unspent Funds, are subject always to and supplemented by its obligations under the Funding Deed.

5. Notification requirements

5.1 *General reporting requirements of Service Providers*

- (a) In addition to its disclosure and notification requirements under any Laws, the Service Provider must fulfil all Notification Requirements to DCJ:
 - (i) under this Agreement, including any Schedules;
 - (ii) under the Notification Requirements of clause 3.4 or any other provision of the Funding Deed; and
 - (iii) under any Policy notified to the Service Provider.

6. Data collection, information, quality and performance

6.1 Requirements of the Service Provider

In addition to the requirement of any Law or as required under the Funding Deed, the Service Provider must collect the types of data and issue the reports as set out in Schedule 2 to this Agreement.

6.2 Provision of information by the Service Provider

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

6.3 Performance Meetings

The Service Provider Representative and the DCJ Representative must meet monthly (or such other frequency as agreed) to monitor and review the Service Provider's performance under this Agreement, including Schedule 2. The Service Provider Representative must contact the DCJ Representative to instigate this review.

7. Variations to Services

7.1 Sector consultation

- (a) The parties agree that DCJ may, for the purpose of flexibility in the delivery of the Services, require an increase, decrease or change in the quantity or types of Services to be delivered by the Service Provider.
- (b) The Service Provider agrees that from time to time, DCJ may consult with stakeholders in the Program in relation to the terms of this Agreement or the delivery of the Services.
- (c) DCJ will consider the outcomes of any consultations carried out under clause 7.1(b) prior to directing a Variation under this clause 7.1, but DCJ is not required to implement any of the matters arising from those consultations.

7.2 Proposal

- (a) Either DCJ or the Service Provider may in writing propose to the other a variation to:
 - (i) any provision of this Agreement or the Schedules; or
 - (ii) the Services (Variation).
- (b) Where DCJ is the party proposing the Variation, it will provide to the Service Provider a notice of intent to direct a Variation (Variation Notice).

- (c) Where the Service Provider is the party proposing the Variation, DCJ will consider the proposed Variation, and it will either:
 - (i) provide the Service Provider with a Variation Notice; or
 - (ii) respond to the Service Provider in writing that the proposed Variation is unacceptable having regard to the impact of achieving the Permanency Support Program objectives.
- (d) When DCJ issues a Variation Notice it will include the:
 - (i) date that the Variation will become effective;
 - (ii) timing for the implementation of the Variation; and
 - (iii) such other matters as are required to give effect to the Variation.
- (e) The parties agree to sign any Variation Notice once it becomes effective in accordance with clause 7.2(d).

7.3 Valuation

- (a) If a Variation under clause 7.2 results or may result in changes to the Service Payment, the valuation of that Variation will be determined:
 - (i) with reference to the applicable rates as set out in Schedule 3 of this Agreement; or
 - (ii) where there are no applicable rates set out in Schedule 3, as reasonably determined by DCJ.
- (b) Any changes required to the Service Payments as a result of a Variation must apply on and from the effective date of the Variation in accordance with clause 7.2(d).

7.4 Omissions

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

7.5 Variation to increase the Contracted Volume

- (a) In addition to the requirements of this clause 7, any Variation Notice which proposes to increase the Service Provider's Contracted Volume for any Service provided under the Agreement (**'Contracted Volume Increase'**) must be directed in accordance with this clause 7.5.
- (b) The Service Provider must determine whether it is capable of implementing the Contracted Volume Increase and give written notice to DCJ of such determination no later than 5 Business Days following the date of the issue of the Variation Notice.

- (c) If the Service Provider gives notice to DCJ that is capable of accepting a Contracted Volume Increase in response to a Variation Notice under clause 7.5(a), the Contracted Volume Increase will become effective on the date which is 40 Business Days following the date of the issue of the Variation Notice.
- (d) If the Service Provider gives notice to DCJ that it is incapable of accepting a Contracted Volume Increase, subject to clause 7.6 of this Agreement, the Contracted Volume will remain unchanged.

7.6 Variation to decrease Contracted Volume

- (a) Subject to clause 7.6(b), DCJ may direct a Variation to decrease the Service Provider's Contracted Volume for Foster Care, Intensive Therapeutic Transitional Care and/or Intensive Therapeutic Care Homes and/or Intensive Therapeutic Care Significant Disability.
- (b) If DCJ proposes a Variation to reduce Contracted Volume to less than the Service Provider's Minimum Contracted Volume for Foster Care, Intensive Therapeutic Transitional Care and/or Intensive Therapeutic Care Homes, the Service Provider may terminate this Agreement pursuant to the procedure set out in clause 19.2(b) of the Funding Deed.

8. Termination and Performance Improvement Plan

8.1 Termination of this Agreement

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

8.2 Performance Improvement Plan

- (a) If the Service Provider is directed by DCJ to prepare and submit to it a Performance Improvement Plan, the following provisions will apply:
 - (i) the Service Provider must submit the Performance Improvement Plan to DCJ within 10 Business Days from the date the Service Provider receives the direction from DCJ;
 - (ii) DCJ will use its reasonable efforts to complete its review of the Performance Improvement Plan as soon as reasonably practicable, and the Service Provider agrees to respond to any queries raised by DCJ and to attend any meetings, whether in person or by telephone, regarding the Performance Improvement Plan;

- (iii) DCJ will advise the Service Provider as soon as reasonably practicable whether or not it approves the Performance Improvement Plan;
 - (iv) if DCJ notifies the Service Provider that it approves the Performance Improvement Plan, the provisions of clause 8.2(b) will apply to the Performance Improvement Plan; and
 - (v) if following the consultation process referred to in clause 8.2(a)(ii) above, DCJ notifies the Service Provider that it does not approve the Performance Improvement Plan, DCJ will at the same time give notice to the Service Provider of such reasonable changes DCJ requires the Service Provider to make to the Performance Improvement Plan and the provisions of clause 8.2(a) will apply to the Performance Improvement Plan, as varied by the changes notified by DCJ.
- (b) The Service Provider must immediately implement the Performance Improvement Plan once it is approved by DCJ.
 - (c) In addition to DCJ's right of audit under clause 5 of the Funding Deed, DCJ may attend any premises owned or operated by the Service Provider, or request any information from the Service Provider, to conduct an audit of the Service Provider's compliance with the Performance Improvement Plan to which clause 8.2(b) applies.
 - (d) Following an audit pursuant to clause 8.2(c), and/or in the event that DCJ in its sole discretion determines that the Service Provider has failed to comply with the Performance Improvement Plan, DCJ may, at its sole and absolute discretion:
 - (i) direct the Service Provider to prepare a further Performance Improvement Plan, in which case the provisions of this clause 8.2 will apply to that Performance Improvement Plan;
 - (ii) reduce or cap the Contracted Volume of the Service Provider in respect of any of the Services; or
 - (iii) terminate this Agreement in accordance with clause 19.1(n) of the Funding Deed.

9. General

9.1 No assignment

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

9.2 Counterparts and execution

This Agreement 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.

9.3 *Legal expenses and stamp duty*

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

9.4 *Invalidity*

- (a) A word or provision must be read down if:
 - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 9.4(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 9.4(b)(i) or 9.4(b)(ii) applies.

9.5 *Waiver*

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

9.6 *Governing law and jurisdiction*

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

10. Definitions and Interpretation

10.1 *Definitions*

In this Agreement, unless the context requires, all defined terms will have the meanings set out in Schedule 5 - Definitions.

10.2 *Interpretation*

In this Agreement, unless the context indicates a contrary intention, the general rules of interpretation which apply under clause 26.2 of the Funding Deed are deemed to apply to this Agreement.

EXECUTED AS AN AGREEMENT on [INSERT DATE EXECUTED BY BOTH PARTIES]

[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]

Execution by 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

Title

DATE:

Execution by the Service Provider:

Executed as an agreement on behalf of
_____ ABN
_____ 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

DATE:

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