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**Special Out of Home Care Service Agreement**

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**Between**

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

**(DCJ)**

ABN 36 433 875 185

and

**[##Name of Special Care Provider##]**

**(Special Care Provider)**

ABN [#####]

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## Table of contents

1	Definitions and interpretation.....	3
2	Term.....	10
3	Performance of Services .....	10
4	Price, invoicing and payment.....	16
5	GST.....	18
6	Insurance .....	18
7	Terms and Conditions applicable to sourcing Personnel from Special Care Provider.....	19
8	Suitability and preparation of Personnel.....	19
9	Performance monitoring .....	23
10	Intellectual Property Rights.....	25
11	Warranties and indemnity .....	25
12	Conflicts of interest, Change in Control and Incidents.....	27
13	Termination, suspension and expiry .....	28
14	Confidentiality, security and privacy.....	30
15	Disputes .....	32
16	Limitation of liability .....	33
17	Notices and communication.....	33
18	Work health and safety obligations .....	33
19	General .....	37
	Schedule 1 – Service Agreement details.....	39
	Schedule 2 – Fee schedule and invoices.....	42
	Schedule 3 – Special OOHC Guidelines.....	44

This Special Out of Home Care Service Agreement is made between

I **The Crown in right of the State of New South Wales, acting through the Department of Communities and Justice (ABN 36 433 875 185)** of 6 Parramatta Square, 10 Darcy Street, Parramatta NSW 2150 (DCJ)

and

II **[##name of Special Care Provider##] ABN [#####]**

of **[##address##]**

(Special Care Provider)

### Background

- A. DCJ is the NSW Government agency that has responsibility for children and young persons (as those terms are defined under section 3 of the Care Act) in out-of-home care, so that they receive such care and protection as is necessary for their safety, welfare and well-being, having regard to, amongst other things, the capacity of their parents or other persons responsible for them.
- B. DCJ has established a panel comprising of Special Care Providers, for the provision of special out-of-home care services (**Special OOHC Services**) as a fee-for-service arrangement (**Panel**). The Panel has been established on a non-exclusive basis for an initial term expiring on the Expiry Date, with the possibility of one extension for 12 months at DCJ's sole discretion.
- C. This Service Agreement sets out the terms on which the Special Care Provider will provide or procure the provision of Special OOHC Services to children or young persons in out-of-home care. Special OOHC Services are provided to children or young persons with one or more impairments, including intellectual, psychiatric, sensory or physical, where these impairments are permanent or likely to be permanent and result in significantly reduced capacity.
- D. The individuals who will work directly with the children or young persons, will be sourced from, and by, the Special Care Provider based on terms set out in this Service Agreement, and after conducting appropriate probity checks and meeting any other requirements set out in this Service Agreement, and will be authorised by DCJ as an Authorised Carer to provide Special OOHC (**Special OOHC Authorised Carer**).

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Service Agreement, the following terms have the following meanings unless the context requires otherwise:

**Authorisation** means any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording, filing, registration, qualification or waiver required by any government authority or by any Law and, for the avoidance of doubt, includes any clearances granted in connection with Working With Children Legislation and any policy or legal requirements that DCJ deems necessary to determine that an organisation is suitable to provide and perform the Special OOHC Services.

**Authorised Carer** has the meaning set out in section 137 of the Care Act.

**Business Day** means a day, which is not a Saturday, Sunday, or Public Holiday in NSW.

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

**Care Regulation** means the *Children and Young Persons (Care and Protection) Regulation 2022* (NSW).

**CG Regulation** means the *Children's Guardian Regulation 2022* (NSW).

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

**Commencement Date** means the relevant date set out in item 2.1 of Schedule 1.

**Community Services Check** means a check, as determined by the Secretary of DCJ, of the information held by DCJ.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about, or in any way related to, the State or DCJ, including any child related information and information designated by the State or DCJ as confidential, which is disclosed, made available, communicated or delivered to the Special Care Provider in connection with this Service Agreement, and includes:

- (a) any decisions or determinations made by DCJ in respect of this Service Agreement;
- (b) information relating to any Special OOHC Services undertaken pursuant to this Service Agreement;
- (c) information required to be kept confidential under any Law;
- (d) any Special Care Contract Material and any information, report or Material provided by DCJ to the Special Care Provider under this Service Agreement, including the results of any client satisfaction surveys conducted pursuant to this Service Agreement; and
- (e) DCJ Intellectual Property,

but does not include information that:

- (f) is or becomes public knowledge other than by a breach of the Service Agreement or by any unlawful means;
- (g) was already in the Special Care Provider's lawful possession without restriction in relation to disclosure before the information was received by the Special Care Provider;
- (h) the Special Care Provider can demonstrate was independently developed or acquired by the Special Care Provider; or
- (i) is disclosed pursuant to legal requirement or order.

**Conflict of Interest** means, in respect of any individual or the Special Care Provider, that individual or the Special Care Provider:

- (a) engaging in any business, trade, work or calling (whether paid or unpaid); or
- (b) having any obligations, duties or interests (whether personal, financial or otherwise),

which conflicts with, or may be reasonably perceived as conflicting with, the ability of that individual or of the Special Care Provider to fairly, objectively and independently perform all applicable obligations under this Service Agreement.

**Control** means in relation to the Special Care Provider, the ability of any person directly or indirectly to exercise effective control over the Special Care Provider (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Special Care Provider) by virtue of control or influence, or having the capacity to control or influence the composition of the board, or decision making, directly or indirectly, or by the holding of voting shares, units or other interests in or in respect of the Special Care Provider or by any other means.

**CYP** means a child or young persons as defined under section 3 of the Care Act.

**DCJ Intellectual Property** means any and all Intellectual Property Rights of DCJ in any Material provided or made available by DCJ to the Special Care Provider under this Service Agreement.

**DCJ Representative** means the person named as such in item 3 of Schedule 1 or as notified in writing by DCJ.

**Designated Agency** has the meaning given under section 72 of the Children's Guardian Act.

**Direct Dealings** means the approved procurement method employed by DCJ as part of establishing the Panel.

**Dispute** has the meaning given to it in clause 15.1.

**Expiry Date** means the relevant date set out in item 2.2 of Schedule 1.

**Extension Period Expiry Date** means the relevant date set out in item 2.3 of Schedule 1.

**GIPA Act** has the meaning given to it in clause 14.6(a).

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

**Insolvency Event** means where a party:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth);
- (c) must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the *Corporations Act 2001* (Cth);
- (d) fails to comply with a statutory demand within the meaning of section 459F(1) of the *Corporations Act 2001* (Cth);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a mortgagee entitled to, or enter into, possession of any property of that party;
- (g) has a controller within the meaning of section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its property; or
- (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

**Intellectual Property Rights** includes all present and future copyright and any other intellectual property rights that are recognised as such under applicable Law.

**Laws** means the law in force in the State of New South Wales and the Commonwealth of Australia, including common law and legislation.

**Mandatory Probity Checks** means each of a:

- (a) National Police Check;
- (b) Community Services Check;
- (c) ChildStory Check;
- (d) WWCC; and
- (e) any other checks that DCJ may, subject to the requirements of applicable Law, undertake or request the Special Care Provider to undertake or procure to be undertaken, in respect of any Personnel who is or may be authorised as a Special OOHCA Authorised Carer in connection with providing any Special OOHCA Services contemplated by this Service Agreement.

**Material** includes documents, records, software (including source code and object code), goods, images, information and data stored by any means, including all copies and extracts of same and anything in which Intellectual Property Rights can exist.

**National Police Check** means a document that lists an individual's disclosable court outcomes and pending charges sourced from the databases of all Australian police jurisdictions.

**Notifiable Events** means an occurrence to which any of the following criteria applies in relation to the Special Care Provider, or any Personnel of the Special Care Provider who is or may be engaged in the provision of Special OOHC Services:

- (a) the occurrence is likely to impact the ability to provide the Special OOHC Services or otherwise fulfil the obligations as set out under this Service Agreement;
- (b) the occurrence may affect or has affected the obligations, or the performance of obligations, under the Service Agreement;
- (c) the occurrence requires an emergency response or involves death, serious injury or any criminal activity;
- (d) the occurrence has or may attract adverse public interest and attention or
- (e) the loss of, or unauthorised access to, any Personal and Health Information of any person or any CYP to which this Service Agreement relates, and without limiting the above includes a ROSH.

**Notifiable Safety Incident** means any event which is required to be notified to any relevant authority pursuant to the relevant Safety Legislation.

**OCG** means the Office of the Children's Guardian.

**OOHC** means out-of-home-care as defined under section 135 of the Care Act.

**Panel** has the meaning given in the Background to this Service Agreement.

**Panel Member** means each Special Care Provider, including the Special Care Provider appointed to the Panel.

**Personal and Health Information** has the meaning given in clause 14.7.

**Personnel** means any employee, director, worker, officer, contractor, subcontractor, agent, principal, partner or secondee of a party (including the Special Care Provider) and, for clarity, in the case of an individual who is referred to DCJ by the Special Care Provider, and is approved by DCJ as a Special OOHC Authorised Carer, that individual is included in the definition of "Personnel".

**PID Act** means the *Public Interest Disclosure Act 2022*.

**Pre-Existing Intellectual Property** means any and all Intellectual Property Rights in any works, items or systems created by or the property of or licensed by a third party to the Special Care Provider, either prior to the commencement of the provision of the Special OOHC Services or after the commencement of the provision of the Special OOHC Services, but not in connection with this Service Agreement.

**Principal Officer** has the meaning given under Section 74 of the Children's Guardian Act.

**Public Holiday** means a public holiday under the *Public Holidays Act 2010* (NSW).

**Rates or Fees** means the rates of pay or fees to be paid by DCJ to the Special Care Provider for the Special OOHC Services, as described in clause 4, read with Schedule 2.

**Reportable Allegation** has the meaning ascribed to that term in section 18 of the Children's Guardian Act and, for clarity, for the purposes of Special OOHC Services provided under this Service Agreement, includes an allegation that the Personnel has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment.

**Reportable Conviction** has the meaning ascribed to that term in section 19 of the Children's Guardian Act and, for clarity, for the purposes of Special OOHC Services provided under this Service Agreement, includes conduct whether or not the conduct occurred in the course of the Personnel's employment.

**Request for Services** means an order for Special OOHC Services, in the form specified by DCJ in its sole discretion from time to time.

**ROSH** means a circumstance where a child or young person is 'at risk of significant harm', as that term is defined in section 23 of the Care Act.

**Safety Legislation** means any:

- (a) legislation applicable to work health and safety, environment protection, dangerous goods and electricity safety;
  - (b) regulations made under that legislation; and
  - (c) directions on safety or notices issued by any relevant authority or any code of practice or compliance code appropriate or relevant to Special OOHC Services,
- and any amendment or replacement of the above.

**Safety Requirements** means any direction, instruction, request or requirement relevant or necessary for compliance by the Special Care Provider with Safety Legislation, including any such matter of which the Special Care Provider has been informed by DCJ.

**Schedule** means the document/s forming part of the Service Agreement and titled "Schedule".

**Service Agreement** means this agreement and includes the schedules and any annexures to it or documents incorporated in this Service Agreement by reference and will include any Request for Services agreed in accordance with clause 3.11.

**Special Care Provider** has the meaning ascribed to that term in clause 27 of the Care Regulation.

**Special Care Provider Representative** means the person nominated by the Special Care Provider under clause 17.1.

**Special out-of-home care** has the meaning ascribed to that term in clause 27 of the Care Regulation.

**Special OOHC Authorised Carer** means a natural person who is:

- (a) an employee or contractor of the Special Care Provider; or

(b) an employee of a contractor engaged by the Special Care Provider;

and whose duties include providing or supervising the provision of care to CYPs, and in respect of whom DCJ has given its authorisation under cl. 27(1) of the Care Regulation.

**Special OOHC Contract Material** means any Material created by or on behalf of the Special Care Provider in the course of or as a result of complying with its obligations under this Service Agreement or providing Special OOHC Services to a CYP pursuant to this Service Agreement.

**Special OOHC Guidelines** means the Special OOHC Guidelines set out in Schedule 3 of this Service Agreement, as may be updated or amended by notification to the Special Care Provider from time to time.

**Special OOHC Services** means the Special OOHC Services described in the Special OOHC Guidelines which the Special Care Provider must, subject to complying with applicable Law, provide or procure are performed by Special OOHC Authorised Carers.

**State** means the Crown in right of the State of NSW.

**Suspension Event** means any of the following:

- (a) DCJ forming a reasonable opinion that the Special Care Provider, or any of its Personnel, has in the reasonable opinion of DCJ engaged in serious misconduct in the performance of its obligations under this Service Agreement, or criminal conduct of any description; or
- (b) a third party making an allegation or complaint to DCJ that the Special Care Provider, or any of its Personnel, has engaged in serious misconduct in the performance of its obligations under this Service Agreement, or criminal conduct of any description, which DCJ in its sole discretion deems to warrant investigation; or
- (c) DCJ considers in its discretion that it wishes to conduct a risk assessment of the Special Care Provider, including but not limited to circumstances where another Service Agreement between DCJ and the Special Care Provider has been terminated or suspended, or where an adverse finding has been made against the Special Care Provider by a regulatory authority or court; or
- (d) the Special Care Provider ceases to hold the requisite Authorisation to perform the Special OOHC Services.

**Term** means the term of this Service Agreement.

**WHS Management System** means a documented system that:

- (a) describes how work is to be carried out;
- (b) identifies the work activities assessed as having safety risks or hazards;
- (c) identifies the safety risks and hazards; and
- (d) describes the control measures that will be applied to the work activities in accordance with the risk management requirements of Safety Legislation,

and includes a description of the equipment used in the work, the standards or codes to be complied with, the qualifications of the personnel doing the work (including competency

certificates and licenses of the personnel), the training required to do the work and confirmation that the training has been provided in compliance with Safety Legislation, applicable codes of practice and other guidance material issued by an authority that enforces Safety Legislation.

**Working With Children Legislation** means any:

- (a) legislation applicable to working with children, including the *Child Protection (Working with Children) Act 2012* (NSW);
  - (b) regulations made under any legislation described in paragraph (a); and
  - (c) directions or notices related to working with children issued by any relevant authority or any code of practice or compliance code appropriate or relevant to the Special OOHC Services,
- and any amendment or replacement of the above.

**WWCC** means working with children checks undertaken in accordance with the Working With Children Legislation.

### 1.2 Interpretation

Unless expressed to the contrary, in this Service Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) words in the singular include the plural and vice versa;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) 'includes' in any form is not a word of limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iii) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia;
  - (iv) a clause, schedule or annexure is a reference to a clause, schedule or annexure of this Service Agreement, and a reference to this Service Agreement includes all schedules and annexures to it;
  - (v) a financial year is a reference to a consecutive period of 12 months commencing on 1 July and ending on the following 30 June; and

- (vi) where a Business Day is referred to, a date on or by which any act must be done under this Service Agreement, which is not a Business Day, is a reference to the next Business Day.

### **1.3 Precedence**

In the event of any inconsistency or conflict between terms of this Service Agreement, or between this Service Agreement and a Request for Services, the following order of precedence will apply in resolving such inconsistency or conflict:

- (a) the terms of this Service Agreement, except the Special OOHC Guidelines;
- (b) the Special OOHC Guidelines; and
- (c) a Request for Services.

## **2 Term**

### **2.1 Term**

Subject to clause 2.2 this Service Agreement commences on the Commencement Date and will end on the Expiry Date unless it is extended under clauses 2.2 and 2.3.

### **2.2 Extension of Term**

DCJ may, at its sole discretion, extend this Service Agreement to the Extension Period Expiry Date by written notice of its intention to do so prior to the Expiry Date.

### **2.3 No effect on outstanding Request for Services**

Notwithstanding the expiration of this Service Agreement, the Special Care Provider must continue to perform its obligations under any Request for Services in existence as at the relevant expiry date, and to this end, the terms of this Service Agreement shall be deemed to survive the expiration of termination of this Service Agreement until the Special OOHC Services being provided in respect of all outstanding Requests for Services have been completed to the satisfaction of DCJ or such Requests for Services have been terminated in accordance with the terms of this Service Agreement.

## **3 Performance of Services**

### **3.1 No obligation to acquire**

The Special Care Provider acknowledges that DCJ:

- (a) is not obliged to issue any Request for Services to it or to acquire any particular volume of Special OOHC Services from the Special Care Provider; and
- (b) may acquire Special OOHC Services from any other person on such terms and conditions as DCJ decides in its discretion, including from service providers that are not appointed to the Panel.

### **3.2 Appointment to provide Services**

Upon entering into this Service Agreement, and subject to the terms of this Service Agreement, DCJ appoints the Special Care Provider to provide or to procure the provision of such Special OOHC Services as are requested under this Service Agreement and read together with a Request for Services issued to the Special Care Provider by DCJ.

### **3.3 Standard of performance**

The Special Care Provider must, in addition to compliance with clause 3.6, provide or procure the provision of the Special OOHC Services:

- (a) as required by any Request for Services entered into by the parties under this Service Agreement;
- (b) in accordance with applicable Authorisations;
- (c) in a proper, timely, ethical and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of Special OOHC Services; and
- (d) otherwise to the reasonable satisfaction of DCJ.

### **3.4 Responsibility for Special OOHC Services**

If the Special Care Provider is unable to provide or procure the provision of the Special OOHC Services (in whole or in part), in accordance with the terms of this Service Agreement, it must immediately notify DCJ of this in writing.

### **3.5 Provision of information to Special Care Provider**

DCJ may provide the Special Care Provider with information relevant to the provision of the Special OOHC Services in accordance with the Special OOHC Guidelines. The Special Care Provider must immediately notify DCJ in writing if it knows or has reason to suspect that any such information is inaccurate, incomplete or inadequate.

### **3.6 Compliance with Law and Policies, including PID**

- (a) The Special Care Provider must, in performing its obligations under this Service Agreement comply with, and ensure its Personnel complies with:
  - (i) all Laws affecting or applicable to the provision of the Special OOHC Services by the Special Care Provider, including without limitation those listed in the Special OOHC Guidelines;
  - (ii) the policies, obligations and guidelines contained in the Special OOHC Guidelines, along with all other policies notified to it by DCJ from time to time;
  - (iii) the Working With Children Legislation;
  - (iv) the Safety Legislation; and
  - (v) any requirements of the OCG, such as Child Safe Standards.

- (b) Without limiting this clause 3.6, the Special Care Provider must:
- (i) ensure that all individuals involved in providing Special OOHG Services under this Service Agreement are made aware of the following:
    - (A) that those individuals are public officials for the purposes of the PID Act;
    - (B) how to make a voluntary public interest disclosure;
    - (C) DCJ's public interest disclosure policy, which is contained in the Special OOHG Guidelines; and
    - (D) the fact that a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another Act or law;
  - (ii) notify DCJ of a voluntary public interest disclosure of which the Special Care Provider becomes aware, where either:
    - (A) the disclosure relates to DCJ; or
    - (B) the maker of the disclosure is known to be a public official associated with DCJ;
  - (iii) notify DCJ of serious wrongdoing committed, or alleged to be committed, by an individual who is involved in providing the Special OOHG Services under this Service Agreement;
  - (iv) 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 disclosure on behalf of DCJ or any other agency (as defined in the PID Act).
  - (v) acknowledge that:
    - (A) DCJ has an obligation to take corrective action under s.66 of the PID Act; and
    - (B) DCJ has a right to terminate the Service Agreement and any outstanding Request for Services in response to a finding of serious wrongdoing or other misconduct involving the Special Care Provider or any individual, including Personnel who are involved in providing Special OOHG Services under this Service Agreement;
- (c) If the Special Care Provider is permitted under clause 3.7 below, to subcontract the Special OOHG Services, whether in whole or in part, the Special Care Provider must ensure that the subcontract contains terms binding the person or body engaged under the subcontract that are substantially equivalent to the terms binding the Special Care Provider in this clause 3.6.
- (d) The parties acknowledge that the regulations made under the PID Act may make further provision about terms that must, or must not, be included in an agreement or arrangement similar to this Service Agreement.

### 3.7 Subcontracting

- (a) The Special Care Provider must not assign or subcontract the whole or any part of its obligations under this Service Agreement without the prior express written approval of the DCJ Principal Officer, which may be given or withheld in DCJ's sole discretion, may be subject to conditions, and may be withdrawn at any time during the Term by notice in writing.
- (b) The Special Care Provider warrants that except in the case where it recruits or engages Personnel from labour hire agencies, it has the capacity to supply the Special OOHC Services without the necessity for subcontracting any Special OOHC Services.
- (c) Where the Special Care Provider seeks DCJ's approval of any subcontracting arrangement during the Term, the Special Care Provider must provide such details as DCJ requires, including the scope of subcontracting proposed, the identity of the subcontractor and details of proposed charging arrangements.
- (d) Subject to clause 3.7(a), the Special Care Provider must ensure that all subcontractors comply with the terms of the Service Agreement as if they were a party to it. Any subcontracting agreement must require the subcontractor to comply with the Special OOHC Guidelines and with any mandatory terms required to be included either in this Service Agreement or the subcontracting agreement under any applicable Authorisations, Laws and NSW Government policies, including Mandatory Probity Checks for Special OOHC Authorised Carers.
- (e) DCJ may require the Special Care Provider to provide a copy of any draft or executed subcontract to DCJ and the Special Care Provider must obtain any necessary consent from the subcontractor to disclose to DCJ such subcontract and details of all charging arrangements and other information required by DCJ in relation to such subcontracted Special OOHC Services.
- (f) Ignoring anything else in this Service Agreement that may state otherwise, nothing in this Service Agreement permits the Special Care Provider to subcontract any part of the Special OOHC Services if under the Law the Special OOHC Services are not permitted to be subcontracted. And any approval that DCJ may have given for such subcontracting will be deemed ineffective to the extent that the subcontracting is not permitted by Law.

### 3.8 Cooperation

- (a) The Special Care Provider must, when requested or applicable, cooperate with and assist in good faith:
  - (i) DCJ;
  - (ii) any third party service provider or contractor appointed by or at the direction of DCJ; and
  - (iii) the OCG.
- (b) Without limiting the provisions of clause 3.8(a), the Special Care Provider agrees to cooperate and promptly 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 Service Agreement.
- (c) Without limiting the provisions of clause 3.13, the Special Care Provider will cooperate with, and provide all reasonable assistance to DCJ, including the provision of any relevant information in the possession or control of the Special Care Provider and its Personnel in connection with the investigation or determination of any Reportable Allegation or Reportable Conviction.
  - (d) The Special Care Provider must cooperate and promptly, when requested, assist DCJ and provide DCJ with all written, photographic and any other records relating to the development, history and identity of a CYP for whom the Special Care Provider has provided or is providing Special OOHC Services and in accordance with the Special OOHC Guidelines and any NSW government policies in place from time-to-time to enable DCJ to comply with all of its obligations under the Care Act, including sections 160 and 167-170.

### **3.9 Panel refresh**

DCJ will monitor the performance of the Special Care Provider and the other Panel Members on an ongoing basis throughout the Term. DCJ may, subject to complying with any relevant Laws and NSW Government policies, including those related to procurement of goods and services, at any time in its sole discretion and without notice, refresh the Panel in any manner it thinks fit, including adding any new Panel Members to the Panel.

### **3.10 Special OOHC Guidelines refresh**

Notwithstanding anything else in this Service Agreement, DCJ may, in its sole discretion, update or amend the Special OOHC Guidelines from time to time by written notice to the Special Care Provider and the Special Care Provider must give notice of these updates or amendments to the Special OOHC Authorised Carers.

### **3.11 Requests for Services**

- (a) Following the Commencement Date, DCJ may issue a Request for Services to the Special Care Provider from time to time.
- (b) The Special Care Provider will only be deemed to be engaged to perform the Special OOHC Services listed in a Request for Services at, and from, the time that DCJ and the Special Care Provider have signed their acceptance of the Request for Services (or from such other time as DCJ may notify the Special Care Provider in writing, (after the Special Care Provider and DCJ have both agreed to the Request for Services) from time to time).

### **3.12 Amendment, suspension or withdrawal of Services**

- (a) DCJ may, in its reasonable discretion, at any time provide written notice to the Special Care Provider, to amend, suspend or withdraw the provision of any Special OOHC Services under one or more Requests for Services. Any amendment, suspension or withdrawal will take effect on the date specified in the notice, provided that the date shall not be a date that occurs before the notice is provided to the Special Care Provider.

- (b) If DCJ provides notice to amend a Request for Services, the Special Care Provider will, as soon as reasonably practicable (but in any event within one (1) Business Day), confirm its availability to perform the amended Special OOHC Services, failing which DCJ will have the right, but not the obligation, to give the Special Care provider written notice of termination of this Service Agreement and or any ongoing Requests for Services that are impacted by the amendment, with such notice to be not less than 14 days, in which case the provision of clause 13.3 and 13.4, as applicable, will apply.
- (c) In the event of a suspension, withdrawal of Special OOHC Services, DCJ will only pay for Special OOHC Services (if any) rendered up until the point of suspension or withdrawal.
- (d) Despite anything to the contrary in this Service Agreement, where a Special OOHC Service is suspended or withdrawn, DCJ may require a placement to be transitioned within such time period as specified by DCJ.

### **3.13 Reportable Allegations and Convictions**

- (a) Where the Special Care Provider becomes aware of any Reportable Allegation or Reportable Conviction concerning any of its Personnel who are engaged in Special OOHC Services under this Service Agreement, the Special Care Provider must inform the DCJ Child Protection Helpline (13 21 11) of such matter immediately by phone; with the details to be confirmed in writing by the Special Care Provider to DCJ within 24 hours thereafter.
- (b) For the purposes of clause 3.13(a):
  - (i) the Special Care Provider confirms that within 24 hours of receiving notice, or otherwise becoming aware, of any Reportable Allegation and Reportable Conviction, it will ensure that the details of the Reportable Allegation or Reportable Conviction are given to the DCJ Child Protection Helpline Allegations DCJ Contact set out in item 5 of Schedule 1; and
  - (ii) the Special Care Provider confirms that its contact person and their contact details for all communications by DCJ to the Special Care Provider in connection with any Child Protection Allegations and Reportable Convictions are set out in item 3 of Schedule 1.
- (c) The Special Care Provider must not approach or discuss the matter with the Personnel who is the subject of the Reportable Allegation or Reportable Conviction or inform them of the same without obtaining the prior written consent of DCJ.
- (d) The Special Care Provider agrees that DCJ is responsible for investigating or determining any Reportable Allegation or Reportable Conviction in relation to any Personnel who are engaged in performing any Special OOHC Services under this Service Agreement and in this regard, the Special Care Provider agrees that:
  - (i) it must not itself take any steps to investigate the allegations without the prior written consent of DCJ;
  - (ii) it must cooperate with, and provide all reasonable assistance to, DCJ, including the provision of any information pertinent to the allegations in the possession or control of the Special Care Provider in connection with the investigation; and

- (iii) all communications related to the investigation with the relevant Personnel as well as communications regarding any decision making relating to findings or any action to be taken in connection with the investigation must be made by DCJ and in no circumstances may the Special Care Provider communicate with the relevant Personnel about the investigation without the prior written consent of DCJ.
- (e) This clause does not prevent the Special Care Provider from reporting a matter to the police if required by any Law; however, the Special Care Provider agrees that DCJ will take the lead in liaising with the police.
- (f) After the completion of, and based on the findings of, the investigation of or determination made in respect of the Reportable Allegation or Reportable Conviction and after express written consent has been provided by DCJ, the Special Care Provider will be responsible for communicating with the Personnel about any employment action it intends to take.
- (g) The Special Care Provider agrees to develop and apply an appropriate risk management protocol as per the findings of the investigation or determination by DCJ in respect of any Reportable Allegation or Reportable Conviction relating to its Personnel; and share the protocol with DCJ upon request.
- (h) To avoid any doubt, this Service Agreement does not displace, or transfer to DCJ any obligations the Special Care Provider may have under the Children's Guardian Act in relation to its other functions, not being in respect of special out-of-home care.

## 4 Price, invoicing and payment

### 4.1 Rates

- (a) Payment for the Special OOHC Services will be agreed, between DCJ and the Special Care Provider at the time when a Request for Services is issued to the Special Care Provider. The basis on which the amount of fees will be determined and then agreed will be the Rates determined in accordance with the principles set out in Schedule 2 and the Special OOHC Guidelines and any guidance issued by DCJ from time to time.
- (b) Subject to clause 4.2(a), the fees charged by the Special Care Provider for the Special OOHC Services must not exceed the amount agreed between DCJ and the Special Care Provider under clause 4.1(a), plus GST ("**Total Fee**").
- (c) Notwithstanding anything else in this Service Agreement, the Rates may be varied by DCJ acting reasonably by written notice to the Special Care Provider at any time.

### 4.2 Additional fees

- (a) If the Special Care Provider becomes aware at any time that the Total Fee of the Special OOHC Services in respect of a CYP will, or is reasonably likely to, exceed the amount agreed under clause 4.1(a) above, the Special Care Provider must give written notice of this to DCJ as soon as practicable. Where relevant, such written notice must be in such form as DCJ may require from time to time.
- (b) The Special Care Provider may only charge additional fees in circumstances where:

- (i) there has been a material change in circumstances from the circumstances that existed at the time when the Request for Services in respect of the CYP was issued to the Special Care Provider;
- (ii) the expenditure is necessary for the care or protection of the CYP in a placement;
- (iii) the expenditure is approved by DCJ in writing in accordance with Item 2 of Schedule 2 and the Special OOHC Guidelines, or in accordance with any other procedure advised by DCJ from time to time;
- (iv) the expenditure is substantiated to the satisfaction of DCJ and is invoiced on an actual costs basis in accordance with Schedule 2,

and without limiting the above provisions of clause 4.2(b)(i) to (iv), in no circumstances may the Special Care Provider incur costs in excess of the Total Fee without consulting with DCJ and receiving DCJ's prior written approval. For clarity, if the Special Care Provider incurs costs in excess of the Total Fee without the prior written consent of DCJ, DCJ shall have no obligation to reimburse those costs to the Special Care Provider.

### 4.3 Invoicing

- (a) The Special Care Provider may submit a tax invoice for Fees to DCJ in respect of each Request for Services only after the placement is complete, or, where the Special OOHC Services in respect of a CYP continue for over one month, monthly in arrears. Such invoices must conform with the provisions of Schedule 1, Schedule 2 and DCJ's reasonable instructions.
- (b) The Special Care Provider agrees and acknowledges that if DCJ introduces an electronic invoice payment system during the Term, the Special Care Provider must comply with that system for the remainder of the Term.
- (c) Without limiting the provisions of this clause 4.3, DCJ may from time-to-time issue directions to the Special Care Provider regarding any new or varied requirements that tax invoices issuable by the Special Care Provider must comply with, including the processes by which they must be issued.

### 4.4 Payment of invoices

DCJ will pay each properly rendered and undisputed invoice within 30 days of receipt in accordance with items 6 and 7 of Schedule 1. DCJ will assess whether a particular invoice is properly rendered, acting reasonably.

### 4.5 Disputed invoices

If DCJ disputes any invoice, in whole or in part, DCJ will pay the undisputed part of such invoice and notify the Special Care Provider in writing of the basis and quantum of the disputed amount. If the Special Care Provider does not agree with this assessment, either party may refer the matter for resolution under clause 15.

### 4.6 Nature of payment

Payment of an invoice is taken to be payment on account only and is not an indication or admission that the Special OOHC Services have been performed adequately or at all.

### 4.7 Other expenses

Aside from the agreed Fees, DCJ shall not be liable for any other cost, charge or expense for the Special OOHC Services. For the avoidance of doubt, and without limiting this clause 4.7, the Special Care Provider shall be responsible for all costs and expenses (including wages, superannuation, long service leave, annual and sick leave, withholding tax and any other payments whether required by Law or otherwise) associated with any Personnel of the Special Care Provider in connection with this Service Agreement and the provision of the Special OOHC Services.

## 5 GST

### 5.1 Consideration is exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Service Agreement are exclusive of GST.

## 6 Insurance

- (a) The Special Care Provider acknowledges that it is common for CYPs, to whom the Special Care Provider is to provide Special OOHC Services, to exhibit challenging behaviour or have other complex support requirements which has the potential of causing workplace health and safety risks. The Special Care Provider agrees to report to DCJ immediately any incident which causes concerns that any CYP may cause harm to themselves, to other people or to any property. The Special Care Provider further agrees to manage any challenging or complex behaviour in line with, any behaviour management strategies developed for any CYP, including the Special OOHC Guidelines and other relevant policies and to otherwise remain vigilant and alert to any challenging or complex behaviour of a CYP and to inform DCJ of any changes in behaviour, including where any behaviours are identified and they are not covered by existing behaviour management strategies. The Special Care Provider must also make sure that when carrying out the obligations under this Service Agreement, it exercises the highest level of care and skill so that the CYP will not cause loss or damage to property of, or personal injury, or death to, any person.
- (b) The Special Care Provider warrants that it has undertaken an assessment of risks relating to OOHC placements and has, with the benefit of such risk assessment and the experience of the Special Care Provider in connection with OOHC, arranged and maintains, at its own costs, adequate and appropriate insurance cover to protect its physical assets, the assets of any third party that may be made available to, or become accessible by, the CYP, against loss and/or damage, and to protect the Special Care Provider and the Special Care Provider's Personnel against legal liability risk for personal injury and/or property damage or other financial loss claims including, losses and claims arising from the provision of the Special OOHC Services to a CYP. To the maximum extent permitted by applicable Law, and despite any provision to the contrary contained in this Service Agreement or in any other agreement with DCJ or relating to OOHC (whether or not DCJ is a party to the agreement), the Special Care Provider agrees with DCJ that neither DCJ nor any agency or officer of the NSW Government will be liable for any loss or damage to, or for the destruction of, any property or for any claims made as a result of the wrongful acts or omissions of the Special Care Provider or any of the Special Care Provider's Personnel in connection with provision of the Special OOHC Services.
- (c) Without limiting clauses 6(a) and 6(b), it is an essential term of this Service Agreement that:

- (i) the Special Care Provider must obtain and maintain adequate insurance that is appropriate to cover the risks of loss or damage that may arise in connection with the provision of the Special OOHC Services to be undertaken under this Service Agreement (as described in clause 6(b)), including but not limited to the types and level of insurance set out in item 8 of Schedule 1. In respect of professional indemnity insurance, such policy must be maintained for the Term and a period of at least six years after the termination of the Service Agreement.
  - (ii) all persons who transport or convey CYP's in motor vehicles must hold valid driver's licenses and must not have been convicted of any driving offence other than for minor traffic infringements.
- (d) The Special Care Provider must provide DCJ with certificates of currency in respect of the required insurances (including, without limit, insurance for motor vehicles that will be used to convey or transport CYPs) within 10 Business Days of a written request by DCJ (and otherwise as a condition to payment by DCJ).
- (e) The insurance requirements of this Service Agreement do not limit the liability of the Special Care Provider under this Service Agreement.
- (f) The Special Care Provider agrees to immediately notify DCJ of any event which affects or may affect the Special Care Provider's compliance with this clause 6.

## **7 Terms and Conditions applicable to sourcing Personnel from Special Care Provider**

### **7.1 General**

The provisions of this clause 7 shall, despite anything to the contrary contained in any other agreement between DCJ and the Special Care Provider, apply to the terms and conditions under which the services of any Personnel are, following the issue of a Request for Services to the Special Care Provider, offered or made available for the purpose of undertaking any Special OOHC Services and any term that purports to override or contradict any provisions of this clause 7, shall be void.

### **7.2 Mandatory Probity Checks and Authorisation**

- (a) The Special Care Provider must refer to DCJ only appropriately skilled and qualified Personnel for DCJ's consideration to undertake tasks associated with the performance of Special OOHC Services as a Special OOHC Authorised Carer.
- (b) The Special Care Provider acknowledges and agrees that any Personnel, whether an employee or a contractor, engaged by the Special Care Provider to provide special out-of-home care to a CYP will need to be authorised by DCJ as a Special OOHC Authorised Carer.
- (c) The Special Care Provider must ensure that any Personnel proposed for engagement as a Special OOHC Authorised Carer to provide Special OOHC Services is fully informed of the Mandatory Probity Check requirements and that the relevant details for such checks are duly provided to DCJ.

- (d) The Special Care Provider must, undertake, or procure that there is undertaken, on such Personnel all applicable Mandatory Probity Checks in accordance with the Special OOHC Guidelines.
- (e) The Special Care Provider acknowledges that it is an “employer” for the purposes of section 9 of the *Child Protection (Working with Children) Act 2012* (NSW). The Special Care Provider must ensure that all mandatory employment screening (referred to in the *Child Protection (Working with Children) Act 2012* (NSW) as the “working with children check clearance”) has been undertaken on all Personnel, engaged to provide any services that constitute Special OOHC Services or to work in “child-related work” (as defined in the *Child Protection (Working with Children) Act 2012* (NSW)), prior to such Personnel performing any such work.

### **8 Suitability and preparation of Personnel**

- 8.1** Without limiting the provisions of clause 7, the Special Care Provider must not refer to DCJ or make available the services of any individual to undertake Special OOHC Services, unless the Special Care Provider has:
- (a) assessed the suitability and skills of the individual through appropriate recruitment and selection processes that includes interviews and referee checks;
  - (b) satisfied itself, that the individual meets the qualification, training or experience requirements described in the Special OOHC Guidelines;
  - (c) satisfied itself, having regard to the Special OOHC Guidelines, that the individual has appropriate experience caring for vulnerable CYPs;
  - (d) satisfied itself, having regard to the Special OOHC Guidelines, that the individual has demonstrated a sound knowledge of child protection obligations and responsibilities;
  - (e) notified the individual that they will be required to keep confidential all information relating to any CYPs in respect of whom the individual may come into contact while performing any Special OOHC Services and that the individual will be required to sign a confidentiality agreement to this effect with DCJ;
  - (f) provided the individual with the Special OOHC Guidelines that describe the roles and responsibilities the individual will be required to perform and adhere to if authorised as a Special OOHC Authorised Carer by DCJ to provide Special OOHC Services (as the case may be);
  - (g) provided to the individual, DCJ’s Code of Ethical Conduct and the individual has, by signing the Code of Ethical Conduct, agreed to be bound by the Code of Ethical Conduct and all relevant policies and procedures of DCJ, from time to time. It is also a requirement that the Special Care Provider ensures that its Personnel are given a copy, and sign their acceptance, of the terms of such Code of Ethical Conduct made available by DCJ from time to time;
  - (h) has satisfied itself that the individual holds a valid driver’s license (class C); and
  - (i) provided the individual with relevant information about the needs of the CYP to whom Special OOHC Services are to be provided by the individual.

### 8.2 Further restrictions

- (a) Without limiting the above provisions of this clause 8, it is an essential term of this Service Agreement that the Special Care Provider must not cause or permit any Personnel to undertake tasks associated with the performance of the Special OOH Services if any of the following apply:
- (ii) the individual is a current DCJ employee and they have not declared their secondary employment with the Special Care Provider to DCJ;
  - (iii) the Mandatory Probity Checks on the Personnel have not been completed, or where they have been completed, either:
    - (A) the outcomes of any of the checks are not available; or
    - (B) the outcomes of the checks are available, and the decision of DCJ (based on the outcomes of those checks) is to not authorise the Personnel as a Special OOH Authorised Carer;
  - (iv) the Personnel does not possess a current first aid certificate;
  - (v) the Personnel does not hold a current WWCC clearance; or
  - (vi) DCJ believes that the Personnel is not capable or suitable or not a fit and proper person to undertake tasks associated with the performance of the Special OOH Services.
- (b) For the duration of the Term, each of the Special Care Provider's officers and directors (or, if the Special Care Provider is a natural person, the Special Care Provider itself), including any person authorised to sign this Service Agreement on behalf of the Special Care Provider and their Personnel who are Special OOH Authorised Carers, must:
- (i) hold all Authorisations required to occupy their position or role with and/or perform their functions for, the Special Care Provider; and
  - (ii) be and remain, in DCJ's opinion (or in the opinion of the OCG), a capable, suitable and fit and proper person to perform tasks associated with the Special OOH Services and to represent the Special Care Provider in connection with this Service Agreement.

### 8.3 Provision of information

- (a) Subject to applicable Law, the Special Care Provider must:
- (i) obtain from all Personnel who undertake tasks associated with the performance of the Special OOH Services, a written consent to disclose personal information to DCJ for the purposes of enforcing compliance with this Service Agreement;
  - (ii) not cause or permit any Personnel to undertake tasks associated with the performance of the Special OOH Services if it has not obtained the consent described in clause 8.3(a)(i) or if that consent has been revoked; and

- (iii) provide to DCJ any information it discovers concerning its Personnel that may impact on the eligibility of the Personnel to maintain their authorisation as a Special OOHC Authorised Carer.
- (b) On request by DCJ, the Special Care Provider must immediately provide such information referred to in clause 8.3(a) as DCJ may request in connection with any Personnel who is or may be undertaking tasks associated with the performance of the Special OOHC Services.
- (c) The Special Care Provider must inform DCJ within one (1) Business Day if any Personnel, authorised by DCJ as Special OOHC Authorised Carers, either cease their employment or discontinue providing care under any contractual arrangement with the Special Care Provider.

### **8.4 Removal of Personnel**

DCJ may at its sole discretion direct the Special Care Provider to cease using any Personnel in respect of any activity relating to the Special OOHC Services. The Special Care Provider must remove that person within the time directed by DCJ. If the Special Care Provider itself determines to cease using any Personnel in respect of any activity relating to the Special OOHC Services, it must immediately notify DCJ of this, and the date when the Personnel will cease to be so used, and if the reasons relate to the non-compliance with any obligations under this Service Agreement, the Special Care Provider must inform DCJ of the particular reasons for the Special Care Provider determining to cease to use the services of the Personnel.

### **8.5 Special Care Provider's Personnel**

- (a) The Special Care Provider must procure that Personnel do not do, or omit to do anything, that if done or omitted to be done by the Special Care Provider, would be a breach of the Special Care Provider's obligations under this Service Agreement.
- (b) Subject to clauses 8.2(a), 8.2(b) and 8.4 the Special Care Provider must ensure that Personnel engaged in the performance of the Special OOHC Services will not be hindered or prevented in any way in the performance of their duties, including being removed from the performance of the Special OOHC Services or being requested to perform Special OOHC Services which in any way interfere with their due performance of the Special OOHC Services.
- (c) Where Personnel engaged in the performance of the Special OOHC Services are unable to undertake work due to illness or other incapacity or resignation, the Special Care Provider must use its best efforts to find another Personnel who is a Special OOHC Authorised Carer to undertake the work of the Personnel who is ill, incapacitated or has resigned. The Special Care Provider must notify DCJ immediately if they cannot find a replacement.

### **8.6 Exchange of Information**

Without limiting the provisions of clauses 3.8 and 8.3, and for the overriding objective to ensure the safety, welfare or well-being of CYPs to whom a Request for Services applies, the Special Care Provider undertakes to diligently, proactively and collaboratively seek from, and provide to, persons to which Chapter 16A of the Care Act applies, all information that will be relevant to the care and protection of CYPs.

### **8.7 Further obligations**

Without limiting anything else in this clause 8, the Special OOHC Guidelines may set out or refer to further mandatory requirements in respect of the engagement of Personnel to undertake tasks associated with the performance of the Special OOHC Services, including non-exhaustive criteria for assessing whether an individual is capable and suitable and a fit and proper person and the Special Care Provider agrees to comply with those mandatory requirements.

## **9 Performance monitoring**

### **9.1 Failure to perform**

Without limitation of clause 13, if the Special Care Provider fails to adequately provide the Special OOHC Services or to otherwise perform its material obligations under this Service Agreement, DCJ will not be required to pay for those Special OOHC Services unless and until the Special OOHC Services or the relevant obligations are adequately performed.

### **9.2 Assessment**

The parties must cooperate to monitor, track and report on the Special Care Provider's delivery of the Special OOHC Services and performance of this Service Agreement.

### **9.3 Reports and information**

- (a) The Special Care Provider must, within the timeframes and in the formats stated, and otherwise on reasonable request, keep and provide to DCJ all required reports, data and information set out in this Service Agreement (including those required pursuant to the Special OOHC Guidelines) or otherwise requested by the DCJ Representative, including quality assurance documentation.
- (b) For the avoidance of doubt, the Special Care Provider acknowledges that DCJ may share information in relation to the Special Care Provider's provision of the Special OOHC Services and its general performance under this Service Agreement with any party having an interest in the care and protection of any CYP who is to be placed with the Special Care Provider, including with the OCG.

### **9.4 Meetings**

The Special Care Provider must, on request by DCJ, ensure that its Special Care Provider Representative is available to attend any meetings with the DCJ Representative when reasonably requested including for discussions regarding contract management and performance issues raised by either party.

### **9.5 Records**

- (a) The Special Care Provider must:
  - (i) keep all records (including all records relating to CYP's) required by this clause 9.5(a) during the Term and for a period of seven (7) years after termination or expiry of this Service Agreement;
  - (ii) keep true and particular accounts and records of:

- (A) all Special OOHC Services supplied under this Service Agreement, including records of any expenses incurred, subcontracting arrangements and associated charges, and Personnel who performed Special OOHC Services on behalf of the Special Care Provider;
  - (B) its financial affairs, to the extent required by Law or otherwise reasonably directed by DCJ; and
  - (C) without limiting clause 14.7, all records required by Law or by any authority in connection with the performance of the Services, including compliance documentation and WWCC numbers;
- (iii) permit DCJ, subject to 10 Business Days' prior notice, to inspect the records described in this clause 9.5(a); and
  - (iv) ensure that its Personnel also comply with this clause.
- (b) At the expiry of the seven year period referred to in clause 9.5(a)(i), the Special Care Provider must seek and obtain written confirmation of the DCJ Representative that such records are not required for the purposes of the *State Records Act 1998* (NSW) or State Records disposal authorities. The Special Care Provider acknowledges that DCJ may require one copy of the records for the purposes of indefinite storage.

### 9.6 Audit and self-assessment

- (a) At any time during the Term, and for the seven (7) year period specified in clause 9.5 following expiration or termination of this Service Agreement ("Extended Term"):
  - (i) DCJ or its duly authorised representatives, will have the right, at DCJ's cost and after giving 10 Business Days' prior notice, during business hours, to inspect and/or audit the accounts and records of the Special Care Provider (including the accounts and records of any Personnel) referred to in clause 9.5, including taking copies of such accounts and records;
  - (ii) the Special Care Provider must, at its own expense, provide all reasonable access and assistance to DCJ or its duly authorised representatives (including procuring access to the accounts and records of any Personnel) in connection with clause 9.6(a)(i);
  - (iii) the Special Care Provider must complete any self-assessment survey or other self-assessment tool requested by DCJ within such timeframe as DCJ may designate; and
  - (iv) the Special Care Provider shall participate promptly and cooperatively in any review or audit conducted or instigated by DCJ or by a NSW governmental department or agency.
- (b) The Special Care Provider acknowledges that DCJ may:
  - (i) instigate an audit of the Special Care Provider's compliance with its obligations under this Service Agreement at any time during the Extended Term; and
  - (ii) as part of any audit, and/or in conjunction with any self-assessment survey, have regard to any feedback received by DCJ from DCJ personnel who have had

dealings or interaction with the Special Care Provider during the twelve (12) months immediately preceding the period covered by the audit.

### **10 Intellectual Property Rights**

#### **10.1 Ownership of intellectual property**

Nothing in this Service Agreement affects:

- (a) ownership of the Special OOHG Contract Material and any Pre-Existing Intellectual Property used by the Special Care Provider in connection with the provision of Services, which will be owned by the Special Care Provider; or
- (b) ownership of the DCJ Intellectual Property, which will be owned by DCJ.

#### **10.2 Licence of DCJ Intellectual Property**

DCJ grants to the Special Care Provider free of additional charge, a non-exclusive, non-transferable, revocable licence for the Term to use, reproduce, modify and adapt DCJ Intellectual Property but only to the extent necessary for the purposes of carrying out the Special Care Provider's obligations under this Service Agreement. For the avoidance of doubt, this clause does not give the Special Care Provider the right to use, copy or modify any DCJ's insignia, trade mark, letterhead, brand or logo without DCJ's prior written consent.

#### **10.3 Licence by Special Care Provider**

The Special Care Provider irrevocably and unconditionally grants to DCJ, free of additional charge, a perpetual non-exclusive, transferable, revocable licence to use, reproduce, adapt, modify, publish, communicate or exploit (including the right to sub-licence) any Special OOHG Contract Materials, including any Pre-Existing Intellectual Property but only to the extent that such Pre-Existing Intellectual Property is used for or in connection with the provision of the Special OOHG Services (for example by way of incorporation into any Special OOHG Contract Material).

### **11 Warranties and indemnity**

#### **11.1 Intellectual property**

The Special Care Provider warrants to DCJ that it is entitled to use and deal with any Intellectual Property Rights (other than any DCJ Intellectual Property) which may be used by it in connection with the provision of the Special OOHG Services under this Service Agreement, including any licence of Intellectual Property Rights to DCJ under clause 10.3.

#### **11.2 General warranties**

The Special Care Provider warrants to DCJ that:

- (a) the Special Care Provider has all necessary powers and Authorisations to enter into this Service Agreement and perform its obligations under this Service Agreement, as

- supplemented by each Request for Services that has been agreed in accordance with clause 3.11(b);
- (b) without limiting clause 11.2(a), the Special Care Provider possesses the Authorisations, as stipulated by all DCJ policies, which are required for the provision of Special OOHC Services;
  - (c) it is complying with the conditions of its Authorisations;
  - (d) it will maintain such Authorisations for the Term;
  - (e) it will provide the Special OOHC Services with all due care and skill and in accordance with this Service Agreement and all applicable Laws and NSW Government policies and guidelines;
  - (f) it and its Personnel are, or will at the time they are engaged to provide Special OOHC Services, be appropriately qualified and have the requisite knowledge, accreditations (including all Authorisations required under Working With Children Legislation), skills and expertise to provide the Special OOHC Services in accordance with this Service Agreement and each Request for Services;
  - (g) all Personnel of the Special Care Provider involved in tasks associated with the performance of the Special OOHC Services:
    - (i) are capable and suitable and fit and proper persons to perform those tasks; and
    - (ii) do not have any disclosable court outcomes in respect of National Police Checks that would, under relevant applicable Law or DCJ policies, prevent or preclude the Personnel from being permitted to perform Special OOHC Services; and
  - (h) all written information and representations made by the Special Care Provider as part of or in connection with the Direct Dealings undertaken between DCJ and the Special Care Provider were accurate and will remain accurate during the Term.

### **11.3 General indemnity**

To the maximum extent permitted under applicable Law, and without limiting anything else in this Service Agreement, the Special Care Provider indemnifies DCJ against:

- (a) all loss, expense, liability or damage incurred by DCJ; and
- (b) all claims, demands, actions, suits and proceedings (including the cost of defending or settling the same) that may be brought against DCJ, in respect of:
  - (i) loss of or damage to the property of DCJ or a third party;
  - (ii) personal injury (including death) to any person,arising out of or in connection with:

- (c) a negligent or wilful acts or omissions on the part of the Special Care Provider or its Personnel (including, for the avoidance of doubt, any subcontractor approved by DCJ pursuant to clause 3.7) in the performance of the Special OOHG Services; or
- (d) a breach of this Service Agreement (including any warranties and indemnities) by the Special Care Provider or its Personnel.

### **11.4 Exceptions to indemnity**

The indemnity in clause 11.3 will not apply to the extent that such liability is incurred as a result of the negligent act, wrongful omission or default of DCJ.

### **11.5 Nature of indemnities**

- (a) Each indemnity under this Service Agreement is a continuing obligation, separate and independent from the other obligations of the party giving the indemnity and survives termination or expiry of this Service Agreement. It is not necessary for a party to incur any expense or to make any payment before enforcing a right of indemnity.
- (b) The indemnities conferred upon the parties by this Service Agreement are in addition to and do not derogate from, exclude or otherwise limit any other rights that a party may have under this Service Agreement, at law, in equity or under statute (including any right of a party to sue for damages for breach of contract at common law).

## **12 Conflicts of interest, Change in Control and Incidents**

### **12.1 Change in Control**

- (a) The Special Care Provider must promptly notify DCJ in writing of any proposed or impending change in Control of the Special Care Provider (or of the ultimate holding agency or company of the Special Care Provider, if applicable). The notice must include details demonstrating appropriate measures to be implemented by the Special Care Provider to continue the provision of Special OOHG Services.
- (b) Upon receipt of a notice pursuant to 12.1(a), DCJ may, in its sole discretion, approve the proposed or impending change of Control of the Special Care Provider.
- (c) Where DCJ, in its sole discretion, is not satisfied that the Special Care Provider has or will have appropriate measures in place to continue the provision of Special OOHG Services, DCJ may terminate this Service Agreement and remove the Special Care Provider from the Panel.

### **12.2 Conflicts of interest**

- (a) The Special Care Provider warrants that, on an ongoing basis on and from the Commencement Date, and except as promptly disclosed to DCJ in writing, it does not have, and will ensure that its Personnel do not have, any Conflict of Interest.
- (b) During the Term the Special Care Provider must promptly disclose to the DCJ Representative referred to in Item 3 of Schedule 1 any event, matter or change in circumstances that might reasonably be considered to constitute a Conflict of Interest.

### 12.3 Notifiable Events

The Special Care Provider warrants that to the best of its knowledge, after making diligent inquiries, it has disclosed to DCJ all Notifiable Events which have occurred in the five years prior to the Commencement Date.

### 12.4 Notification

Without limiting the provisions of clause 12.3, during the Term, the Special Care Provider must immediately notify DCJ (in writing, with sufficient details) of the occurrence of any Notifiable Event, or any event which might reasonably be considered to be a Notifiable Event and the notification must comply with any applicable legal requirement, including the requirements set out in the Care Act, where the Notifiable Event constitutes a ROSH.

## 13 Termination, suspension and expiry

### 13.1 Termination for convenience

Despite anything to the contrary in this Service Agreement, DCJ may, in its sole discretion, terminate this Service Agreement and/or any Request for Services (in whole or in part) for convenience, by giving written notice to the Special Care Provider, with immediate effect or at such later date as may be set out in that written notice.

### 13.2 Suspension

- (a) If:
- (i) DCJ is entitled to terminate this Service Agreement (whether under clause 13.1 or otherwise); or
  - (ii) a Suspension Event occurs,

DCJ may, as an alternative to termination, elect to suspend this Service Agreement (in whole or in part) to the extent and for the duration specified in a written notice to the Special Care Provider. In the case of a partial suspension, the Special Care Provider must continue to perform all unaffected obligations.

- (b) If this Service Agreement is suspended pursuant to clause 13.2(a)(ii), the Special Care Provider will cooperate in good faith with any investigation undertaken or authorised by DCJ into the circumstances giving rise to the Suspension Event.

### 13.3 Consequences of suspension, termination or expiry

- (a) Suspension, termination or expiry of this Service Agreement is without prejudice to the accrued rights and remedies of either party. Except as expressly provided for in this Service Agreement (or in respect of prior Special OOH Services validly and properly provided), DCJ will not be liable to pay any compensation or other money to the Special Care Provider in connection with the suspension or termination of this Service Agreement. The Special Care Provider agrees that it will not exercise or purport to exercise a lien over any files, Materials or Confidential Information of DCJ.
- (b) Upon receipt of a written termination notice given under clauses 13.1 or 13.2 in respect of this Service Agreement, the Special Care Provider shall (unless the written termination

notice expressly provides, or DCJ directs, otherwise) continue to perform the Special OOHC Services subject to any Request for Services(s) outstanding as at the date of the termination notice.

- (c) If DCJ serves a written termination notice under clause 13.1 in respect of this Service Agreement, DCJ shall pay the Special Care Provider:
  - (i) for any validly and properly provided Special OOHC Services under this Service Agreement prior to the relevant date of termination; and
  - (ii) if the Special Care Provider continues to validly and properly perform Special OOHC Services pursuant to clause 13.3(b) for such Services.
- (d) On expiry or termination of this Service Agreement, DCJ may direct the Special Care Provider to:
  - (i) promptly return to DCJ or its nominee all Confidential Information and any Special OOHC Contract Material it holds or controls for the provision of the Special OOHC Services and the performance of its obligations under this Service Agreement;
  - (ii) promptly return to DCJ or its nominee the originals of any documents, or records created as part of the Special OOHC Services;
  - (iii) subject to clause 3.8(d) and to the Special Care Provider's obligations under its governance, reporting, taxation, and legal requirements, immediately destroy all Confidential Information and any Special OOHC Contract Material and records that the Special Care Provider holds or controls for the provision of the Special OOHC Services the performance of its obligations under this Service Agreement, as directed by DCJ, and provide such proof of destruction as DCJ may reasonably require; and
  - (iv) in a timely manner, do all things that are reasonably required to assist DCJ to transfer the provision of service to another person.

### **13.4 Transitional assistance**

Subject to clause 3.8, the Special Care Provider acknowledges and agrees that on termination or expiry of this Service Agreement, the Special Care Provider must:

- (a) return (at DCJ's election) all Confidential Information of DCJ;
- (b) provide DCJ with copies of all Special OOHC Contract Materials requested, in such manner and format as DCJ may specify; and
- (c) provide all such transitional assistance as may be reasonably necessary or requested by DCJ to facilitate the smooth transition from the Special Care Provider to DCJ or to a third party nominated by DCJ.

### **14 Confidentiality, security and privacy**

#### **14.1 Obligations of confidentiality**

With effect from the Commencement Date, and except as permitted in clause 14.2, the Special Care Provider must not, and must procure that its Personnel do not, disclose or use any Confidential Information, except for the purposes of providing the Special OOH Services and performing this Service Agreement or as otherwise directed in writing by DCJ. The Special Care Provider acknowledges that DCJ will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach of this clause 14 and without the need to prove any special damage.

#### **14.2 Permitted use and disclosure**

- (a) The Special Care Provider may disclose Confidential Information:
  - (i) to its legal advisers, auditors and other professional advisers who require such information for the purposes of this Service Agreement;
  - (ii) as required or authorised by Law; or
  - (iii) to the Special Care Provider's Personnel who require such information but only to the extent necessary to enable them to perform their obligations under this Service Agreement.
- (b) Before disclosing any Confidential Information to a permitted recipient, the Special Care Provider must ensure that the permitted recipient is aware of the confidentiality requirements of this Service Agreement and is advised that such permitted recipient is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Service Agreement. DCJ may, at its sole discretion and at any time, require the Special Care Provider to arrange for a permitted recipient to execute a Service Agreement in such form as may be required by DCJ, relating to the non-disclosure and use of the Confidential Information and the Special Care Provider will promptly arrange for such Service Agreement to be executed and provided to DCJ.
- (c) The Special Care Provider must ensure that any current or former Personnel who has had access to Confidential Information in accordance with this Service Agreement do not do or permit to be done anything which, if done or permitted to be done by the Special Care Provider, would be a breach of the Special Care Provider's obligations under this Service Agreement.

#### **14.3 Security**

The Special Care Provider must take all reasonable precautions to prevent any unauthorised use or disclosure of Confidential Information or Personal and Health Information, including:

- (a) ensuring that all information and materials of DCJ, including all Confidential Information and Personal and Health Information are protected from unauthorised access or use and from misuse, damage and destruction by any person;
- (b) taking protective measures (including administrative, physical and technical safeguards) that are no less rigorous than accepted industry standards;

- (c) not storing any Confidential Information or Personal and Health Information outside of Australia without DCJ's prior written consent;
- (d) complying with all relevant Laws and NSW Government policies, and best practice; and
- (e) informing and educating its Personnel of the importance of protecting Confidential Information and Personal and Health Information.

### 14.4 Notification

The Special Care Provider must immediately notify the DCJ Representative in writing of any:

- (a) actual, threatened or suspected unauthorised access to or use of any Confidential Information or Personal and Health Information; or
- (b) third party request to access any Confidential Information or Personal and Health Information.

### 14.5 Public announcements and publications

- (a) The Special Care Provider must not make any public announcement or other statement which refers to, or is connected with, this Service Agreement or DCJ, including in relation to the Special Care Provider's provision of Special OOHC Services, without first obtaining DCJ's written approval of the public announcement or statement.
- (b) Clause 14.5(a) does not apply to:
  - (i) announcements required by Law or by the rules of any securities exchange where the Special Care Provider is listed; or
  - (ii) information that is public knowledge otherwise than through a breach of any obligation of confidentiality (including one imposed by this clause 14).
- (c) The Special Care Provider must not submit for publication, distribute or publish any material related to this Service Agreement, including in relation to the Special OOHC Services, without the prior written permission of DCJ.
- (d) The Special Care Provider acknowledges and agrees (and shall procure that its Personnel acknowledge and agree) that DCJ may be required to publicly disclose the participation of the Special Care Provider and its Personnel in the performance of this Service Agreement.

### 14.6 GIPA

#### (a) Acknowledgement

The Special Care Provider acknowledges that DCJ may be required to publish certain information concerning this Service Agreement in accordance with the *Government Information (Public Access) Act 2009 (NSW) (GIPA Act)* and hereby irrevocably consents to such disclosure and will co-operate fully and promptly with DCJ on any requests that DCJ may make so that DCJ may comply with any requests or requirements under the GIPA Act.

#### (b) Costs of providing information

The Special Care Provider must provide copies of any information requested by DCJ in accordance with clause 14.6 at its own cost.

### 14.7 Privacy and personal information

Subject to Chapter 16A of the Care Act, where the Special Care Provider has access to personal information or health information (as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW)) (**Personal and Health Information**) in order to fulfil its obligations under this Service Agreement, the Special Care Provider must:

- (a) act in accordance with the *Privacy Act 1988* (Cth);
- (b) act in accordance with the *Privacy and Personal Information Protection Act 1998* (NSW), and the *Health Records and Information Privacy Act 2002* (NSW) in each case as if the Special Care Provider were bound by such Acts; and
- (c) not do or omit to do anything which would cause DCJ to be in breach of the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW) or any other Laws.

## 15 Disputes

### 15.1 Notice of Disputes

If a party believes a dispute has arisen out of or in relation to the Service Agreement, a Request for Services or the performance of the Special OOH Services (**Dispute**), that party may provide the other party with written notice of the general nature of the Dispute, via the DCJ Representative, referred to in Schedule 1 and the Special Care Provider Representative respectively.

### 15.2 Negotiation

The parties are expected to cooperate in an attempt to resolve Disputes in a non- adversarial manner. Where either party has given notice of a Dispute, representatives of the parties will meet promptly and will use reasonable endeavours to attempt to resolve the Dispute. If the Dispute has not been resolved within 15 days of the date of receipt of a notice served under clause 15.1, either party may refer the matter for mediation by the Office of the NSW Small Business Commissioner.

### 15.3 Legal or arbitral proceedings

A party may not institute any legal or arbitral proceedings in respect of a Dispute, except for the purpose of seeking urgent interlocutory relief, until the matter has been referred for mediation in accordance with clause 15.2 and the party has, acting in good faith, made reasonable efforts to mediate the Dispute. If in the opinion of DCJ the physical or psychological welfare of a CYP is in jeopardy, or DCJ considers the conduct of the Special Care Provider to be egregious, DCJ may resort to legal proceedings without following the procedures set out herein.

### 15.4 Continued performance

Despite the existence of a Dispute (but without prejudice to any other rights either party may have under this Service Agreement or at Law), both parties must continue to perform the Special OOH Services under this Service Agreement unless otherwise validly suspended or terminated.

### **16 Limitation of liability**

#### **16.1 DCJ's liability cap**

Unless stated otherwise in item 9 of Schedule 1, and to the maximum extent permitted by applicable Law, only in circumstances where DCJ is held to be liable for any loss or damages, the total aggregate liability of DCJ to the Special Care Provider for all loss or damage sustained by the Special Care Provider from events arising out of or related to this Service Agreement or any Request for Services (whether under statute, in contract or in tort, including for negligence or otherwise) is limited to the total amount of Fees paid by DCJ to the Special Care Provider under clause 4 in respect of the Request for Services to which the liability relates.

### **17 Notices and communication**

#### **17.1 DCJ Representative and Special Care Provider Representative**

- (a) The Special Care Provider Representative is appointed by the Special Care Provider as specified in item 3 of Schedule 1.
- (b) The Special Care Provider Representative and the DCJ Representative will, in the first instance, deal with complaints and discussions between DCJ and the Special Care Provider. If the complaint or discussions evolves into a dispute between the parties, then clause 15 above will apply to the dispute.
- (c) The DCJ Representative is appointed by DCJ as specified in item 3 of Schedule 1 and may from time to time, at DCJ's sole discretion, liaise with the Special Care Provider Representative.
- (d) Either party may amend their respective appointments of Special Care Provider Representative and DCJ Representative by written notice to the other party.

#### **17.2 Notices**

Any notice given under this Service Agreement 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 address of the party in accordance with item 10 of Schedule 1 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 Service Agreement is via email.

### **18 Work health and safety obligations**

#### **18.1 Acknowledgement of control by Special Care Provider**

- (a) The Special Care Provider acknowledges that as a person conducting a business or undertaking it has, and must maintain, the sole management and control of:
  - (i) the provision of the Special OOH Services under the Service Agreement;
  - (ii) the manner in which work under the Service 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 Service Agreement that give rise or may give rise to any risk to health or safety,

except insofar as the law requires otherwise, or where DCJ also has management or control in respect of any of these matters pursuant to clause 3.6(a)(ii) of this Service Agreement.

### **18.2 Health and safety compliance**

(a) The Special Care Provider:

- (i) must comply with all relevant Safety Legislation and Safety Requirements;
- (ii) warrants that it is familiar with and has the capability, resources and competency to comply with all relevant Safety Legislation and Safety Requirements;
- (iii) must perform all relevant functions and fulfil all relevant duties under all relevant Safety Legislation of an employer or a person conducting a business or undertaking or otherwise applicable to the role of the Special Care Provider; and
- (iv) must (and must ensure that any subcontractors, where the appointment of subcontractors has been agreed to by DCJ) 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 employees, all subcontractor's employees, DCJ's employees and members of the public who may be affected by any work under the Service Agreement.

### **18.3 Obligation to comply with a Work Health and Safety Management System**

(a) The Special Care Provider must:

- (i) submit a WHS Management System and comply with, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control or influence while executing the work under the Service Agreement, comply with the requirements of the WHS Management System, Safety Legislation and Safety Requirements;
- (ii) provide details of the WHS Management System to DCJ in accordance with any reasonable request by or on behalf of DCJ;
- (iii) provide evidence of implementation of adequate risk control measures to DCJ in accordance with any reasonable request by or on behalf of DCJ;
- (iv) provide evidence which reasonably satisfies DCJ that the Special Care Provider has complied with the WHS Management System, Safety Legislation and Safety Requirements, or otherwise that the Special Care Provider is taking reasonable steps to rectify any non-compliance, in accordance with any reasonable request by or on behalf of DCJ;
- (v) provide evidence which reasonably satisfies DCJ that all persons for whom the Special Care Provider is responsible or over whom it is capable of exercising control or influence while executing work under the Service Agreement, have complied with the requirements of the WHS Management System, Safety Legislation and Safety

Requirements, or otherwise that the Special Care Provider is taking reasonable steps to rectify any non-compliance, in accordance with any reasonable request by or on behalf of DCJ; and

- (vi) provide evidence which reasonably satisfies DCJ that the Special Care Provider and its employees and subcontractors hold the authorisations, clearances, registrations, licenses, permits or certificates of competency that they are required by law to hold as a condition for operating equipment or performing the work under the Service Agreement.

### **18.4 Appointment of the Special Care Provider as principal contractor**

- (a) Insofar as Safety Legislation imposes principal contractor obligations on DCJ in relation to any work under the Service Agreement (including installation and maintenance work), DCJ:
  - (i) appoints the Special Care Provider, and the Special Care Provider accepts its appointment, as principal contractor for the work under the Service Agreement; and
  - (ii) authorises the Special Care Provider to manage and control the workplace in which Special OOH Services are provided, to the extent necessary to enable the Special Care Provider to discharge the responsibilities and duties imposed on a principal contractor under the relevant Safety Legislation.
- (b) The Special Care Provider acknowledges that it has the responsibility and authority for the management and control of the matters referred to in clause 18.1(a) and the Special Care Provider's responsibility and authority remains unaffected despite any approval, authorisation, direction, instruction, order, permission, request or requirement of DCJ or the operation of any other clause of the Service Agreement.

### **18.5 Warranties**

- (a) The Special Care Provider warrants that the Special Care Provider and its Personnel are competent to provide the Special OOH Services under the Service Agreement.
- (b) The Special Care Provider warrants further that the Special Care Provider and its Personnel are fully trained, qualified and competent in, and have the resources to comply with, all Safety Legislation and Safety Requirements.

### **18.6 Reporting obligations re Safety**

- (a) In performing work under the Service Agreement, the Special Care Provider must:
  - (i) notify DCJ of any Notifiable Safety Incident (whether or not there is an injury), accident, injury, property or environmental damage which occurs during the carrying out of, or is associated with, any part of the work under the Service Agreement. The Special Care Provider must, as soon as reasonably possible, provide a written report to DCJ containing complete details of the incident, including the result of any investigation into its cause and any recommendation or strategy for prevention of a recurrence;
  - (ii) promptly notify DCJ of any direction or notice of any authority, having jurisdiction in relation to health and safety, provided to the Special Care Provider or issued in

relation to the work under the Service Agreement. The Special Care Provider must, within 24 hours of receipt, provide a copy to DCJ;

- (iii) immediately advise DCJ in writing of any act, fact or circumstance associated with the activities of the Special Care Provider or any other person relevant to the ability of the Special Care Provider to carry out any part of the work under the Service Agreement in a manner that is safe and without risk to health and safety;
- (iv) provide DCJ with reasonable assistance (including access to relevant documents and the Special Care Provider's employees) in investigating any such incident if requested to do so by DCJ; and
- (v) maintain records and make reports concerning the health, safety and welfare of people, and damage to property, as DCJ reasonably requires.

### **18.7 Access, assistance and cooperation for audit compliance**

(a) The Special Care Provider must reasonably:

- (i) provide DCJ with access to relevant documents;
- (ii) provide DCJ with assistance; and
- (iii) co-operate with DCJ,

to enable DCJ to audit compliance by the Special Care Provider and DCJ with Safety Legislation and compliance with the terms of this Service Agreement.

### **18.8 Consultation, co-operation and co-ordination**

- (a) In performing work under the Service Agreement, the Special Care Provider must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with DCJ, any suppliers or service providers or other persons who have a work health and safety duty in relation to the same matter as the Special Care Provider, in relation to or associated with the work under the Service Agreement:
  - (i) to achieve effective co-ordination of activities to ensure optimal health and safety risk management; and
  - (ii) to enable DCJ and the Special Care Provider and other relevant parties to comply with their respective obligations under all relevant Safety Legislation.
- (b) The Special Care Provider's obligation in clause 18.8(a) includes providing information to DCJ when reasonably requested.
- (c) The Special Care Provider must provide all reasonable assistance to DCJ to enable DCJ to comply with its obligations under Safety Legislation.

### **19 General**

#### **19.1 Legal costs**

Except as expressly stated otherwise in this Service Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Service Agreement.

#### **19.2 Successors and assigns**

This Service Agreement shall be binding upon and continue for the benefit of the parties, and their respective successors and permitted assigns.

#### **19.3 Amendment**

Subject to clauses 3.10 and 3.12 and any other clauses in this Service Agreement that expressly permits variations, this Service Agreement may only be varied or replaced by a document executed by DCJ and the Special Care Provider.

#### **19.4 Waiver and exercise of rights**

A single or partial exercise of waiver by a party of a right relating to this Service Agreement does not prevent any other exercise of that right or the exercise of any other right.

#### **19.5 Rights cumulative**

Except as expressly stated otherwise in this Service Agreement, the rights of a party under this Service Agreement are cumulative and are in addition to any other rights of that party.

#### **19.6 Set off**

DCJ may set off against any sum owing to the Special Care Provider under this Service Agreement any amount then owing by the Special Care Provider to DCJ.

#### **19.7 Governing law and jurisdiction**

This Service Agreement is governed by and is to be construed in accordance with the laws applicable in NSW. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of NSW and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

#### **19.8 Counterparts**

This Service Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

#### **19.9 Further Assurance**

Each party agrees to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this Service Agreement; and

- (b) to give effect to the intentions of the parties and the transactions contemplated by this Service Agreement, including execution and delivery of documents and other instruments

### **19.10 Entire understanding**

This Service Agreement contains the entire understanding between the parties as to the subject matter of this Service Agreement.

### **19.11 Relationship of parties**

- (a) This Service Agreement is not intended to create a partnership, joint venture, agency or employment relationship between the parties.
- (b) In providing the Services, the Special Care Provider acts as DCJ's independent contractor and does not have any authority to act as DCJ's agent or on its behalf, unless DCJ expressly authorises the Special Care Provider to do so in writing.
- (c) In particular, without limitation, the Special Care Provider has no authority to enter into contracts, make representations or incur liabilities on behalf of DCJ.
- (d) The Special Care Provider must not purport to make any representation on behalf of the State of New South Wales or DCJ except with the express written instructions of DCJ.
- (e) The Special Care Provider acknowledges that its engagement to carry out the Special OOHC Services does not entitle it to any employee benefits or entitlements other than as expressly set out in this Service Agreement.

### **19.12 Survival**

- (a) Without limitation to any other provisions of this Service Agreement, any indemnity, warranty or representation given or made under this Service Agreement survives the termination or expiry of this Service Agreement.

**Schedule 1 – Service Agreement details**

**1 Special Care Provider Details (clause 3.2)**

Special Care Provider: [Variable A]  
ACN/ABN [Variable B]  
Address: [Variable C]

The Special Care Provider is appointed to provide Special OOHC Services.

**2 Term (clause 2)**

2.1 Commencement Date: Date of signature

2.2 Expiry Date: The period ending on 31 December 2025.

2.3 Extension Period Expiry Date: 12 months following the Expiry Date.

**3 DCJ Representative and Special Care Provider Representative (clause 17.1)**

**DCJ Representative**

**Name:** Director, Central Access Unit, High Cost Emergency Arrangement Uplift Team

**Address:** 6 Parramatta Square,  
10 Darcy Street,  
Parramatta NSW 2150

**Email:** [DirectorCentralAccessUnitSIU@facss.nsw.gov.au](mailto:DirectorCentralAccessUnitSIU@facss.nsw.gov.au)

**Special Care Provider Representative**

**Name:** [Variable D] \_\_\_\_\_

**Title:** [Variable E] \_\_\_\_\_

**Address:** [Variable F] \_\_\_\_\_

**Telephone** [Variable G] \_\_\_\_\_

**Email:** [Variable H] \_\_\_\_\_

**4 Child Protection Helpline (13 21 11)**

**5 Child Protection Allegations Contact Details (Clause 3.8)**

**DCJ's Contact Details**

**Name:** DCJ Child Protection Helpline

**Telephone:** 13 21 11

**Email:**

**Special Care Provider’s Contact Details**

**Name:**

**Title:**

**Address:**

**Telephone:**

**Email:**

**6 Invoicing (clause 4.3)**

All invoices must be sent to the person(s) (if any) and address specified in the relevant Request for Services, or as otherwise directed by DCJ. This may change if an electronic billing system is introduced by DCJ during the Term or if DCJ issues revised procedures for invoicing

**7 Payment (clause 4.4)**

Payment for Special OOHC Services is to be made in accordance with the method specified in relevant Request for Services or as otherwise advised by DCJ.

**8 Insurance (clause 6)**

<b>Type of cover</b>	<b>Minimum indemnity limits (AUD)</b>
Professional indemnity insurance	Approved professional indemnity insurance of no less than \$2 million (AUD) for each and every claim.
Workers compensation insurance	As required under relevant Law including workers’ compensation legislation.
Public liability insurance	\$10 million per claim or any occurrence giving rise to a claim in any 12 month policy period.
Any other insurance that is required by applicable Law, including, without limitation, compulsory third party insurance	As required by applicable Law

**9 Limitation of liability (clause 16.1)**

As set out in clause 16.1

### **10 Notice particulars (clause 17)**

Notices must be directed to the DCJ Representative, using the details set out in item 3 of Schedule 1.

#### **Special Care Provider**

Notices must be directed to the Special Care Provider's Representative, using the details set out in item 3 of Schedule 1.

## Schedule 2– Fee schedule and invoices

### 1 Introduction

- (a) The agreed fees are inclusive of accommodation for the CYP (where required), staffing (including backfill), household and child-related costs in accordance with the Special OOHC guidelines and any guidance issued by DCJ from time to time.
- (b) The Special Care Provider must not charge for any items listed in paragraph 3 below. DCJ will not pay for any activities not included in this Schedule 2 without the prior written approval of DCJ.

### 2 Additional fees if approved in exceptional circumstances

- (a) If the Special Care Provider is given written permission by DCJ to incur an expense that will increase the amount of the Total Fee, as defined in clause 4.1 of the Service Agreement, the Special Care Provider must provide to DCJ, at the time of the claim for a reimbursement:
  - (i) a detailed description of the items for which the expenses are incurred;
  - (ii) the name and, if available, the ChildStory ID of the CYP to which the expenses relate;
  - (iii) a copy of the third party provider's valid tax invoice including the provider's or supplier's or vendor's full name and ABN, the date of issue and full itemisation of the expenses, and
  - (iv) a copy of the receipt for payment.
- (b) The Special Care Provider must retain the originals of the documentation referred to under clause 2(a) of this Schedule 2 as part of its record keeping obligations and must produce the originals to DCJ on request or in the event of an audit under clause 9.6 of this Service Agreement.
- (c) DCJ will not be liable to pay expenses incurred by the Special Care Provider where:
  - (i) the expenditure was not approved by the DCJ Representative or other DCJ delegate in writing in advance of the expenditure being incurred or committed; or
  - (ii) the Special Care Provider has not provided DCJ with the information set out in paragraph 2(a) above at the time set out in that paragraph.

### 3 Non-chargeable items

Unless specifically agreed in writing in advance by the DCJ Representative or other DCJ delegate under exceptional circumstances in accordance with clause 4.2 of the Service Agreement, DCJ will not pay and is not responsible for:

- (a) preparation of an any estimate or other information in response to a Request for Services;

- (b) internal conferencing between service providers;
- (c) internal photocopying and printing of documents;
- (d) any performance meetings between DCJ and the Special Care Provider;
- (e) telephone charges, fax charges and postage;
- (f) any costs associated with the Special Care Provider complying with any reporting requirements; or
- (g) any additional matter excluded from the Request for Services and not related specifically to the delivery of Special OOHC Services, or deemed excessive to the needs of the CYP during the provision of the Special OOHC Services.

#### **4 Invoice requirements**

Invoices submitted to DCJ pursuant to this Service Agreement must include:

- (a) the Special Care Provider's name and ABN;
- (b) the Special Care Provider's address and Banking details
- (c) the date of issue of the tax invoice;
- (d) DCJ's Request for Services or other reference number;
- (e) CYP name and ChildStory ID (if available);
- (f) Staffing costs to include total hourly rate, number of hours per day (by weekday, night, weekend day, public holiday, and awake shift if applicable).
- (g) Number of days and clear time period of service delivery
- (h) detailed descriptions of any additional fees claimed under clause 5.2 and receipts in accordance with item 2 of this Schedule 2 to substantiate them;
- (i) the total amount payable (including GST);
- (j) the GST amount shown separately; and
- (k) such other information as may reasonably be required by DCJ.

**Schedule 3 – Special OOHC Guidelines**



**EXECUTED** by the parties as a Service Agreement and delivered on the date shown on the front page.

SIGNED SEALED AND DELIVERED  
for and on behalf of the Crown in right  
of the State of New South Wales,  
acting through the Department of  
Communities and Justice ABN 36  
433 875 185

by  
Deputy Secretary, Child Protection  
and Permanency, District and Youth  
Justice Services

\_\_\_\_\_  
Signature of Deputy Secretary

\_\_\_\_\_  
Name of Deputy Secretary (print)

in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Date

Signed sealed and delivered for and on behalf of the Special Care Provider by:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of authorised representative in full

\_\_\_\_\_  
Name of authorised representative in full

Date: \_\_\_\_\_

Date: \_\_\_\_\_

as authorised representatives who warrant that they are duly authorised to execute this document on behalf of:

**\*[insert Special Care Provider's full legal entity name]**

**ACN/ ABN \*[insert]**