

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Yorganop Association Incorporated**

**THIS DEED OF INDEMNITY** is made on

2022

**BY** **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

**IN FAVOUR OF** Yorganop Association Incorporated (**Service Provider**).

## **RECITALS**

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## **OPERATIVE PROVISIONS**

### **1. Indemnity**

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### **2. Exclusions from Indemnity**

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,
 without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a

personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Yorganop Placement Service	1/10/2013	CPFS201230872
Specialised Fostering Program	8/11/2021	DCP00312a

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

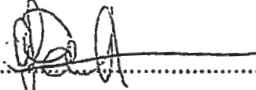
- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

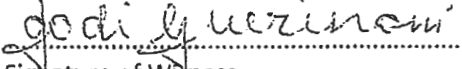
## 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
  - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 1<sup>st</sup> day of JULY 2022

SIGNED AND WITNESSED for and on  
behalf of Yorganop Association Incorporated  
this 1<sup>st</sup> day of July 2022  
in the presence of:

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)   
.....  
Signature  
Dawn Wallam  
Chief Executive Officer

  
.....  
Signature of Witness

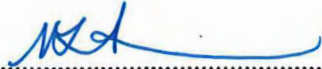
JODI GUERINONI  
.....  
Print Name of Witness

SIGNED AND WITNESSED for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)



Signature



Signature of Witness

NADEN LYN ROBERTS

Print Name of Witness



**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Agencies for South West Accommodation Inc trading as Accordwest**



**THIS DEED OF INDEMNITY** is made on

2022

**BY** **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

**IN FAVOUR OF** Agencies for South West Accommodation Inc trading as Accordwest (**Service Provider**).

## **RECITALS**

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## **OPERATIVE PROVISIONS**

### **1. Indemnity**

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### **2. Exclusions from Indemnity**

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:

- (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or
- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.

- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.
- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

## 7. Notices

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

## 8. Costs

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Family Group Homes: Out Of Home Care Services	1/10/2015	CPFS201413593
General Foster Care - Metropolitan, Peel and South West Areas	1/4/2015	CPFS201417783
ASWA Youth	1/10/2010	PSP1295

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;

- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

## 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
  - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 07 day of July 2022

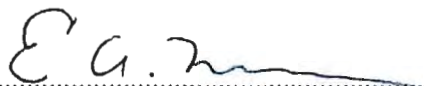
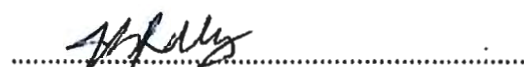
**SIGNED AND WITNESSED** for and on  
 behalf of Agencies for South West  
 Accommodation Inc trading as Accordwest  
 this 07 day of July 2022  
 in the presence of:

)

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Signature

Signature of Witness

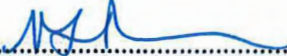
Jessica Kelly.....

Print Name of Witness



**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
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)  
  
.....  
Signature

  
.....  
Signature of Witness

NADEEN LYN ROBERTS  
.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Lifestyle Solutions (Aust) Ltd**

THIS DEED OF INDEMNITY is made on

2022

**BY**                                **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

**IN FAVOUR OF**        Lifestyle Solutions (Aust) Ltd (**Service Provider**).

## **RECITALS**

- A.     The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B.     The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C.     The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## **OPERATIVE PROVISIONS**

### **1. Indemnity**

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### **2. Exclusions from Indemnity**

The indemnity in clause 1 of this Deed does not extend to:

- (a)    the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b)    any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c)    any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d)    any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i)     the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a

personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Family Group Homes: Out Of Home Care Services	1/10/2013	CPFS201413593
General Foster Care Services - Wheatbelt	1/10/2015	CPFS201417761
Specialised Fostering Program	1/2/2013	DCP00312
Disability Placement and Support Program	1/1/2011	DCP0102

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and

- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:


- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

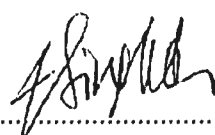
## 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 4 day of July 2022

**SIGNED AND WITNESSED** for and on  
behalf of Lifestyle Solutions (Aust) Ltd  
this 4 day of July 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

Joanne Singleton  
.....  
Print Name of Witness





**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

NADEEN LYN ROBERTS  
.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Mercy Community Services Limited**

THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the  
State of Western Australia for and on behalf of the State of Western  
Australia (**State**)

IN FAVOUR OF Mercy Community Services Limited (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### 3. Process for claiming under Indemnity

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a

personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Family Group Homes: Out Of Home Care Services	1/10/2015	CPFS201413593
Mercy Placement Services	1/10/2013	CPFS201230872
Mercy Community Services Youth Services	1/10/2010	PSP1340

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:



- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

#### 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
  - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 6 day of July 2022

SIGNED AND WITNESSED for and on  
behalf of Mercy Community Services Limited  
this 6 day of July 2022  
in the presence of:


)  
)  
)  
.....  
Signature

.....  
Signature of Witness

Carrie-Lee Gacomini  
.....  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

NAOGEN LYN ROBERTS  
.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Parkerville Children and Youth Care Incorporated**

THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

IN FAVOUR OF Parkerville Children and Youth Care Incorporated (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a

personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Belmont Youth Program	1/10/2013	CPFS201230872
Family Group Homes: Out Of Home Care Services	1/10/2015	CPFS201413593
General Foster Care Services - Murchison	1/4/2015	CPFS201417760
Therapeutic Care Program - Children	1/10/2013	CPFS201230872
Armadale Youth Accommodation Service	1/10/2010	PSP1367
Moving Out Moving On (Including Penny Jones House)	1/10/2010	PSP1335

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer



regulated by a body equivalent to the Australian Prudential Regulatory Authority;

- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

## 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
  - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 18th day of July 2022

**SIGNED AND WITNESSED** for and on  
behalf of Parkerville Children and Youth Care  
Incorporated this  
day of 18 July 2022  
in the presence of:

)

)

)



.....  
Signature



.....  
Signature of Witness

Catherine Muraszko

.....  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

NADEEN WYN ROBERTS  
.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**UnitingCare West trading as Uniting WA**

THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

IN FAVOUR OF UnitingCare West trading as Uniting WA (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider;
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004 (WA)*);
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Family Group Homes: Out Of Home Care Services	1/10/2015	CPFS201413593
Futures	1/10/2013	CPFS201230872
Transitional High Needs	12/11/2021	DCP12311a
Disability Placement and Support Program	1/1/2011	DCP0102

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

**10.2 Rules for interpreting this Deed**

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
  - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 4th day of August 2022

SIGNED AND WITNESSED for and on )  
behalf of UnitingCare West trading as Uniting )  
WA this 4th day of )  
August 2022  
in the presence of:

*E. Addon*

03/08/2022 12:39 PM

Signature



*R. Chalmers*

04/08/2022 11:20 AM

Signature of Witness

Ronald Chalmers

Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

NADEEN LYN ROBERTS  
.....  
Print Name of Witness

2021/2022

**Deed of Indemnity**

by

**Treasurer on behalf of the State of Western Australia**

in favour of

**Wanslea Limited**

THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

IN FAVOUR OF Wanslea Limited (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,
 without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
General Foster Care Services - Great Southern	1/4/2015	CPFS201417759
Wanslea Foster Care	1/10/2013	CPFS201230872
Specialised Fostering Program	1/2/2013	DCP00312

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

## 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
  - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 21<sup>st</sup> day of July 2022

SIGNED AND WITNESSED for and on  
behalf of Wanslea Limited  
this 21<sup>st</sup> day of July 2022  
in the presence of:

)  
)  
)  
.....  
Signature

.....  
Signature of Witness

.....  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

NADEEN LYN ROBERTS  
.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Cam Can Inc**

**THIS DEED OF INDEMNITY** is made on

2022

**BY** **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

**IN FAVOUR OF** Cam Can Inc (**Service Provider**).

## **RECITALS**

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## **OPERATIVE PROVISIONS**

### **1. Indemnity**

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### **2. Exclusions from Indemnity**

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,
 without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Disability Placement and Support Program	1/1/2011	DCP0102

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or

- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 19 day of July 2022

SIGNED AND WITNESSED for and on  
behalf of Cam Can Inc  
this 19 day of July 2022  
in the presence of:

)  
)  
)

Signature

Signature of Witness

STEPHEN PSAILA-SAVONA

Print Name of Witness

SIGNED AND WITNESSED for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)



.....  
Signature



.....  
Signature of Witness

NARDEEN LYN ROBERTS

.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Empowering People in Community**

THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

IN FAVOUR OF Empowering People in Community (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Disability Placement and Support Program	1/1/2011	DCP0102

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or

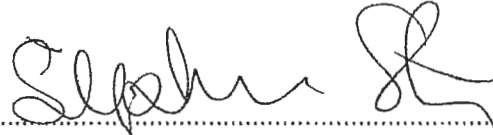
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

#### 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 7<sup>th</sup> day of July 2022

SIGNED AND WITNESSED for and on  
behalf of Empowering People in Community  
this 7<sup>th</sup> day of July 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

ERICA BYRNE  
.....  
Print Name of Witness

SIGNED AND WITNESSED for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)



Signature



Signature of Witness

NADEEN LYN ROBERTS

Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

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**in favour of**

**Safe Places**

THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

IN FAVOUR OF Safe Places (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 10. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 11. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (vii) had committed an Event of Default (as defined in the Service Agreement);
- (viii) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (ix) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (x) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

## **12. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

### **13. Uninsurable Risk Notices**

During the Relevant Period:

- (d) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (e) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (f) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

### **14. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

### **15. Relationship with Service Agreement**

- (d) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (e) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (f) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

### **16. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

### **17. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 18. Governing Law

- (c) This Deed is governed by the law in force in the State of Western Australia.
- (d) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Transitional High Needs Program	1/03/2012	DCP12311

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or


- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

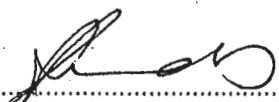
10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (v) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (vi) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 20 day of September 2022


SIGNED AND WITNESSED for and on  
behalf of Safe Places  
this 20 day of September 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

CHRIS SAUNDERS  
.....  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

NADEEN LYN ROBERTS  
.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Short Term Accommodation for Youth Inc**

THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

IN FAVOUR OF Short Term Accommodation for Youth Inc (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
  - (iii) had committed an Event of Default (as defined in the Service Agreement);
  - (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
  - (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
  - (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
  - (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
  - (g) any Loss which is precluded from indemnification under any law;
  - (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
  - (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,
 without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
STAY	1/10/2010	PSP1290

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or

- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

#### 10.2 Rules for Interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 19<sup>th</sup> day of July 2022

SIGNED AND WITNESSED for and on  
behalf of Short Term Accommodation for  
Youth Inc this 19<sup>th</sup>  
day of July 2022  
In the presence of:

)  
)  
)  
)  
Signature

Signature of Witness

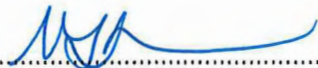
AMANDA BRUNTELI  
Print Name of Witness

SIGNED AND WITNESSED for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of;

)  
)  
)



.....  
Signature



.....  
Signature of Witness

NADEEN LYN ROBERTS

.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Perth Inner City Youth Service Inc**

THIS DEED OF INDEMNITY is made on

2022

**BY** **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

**IN FAVOUR OF** Perth Inner City Youth Service Inc (**Service Provider**).

## **RECITALS**

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## **OPERATIVE PROVISIONS**

### **1. Indemnity**

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### **2. Exclusions from Indemnity**

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**



Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Household Network	1/10/2010	PSP1347

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or

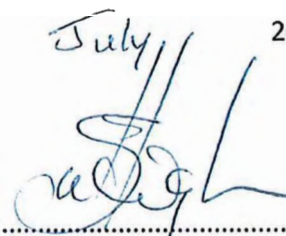
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

#### 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 5<sup>th</sup> day of July 2022

**SIGNED AND WITNESSED** for and on  
behalf of Perth Inner City Youth Service Inc  
this 5<sup>th</sup> day of July 2022  
in the presence of:

  
Signature Salli Higham  
Chairperson

  
Signature of Witness

Alana Dowley  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)



Signature



Signature of Witness

NADEEN LYN ROBERTS

Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Indigo Junction Incorporated**

THIS DEED OF INDEMNITY is made on

2022

**BY**                      **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

**IN FAVOUR OF**      Indigo Junction Incorporated (**Service Provider**).

## **RECITALS**

- A.     The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B.     The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C.     The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## **OPERATIVE PROVISIONS**

### **1.     Indemnity**

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### **2.     Exclusions from Indemnity**

The indemnity in clause 1 of this Deed does not extend to:

- (a)    the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b)    any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c)    any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d)    any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i)     the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Swan Emergency Accommodation - Youth	1/10/2010	PSP1327
Transitional High Needs	12/11/2021	DCP12311a

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or

- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

#### 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this Monday day of 1 August 2022

**SIGNED AND WITNESSED** for and on  
behalf of Indigo Junction Incorporated  
this Monday day of 1 August 2022  
in the presence of:


)  
)  
)  
.....  
Signature  
RONALD MEAL

.....  
Signature of Witness

Sharon Corp  
.....  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

NADGEN LYN ROBERTS  
.....  
Print Name of Witness

2021/2022

## **Deed of Indemnity**

by

**Treasurer on behalf of the State of Western Australia**

in favour of

**Albany Youth Support Association Inc**

THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

IN FAVOUR OF Albany Youth Support Association Inc (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider;
  - (iii) had committed an Event of Default (as defined in the Service Agreement);
  - (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004 (WA)*);
  - (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
  - (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
  - (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
  - (g) any Loss which is precluded from indemnification under any law;
  - (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
  - (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### 3. Process for claiming under Indemnity

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,
 without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.



- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Young House	1/10/2010	PSP1329

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or

- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

#### 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 1st day of July 2022

SIGNED AND WITNESSED for and on  
behalf of Albany Youth Support Association  
Inc this 1st day of July  
2022

in the presence of:

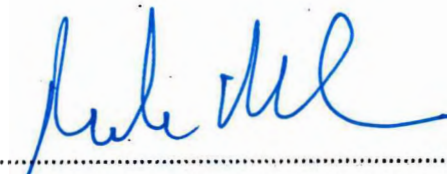
)  
) Phil Bridges  
Signature

[Signature]  
Signature of Witness

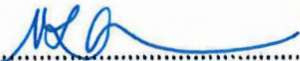
Sam Allen  
Print Name of Witness

SIGNED AND WITNESSED for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
In the presence of:

)  
)  
)



Signature



Signature of Witness

NADEEN LYN ROBERTS

Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Avon Youth Community and Family Services Incorporated**

**THIS DEED OF INDEMNITY** is made on

2022

**BY** **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

**IN FAVOUR OF** Avon Youth Community and Family Services Incorporated (**Service Provider**).

## **RECITALS**

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## **OPERATIVE PROVISIONS**

### **1. Indemnity**

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### **2. Exclusions from Indemnity**

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:



- (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or
- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.



- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.
- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.



## 7. Notices

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

## 8. Costs

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.



**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Wheatbelt Accommodation and Support Services for Young People	10/1/2010	PSP1330

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or
- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

**10.2 Rules for interpreting this Deed**

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
  - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 15<sup>th</sup> day of July 2022

**SIGNED AND WITNESSED** for and on  
behalf of Avon Youth Community and Family  
Services Incorporated

this 15<sup>th</sup> day of July 2022  
in the presence of:

)  
)  
)  
.....  
Signature

Joanne Moya  
.....  
Signature of Witness

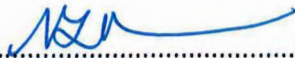
Leanne Moya  
.....  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)



Signature



Signature of Witness

NADGEN LYN ROBERTS

Print Name of Witness

2021/2022

## **Deed of Indemnity**

by

**Treasurer on behalf of the State of Western Australia**

in favour of

**Youth Futures Ltd**



THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the  
State of Western Australia for and on behalf of the State of Western  
Australia (State)

IN FAVOUR OF Youth Futures Ltd (Service Provider).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider;
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### 3. Process for claiming under Indemnity

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the Injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Youth Futures	1/10/2010	PSP1345

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or


- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

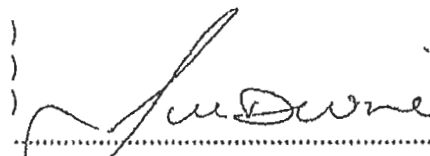
#### 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 20 day of July 2022

SIGNED AND WITNESSED for and on  
behalf of Youth Futures Ltd  
this 20 day of July 2022  
In the presence of:

  
Signature of Witness

)  
)  
)   
Signature

.....KRISTIE ROBINSON.....  
Print Name of Witness

SIGNED AND WITNESSED for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)



Signature



Signature of Witness

NADEEN LYN ROBERTS

Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Calvary Youth Services Mandurah Inc**

THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

IN FAVOUR OF Calvary Youth Services Mandurah Inc (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider;
  - (iii) had committed an Event of Default (as defined in the Service Agreement);
  - (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
  - (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
  - (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
  - (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
  - (g) any Loss which is precluded from indemnification under any law;
  - (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
  - (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,
 without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Calvary Youth Services Mandurah	1/10/2010	PSP1352

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or

- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

#### 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this *Fourth* day of *July* 2022

SIGNED AND WITNESSED for and on )  
behalf of Calvary Youth Services Mandurah )  
Inc this *4<sup>th</sup>* day of *July*,  
2022  
in the presence of:

*N L Boice*

*[Signature]*


Signature

*[Signature]*  
Signature of Witness

*Deborah Moore*  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)

  
.....  
Signature  
.....  
Signature of Witness

NAOGEN LYN ROBERTS  
.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Victoria Park Youth Accommodation (Inc)**

**THIS DEED OF INDEMNITY** is made on

2022

**BY**                    **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

**IN FAVOUR OF**    Victoria Park Youth Accommodation (Inc) (**Service Provider**).

## **RECITALS**

- A.    The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B.    The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C.    The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## **OPERATIVE PROVISIONS**

### **1.    Indemnity**

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### **2.    Exclusions from Indemnity**

The indemnity in clause 1 of this Deed does not extend to:

- (a)    the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b)    any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c)    any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d)    any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i)    the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
  - (iii) had committed an Event of Default (as defined in the Service Agreement);
  - (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
  - (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
  - (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
  - (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
  - (g) any Loss which is precluded from indemnification under any law;
  - (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
  - (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Victoria Park Youth Accommodation Service	1/10/2010	PSP1364

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or

- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

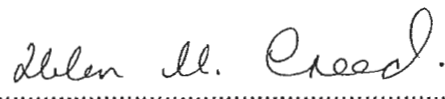
10.2 Rules for interpreting this Deed


- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 22<sup>nd</sup> day of July 2022

**SIGNED AND WITNESSED** for and on )  
behalf of Victoria Park Youth Accommodation )  
(Inc) this 22<sup>nd</sup> day of July )  
2022

in the presence of:

  
.....  
Signature

  
.....  
Signature of Witness

CHARLES BROWN  
.....  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)



Signature



Signature of Witness

NADDEEN LYN ROBERTS

Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Youth Involvement Council Inc**

**THIS DEED OF INDEMNITY** is made on

2022

**BY**                      **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

**IN FAVOUR OF**      Youth Involvement Council Inc (**Service Provider**).

## **RECITALS**

- A.     The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B.     The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C.     The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## **OPERATIVE PROVISIONS**

### **1.     Indemnity**

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### **2.     Exclusions from Indemnity**

The indemnity in clause 1 of this Deed does not extend to:

- (a)     the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b)     any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c)     any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d)     any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i)     the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004* (WA));
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.

- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services; and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Youth Accommodation Program	1/1/2011	PSP1378

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or


- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

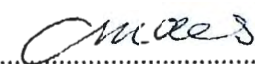
#### 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this *Monday*<sup>4<sup>th</sup></sup> day of *July* 2022

**SIGNED AND WITNESSED** for and on  
behalf of Youth Involvement Council Inc  
this *4* day of *July* 2022  
in the presence of:

)  
)  
)   
.....  
Signature

  
.....  
Signature of Witness

*CHUENRAMON MAES*  
.....  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

)  
)  
)



.....  
Signature



.....  
Signature of Witness

NADDEEN LYN ROBERTS

.....  
Print Name of Witness

**2021/2022**

**Deed of Indemnity**

**by**

**Treasurer on behalf of the State of Western Australia**

**in favour of**

**Ebenezer Aboriginal Corporation**

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THIS DEED OF INDEMNITY is made on

2022

BY **THE HONOURABLE MARK McGOWAN M.L.A.**, Treasurer of the State of Western Australia for and on behalf of the State of Western Australia (**State**)

IN FAVOUR OF Ebenezer Aboriginal Corporation (**Service Provider**).

## RECITALS

- A. The State (acting through the Department of Communities) has engaged the Service Provider to provide Out of Home Care and/or Youth Homelessness Services to the State under the Services Agreement.
- B. The Service Provider has advised the State that the Service Provider is not able to secure insurance covering the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services.
- C. The Treasurer has agreed to indemnify the Service Provider in respect of the Service Provider's civil liability for Physical and Sexual Abuse Claims where the injury was caused by Service Provider Personnel in connection with the provision of the Services on the terms and conditions specified in this Deed.

## OPERATIVE PROVISIONS

### 1. Indemnity

The indemnity covers uninsured Physical and Sexual Abuse Claims on and between the dates of 1 December 2021 to 30 November 2022 on and from the date that the Service Provider provides the State with an Uninsurable Risk Notice, the State agrees, subject to the limitations, exclusions and other terms specified in this Deed, to indemnify and keep indemnified the Service Provider from any Loss arising from Physical and Sexual Abuse Claims made against the Service Provider.

### 2. Exclusions from Indemnity

The indemnity in clause 1 of this Deed does not extend to:

- (a) the first [\$50,000] of the Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim;
- (b) any Loss incurred by the Service Provider in connection with each Physical and Sexual Abuse Claim which exceeds [\$1,000,000]; and
- (c) any Loss incurred by the Service Provider which exceeds [\$20,000,000] in the aggregate in connection with Physical and Sexual Abuse Claims during the Relevant Period;
- (d) any Loss incurred by the Service Provider in connection with a Physical and Sexual Abuse Claim if, at the date of:
  - (i) the actual or alleged Child Physical Abuse or Child Sexual Abuse; or

- (ii) the Physical and Sexual Abuse Claim, the Service Provider:
- (iii) had committed an Event of Default (as defined in the Service Agreement);
- (iv) was in breach of any of its obligations under the Services Agreement (including a failure to obtain an assessment notice under, or otherwise comply with, the *Working with Children (Criminal Record Checking) Act 2004 (WA)*);
- (v) had engaged in conduct involving a wilful breach of duty in relation to the person making the Physical and Sexual Abuse Claim; or
- (vi) had committed a dishonest, fraudulent, wilful or malicious act or omission in relation to the person making the Physical and Sexual Abuse Claim or in connection with the Physical and Sexual Abuse Claim;
- (e) any Loss in connection with a Physical and Sexual Abuse Claim where the Service Provider Personnel who caused, or is alleged to have caused, the injury which is the subject of the Physical and Sexual Abuse Claim is a Known Perpetrator;
- (f) any Loss incurred by the Service Provider in connection with any criminal suit or action against the Service Provider or Service Provider Personnel;
- (g) any Loss which is precluded from indemnification under any law;
- (h) any Loss incurred by the Service Provider which consists of punitive damages, aggravated damages or exemplary damages; or
- (i) any Loss against which the Service Provider is entitled to be indemnified under a contract of insurance held by or for the benefit of the Service Provider, whether that policy of insurance is in force at the date of this Deed or is entered into after the date of this Deed and provides retrospective cover or claims made cover (or both).

### **3. Process for claiming under Indemnity**

- (a) As a condition precedent to the Service Provider's right to be indemnified under this Deed, the Service Provider must:
  - (i) notify the State as soon as practicable after the Service Provider becomes aware of any event or incident occurring which gives rise, or is likely to give rise, to a Physical and Sexual Abuse Claim against the Service Provider;
  - (ii) notify the State within 14 days after a person makes a Physical and Sexual Abuse Claim against the Service Provider;
  - (iii) not admit liability for or settle any Physical and Sexual Abuse Claim; or
  - (iv) not incur any costs or expenses in connection with a Physical and Sexual Abuse Claim,

without the prior written consent of the State, including in respect of the amount described in clause 2(a) of this Deed.
- (b) The State is entitled at any time to take over and conduct in the name of the Service Provider the defence or settlement of any Physical and Sexual Abuse Claim, including in respect of the amount described in clause 2(a) of this Deed.



- (c) The State may make any investigation that the State deems expedient and in respect of any matter for which an indemnity is claimed by the Service Provider.
- (d) The Service Provider agrees to give all such information and assistance to the State as the State may require.
- (e) The State may settle any action, proceeding, claim or demand against the Service Provider as the State deems expedient in its sole and absolute discretion.

#### **4. Uninsurable Risk Notices**

During the Relevant Period:

- (a) the State may review the adequacy and appropriateness of the Uninsurable Risk Notice taking into account current prudent insurance practice;
- (b) the State may require the Service Provider to obtain and provide to the State an updated Uninsurable Risk Notice at any time; and
- (c) if the Service Provider is unable to provide the State with an updated Uninsurable Risk Notice within 30 days after receiving a request under clause 4(a) of this Deed, the rights and obligations of the State and the Service Provider under clause 1 of this Deed will cease.

#### **5. Subrogation**

If the State makes any payment pursuant to this Deed, the State shall be subrogated to the extent of such payment to all rights of recovery for that payment and the Service Provider shall execute all documents required and shall do all things necessary to secure and preserve such right of subrogation including the execution of such documents necessary to enable the State effectively to bring suit in the name of the Service Provider.

#### **6. Relationship with Service Agreement**

- (a) Where any inconsistency occurs between the provisions contained in this Deed and the Service Agreement, the Service Agreement shall where possible be read down to resolve the inconsistency.
- (b) If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Service Agreement without otherwise diminishing the enforceability of the remaining provisions of the Service Agreement.
- (c) For the avoidance of doubt, the Service Provider must comply with all insurance requirements under clause 5 of the General Provisions for the Purchase of Community Services By Public Authorities, forming part of the Service Agreement (or any other clause providing for insurance requirements which forms part of the Service Agreement) except for those the subject of any Uninsurable Risk Notice.

#### **7. Notices**

Notices under this Deed must be given in accordance with the requirements for giving notices under the Services Agreement.

#### **8. Costs**

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

## 9. Governing Law

- (a) This Deed is governed by the law in force in the State of Western Australia.
- (b) The State irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceeding in connection with this Deed, subject only to the right to enforce a judgment obtained in any of those courts in any other jurisdiction.

## 10. Interpretation

### 10.1 Definitions

The following definitions apply unless the context requires otherwise.

**AFSL Insurance Broker** means an insurance broker which holds an Australian Financial Services Licence within the meaning of the *Corporations Act 2001* (Cth).

**Child** means a person under 18 years of age.

**Child Physical Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Physical Abuse.

**Child Sexual Abuse**, of a person, means an act or omission in relation to the person, when the person is a Child, that is Sexual Abuse.

**Deed** means this deed.

**Defence Costs** means that part of the Loss consisting of reasonable costs, charges and expenses incurred in the defence of actions, claims or proceedings and appeals therefrom and the costs of appeal, attachment or similar bonds, or in relation to any formal inquiry, but excluding the costs of defending a criminal action where the Service Provider is found guilty.

**Known Perpetrator** means a perpetrator who has been the subject of a criminal conviction for Physical Abuse, Sexual Abuse or an offence under Chapter XXX1 of *The Criminal Code* (WA) or equivalent legislation in another jurisdiction where the Service Provider is aware, or ought reasonably to have been aware, of such criminal conviction.

**Loss** means the total amount which the Service Provider becomes liable to pay on account of all Physical and Sexual Abuse Claims, including, but not limited to, damages, judgments, settlement costs and Defence Costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

**Physical Abuse** means an assault as defined in section 222 of *The Criminal Code* (WA).

**Physical and Sexual Abuse Claim** means a claim, cause of action, suit, demand or proceedings against the Service Provider that relates, directly or indirectly, to a



personal injury of the person to whom the claim, cause of action, suit, demand or proceedings accrue, where:

- (a) the injury results from:
  - (i) Child Physical Abuse;
  - (ii) Child Sexual Abuse; or
  - (iii) Child Physical Abuse and Child Sexual Abuse,by Service Provider Personnel in connection with the provision of the Services;  
and
- (b) the injury occurs during the Relevant Period.

**Relevant Period** means the period commencing on the date from which the Service Provider has an Uninsurable Risk and ending on 30 November 2022.

**Service Agreement** means the Service Agreement(s) listed below:

Service Agreement Title	Commencement Date	Contract Reference Number
Ebenezer Home	1/1/2011	PSP1379

**Service Provider Personnel** means all officers, employees, agents and subcontractors of the Service Provider, and all officers, employees or agents of subcontractors, engaged in relation to the provision of the Services.

**Services** means the services to be provided by the Service Provider as specified in the Service Agreement.

**Sexual Abuse** means actual or attempted contact or non-contact acts or omissions by a perpetrator against a person to seek or obtain physical or mental sexual gratification, whether immediate or deferred in space and time.

**Uninsurable Risk** means the Service Provider is not able to effect, maintain and keep in force a contract of insurance which:

- (a) is underwritten by an insurer which has been approved by the Australian Prudential Regulatory Authority or a reputable and solvent overseas insurer regulated by a body equivalent to the Australian Prudential Regulatory Authority;
- (b) covers and indemnifies the Service Provider against its liability for Physical and Sexual Abuse Claims which occur during the term of the Service Agreement; and
- (c) has an excess, deductible or self-insured retention payable by the Service Provider for each claim of not less than \$50,000.

**Uninsurable Risk Notice** means a written notice:

- (a) from an AFSL Insurance Broker which states the Service Provider has an Uninsurable Risk; or

- (b) from the Service Provider which states the Service Provider has an Uninsurable Risk and to which is attached documentation from an AFSL Insurance Broker confirming that the Service Provider has an Uninsurable Risk.

#### 10.2 Rules for interpreting this Deed

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
- (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (ii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, a derivative of the word has a corresponding meaning.

EXECUTED AS A DEED this 18<sup>th</sup> day of July 2022

**SIGNED AND WITNESSED** for and on  
behalf of Ebenezer Aboriginal Corporation  
this 18<sup>th</sup> day of July 2022  
in the presence of:

) Martin Smith

) Walter Dumas

Signature

David Michie  
Signature of Witness

DAVID MICHIE  
Print Name of Witness

**SIGNED AND WITNESSED** for and on  
behalf of the State of Western Australia by  
The Hon Mark McGowan MLA, Treasurer,  
this 10<sup>th</sup> day of November 2022  
in the presence of:

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)

)



Signature



Signature of Witness

NADEEN LYN ROBERTS

Print Name of Witness