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| **University of South Australia****and****[Full name of Wellbeing Provider]** |
| **Wellbeing Services Deed** |
| Our Ref LNL:107051/103:LNL  |

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| Parties |
| UniSA: | Name: **University of South Australia** ABN: 37 191 313 308Address: 55 North Terrace, ADELAIDE, SOUTH AUSTRALIA 5000E-mail Address: **[to be inserted]**Attention: **[to be inserted]** |
| Wellbeing Provider: | Name: **[Full name]**ABN: **[to be inserted]**Address: **[to be inserted]**E-mail Address: **[to be inserted]**Attention: **[to be inserted]** |
| Background |
|  | UniSA supports wellbeing activities being conducted within its workplace, with a view to improving the health outcomes of its employees and students. |
|  | The Wellbeing Provider is a provider of wellbeing services, specialising in **[insert description of services]** (***Services****)*. |
|  | Employees and students of UniSA have the option, but not the obligation, to procure the Services within such facilities, premises and venues of UniSA (***Accommodation***) as it may make available from time to time. |
|  | Individuals that do not otherwise have any relationship or connection with UniSA have procured, or may procure, the Services from the Wellbeing Provider and may also access UniSA’s Accommodation during the delivery of the Services. |
|  | The parties have agreed to execute this deed, to record the terms upon which the Wellbeing Provider will access and utilise UniSA’s Accommodation in order to provide the Services to Participating Persons. |

It is agreed as follows.

# Preliminary

## Definitions

In this deed:

**Authority** means any statutory, public, governmental, semi‑governmental, municipal or other public entity.

**BusinessDay** means a day other than a Saturday, Sunday or public holiday in South Australia.

**Commencement Date** means the date of this deed.

**Dispose** means assign, transfer, otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise.

**Encumbrance** means any interest or power:

### reserved in, or over any interest in, any asset including any retention of title; or

### created or otherwise arising in, or over any interest in, any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of any debt or other monetary obligation, or the performance of any other obligations and whether existing or agreed to be granted or created and **Encumber** has a corresponding meaning.

**Guidelines** means the UniSA “Guideline for Engaging Wellbeing Service Providers”, of which the current version as at the date of this deed is attached as Schedule A.

**InsolvencyEvent** means the happening of any of the following events:

### an application is made to a court for an order or an order is made that a body corporate be wound up;

### an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed whether or not under an order;

### a receiver, receiver and manager or controller is appointed or takes possession in respect of any part of the property of a body corporate;

### an administrator is appointed to a body corporate under sections 436A, 436B or 436C of the *Corporations Act 2001* (Cth);

### a body corporate enters into, or resolves to enter into a deed of company arrangement, a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

### a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so;

### a body corporate is or its directors state that it is unable to pay its debts as and when they become due and payable;

### a body corporate is presumed to be insolvent within the meaning of section 459C(2) of the *Corporations Act 2001* (Cth);

### a judgment is entered against a body corporate for a sum in excess of $20,000 and remains unsatisfied or unappealed for a period of 15 days;

### a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in such an event; or

### anything having a substantially similar effect to any of the events specified above happens under any law or any applicable jurisdiction.

**Participating Persons** means:

###  employees or students:

#### of UniSA; and

#### that have elected to procure the Services of the Wellbeing Provider at the Accommodation; and

### any individuals that have elected to procure the Services of the Wellbeing Provider, where any part of those Services is to be delivered at the Accommodation.

**Services** has the meaning set out in Recital B.

**Term** has the meaning set out in clause 2.

## Interpretation

In this deed, unless it is stated to the contrary:

### a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;

### a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, this deed;

### a reference to an agreement or document (including this deed) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement or document;

### a reference to legislation or to a provision of legislation includes a modification or re‑enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;

### the meaning of general words is not limited by specific examples introduced by **including**, or **forexample**, or similar expressions;

### references to **agree**, **approve** or **consent** are references to agreement, approval or consent (as the case may be) in writing; and

### nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or any part of it.

## Headings

Headings do not affect the interpretation of this deed.

## Schedules and annexures

Schedules and annexures form part of this deed.

# Term

### This deed shall commence on the Commencement Date, and shall continue until it is terminated pursuant to clause 5.

### For the avoidance of doubt, this deed shall also apply to any Services which have been arranged for or booked by the Participating Persons, but are yet to be rendered, as at the Commencement Date.

# Wellbeing Provider’s obligations

## Services

The Wellbeing Provider (and if they are a company, any of their personnel rendering the Services) must:

### *before* providing their Services to Participating Persons, ensure that:

#### they are fully apprised of, and undertake all necessary actions to comply with, the Guidelines (including any registration, check-in or other procedures);

#### they are a qualified, fit and proper person to undertake the Services, including by reference to information disclosed in any:

##### National Police Certificate;

##### accreditation or re-accreditation;

##### professional association membership or affiliation;

#### Participating Persons are advised of any matters for which they will be responsible, including:

##### any fees payable to the Wellbeing Provider, including booking and cancellation fees;

##### equipment which must be purchased or supplied by the Participating Person in order to procure the Services;

##### disclosure of any pre-existing medical conditions, dietary requirements or food allergies which may affect their ability to safely or adequately participate in the Services;

##### any risks and potential repercussions associated with their participation in the Services; and

#### payment (if required by UniSA) is made for the use or hire of the Accommodation;

### *whilst* providing their Services to Participating Persons:

#### be aware of and comply with all lawful directions and orders of UniSA or its authorised representatives, including any direction to immediately leave the Accommodation;

#### be aware of and comply with all applicable laws, including the requirements of any Authorities;

#### ensure that whilst using the Accommodation, the Services are performed in a safe manner by properly skilled and qualified persons, so as not to prejudice safe working practices or the safety and care of Participating Persons, their personal property or that of UniSA;

#### ensure that any plant or equipment used to render the Services is in safe, sanitary and good working order and condition;

#### not interfere with UniSA’s other activities, or the activities of other persons, in the vicinity of the Accommodation; and

#### advise UniSA’s nominated representative of any incidents which occur during the provision of the Services, which present a risk to the health, safety or welfare of a Participating Person. For the avoidance of doubt, the Wellbeing Provider’s compliance with this requirement shall not operate to diminish, or derogate from, its own obligations in respect of Participating Persons;

### *after* the completion of any Services:

#### leave UniSA’s Accommodation secure, clean, orderly and fit for immediate use, having regard to the condition of the Accommodation immediately prior to the performance of the Services; and

#### reimburse UniSA for the cost of repairing any damage or destruction of the Accommodation arising from the Wellbeing Provider’s performance of the Services.

## Insurance

### The Wellbeing Provider must take out and maintain during the Term professional indemnity insurance, effected on an occurrence basis with a minimum indemnity of at least twenty million dollars (AUD$20,000,000) per occurrence and twenty millions dollars (AUD$20,000,000) in the aggregate, which covers against the:

#### loss, damage, or loss of use of any real or personal property;

#### economic loss or damage; and

#### injury, disease, illness or death of any person (including Participating Persons),

#### in connection with the Wellbeing Provider’s performance of its obligations under this deed.

### If requested, the Wellbeing Provider must provide UniSA with a copy of the certificate of currency for the abovementioned insurance.

## Approval, affiliation or sponsorship

Nothing in this deed permits the Wellbeing Provider to use UniSA’s name in a manner which states or implies that UniSA:

### is providing a testimonial in respect of the Wellbeing Provider or any of its Services;

### sponsors, approves of, or is affiliated with the Wellbeing Provider or any of its Services;

### endorses any uses or benefits of the Services,

### without the prior written consent of UniSA.

# Acknowledgements

## Service standards

### The Wellbeing Provider shall ensure that the Services are performed:

### by appropriately qualified and trained personnel;

### with due care and skill;

### in a manner which matches any description or demonstration of the Services provided to UniSA or the Participating Persons; and

### in a manner which is fit for the purposes for which those types of services are commonly procured.

## Control, liability and role of parties

It is acknowledged and agreed that:

### UniSA will have no control, management or input regarding the manner in which a Participating Person engages the Wellbeing Provider’s Services;

### the Wellbeing Provider will have no recourse or claims against UniSA in respect of any misbehaviour, malfeasance, failure to pay for Services or other misconduct of a Participating Person;

### Participating Persons will enter into their own contractual arrangements with the Wellbeing Provider in respect of any Services and UniSA is not obliged to represent, or act as agent for, Participating Persons or the Wellbeing Provider in procuring the execution, performance or discharge of those contractual arrangements;

### UniSA receives no commission or other inducement in connection with the Wellbeing Provider’s contractual arrangements with Participating Persons;

### the Wellbeing Provider, in providing the Services, is the sole occupier of the Accommodation for the purposes of section 20(4) of the *Civil Liability Act 1936* (SA); and

### UniSA takes no responsibility, and is not liable, for loss or damage to personal property belonging to any Participating Person or the Wellbeing Provider.

# Termination

## Grounds of termination by either party

Either party may immediately terminate this deed by written notice to the other party, if the other party:

### suffers an Insolvency Event;

### commits a breach of this deed which is capable of being remedied, and does not remedy that breach within a period of at least five (5) Business Days of receipt of a written request from the non-defaulting party, specifying what is required to remedy the breach; or

### commits a breach of this deed which is incapable of being remedied, including a breach of clause 3.3.

## Termination by UniSA

This deed may be terminated for convenience by UniSA by five (5) Business Days written notice to the Wellbeing Provider.

## Mutually agreed termination

### This deed may be terminated on a mutually agreed date by agreement in writing between the parties.

# Indemnity

To the maximum extent permitted by law, the Wellbeing Provider will indemnify, and keep UniSA indemnified from and against all losses, claims or damage arising from, or in connection with any breach of the terms and conditions of this deed by the Wellbeing Provider (including any claims that UniSA may suffer from Participating Persons), except to the extent that such losses, claims or damage is caused or contributed to by a negligent act or omission of UniSA.

# Notices

## Manner of giving

Any notice given under this deed must be in writing and signed by or for the sender.

## Manner of delivery

Notices must be delivered by post, hand, fax or email to the relevant address below:

|  |  |
| --- | --- |
| (a) to UniSA: | 55 North TerraceADELAIDE, SOUTH AUSTRALIA 5000Attention: **[to be inserted]**Fax: **[to be inserted]**Email **[to be inserted]** |
| (b) to Wellbeing Provider: | **[full address]**Attention: **[to be inserted]**Fax: **[to be inserted]**Email **[to be inserted]** |

## When delivered

### Notices will be taken to be duly given:

#### in the case of delivery in person, when delivered;

#### in the case of delivery by post, 5 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country);

#### in the case of delivery by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error; and

#### in the case of delivery by email, on receipt by the sender of a delivery notification receipt showing the correct destination email address of the recipient and indicating that the email has not been rejected due to its size or any other malfunction.

### If the result under clause 7.3(a) is that a notice would be taken to be given on a day that is not a Business Day in the place to which the notice is sent, then it will be taken to have been given on the next Business Day in that place.

# General Provisions

## Entire agreement

This deed contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

## Amendment

No amendment or variation of this deed is valid or binding on a party unless made in writing executed by all parties.

## Assignment

### The rights and obligations of the Wellbeing Provider under this deed are personal.

### They cannot be Disposed of, Encumbered or otherwise dealt with and the Wellbeing Provider cannot attempt, or purport, to do so without the prior written consent of UniSA.

## No waiver

### No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## Costs

### Each party must bear its own costs arising out of the negotiation, preparation and execution of this deed.

## Governing law and jurisdiction

### This deed is governed by the laws of South Australia.

### Each party submits to the non‑exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this deed.

## Counterparts

### This deed may be executed in any number of counterparts.

### All counterparts when exchanged will be taken to constitute one document.

## Relationship

### The relationship between the parties is that of independent contractors.

### The parties are not partners, joint venturers or principal and agent.

## Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the terms of this deed will continue in full force and effect.

**Executed** as a deed this **[insert day]** of **[insert month]** **[insert year]**.

*For* *execution* *by* *company – two directors:*

|  |  |
| --- | --- |
| **Executed** by **University of South Australia**by its duly authorised officer in the presence of:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of duly authorised officer\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name and Position of duly authorised officer | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of witness |

*For* *execution* *by* *company – sole director:*

**[If Wellbeing Provider is a company]**

|  |  |
| --- | --- |
| **Executed** by **[full company name]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Director\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Director | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Director/Secretary\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Director/Secretary |

*For* *execution* *by* *individual:*

**[If Wellbeing Provider is an individual]**

|  |  |
| --- | --- |
| **Executed** by **[full name of individual]** by being signed, sealed and delivered in the presence of:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Individual\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Individual | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Witness |

**Schedule A**

**Guidelines**

**[insert current version]**