



**Australian Government**



**jobactive**

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**Note:** This document shows variations from the original Deed, which commenced on 1 July 2015, as follows:

- (a) words shown in colour are inserted;
- (b) words shown in colour and strikethrough are deleted;
- (c) the relevant General Deed Variation ('GDV') is noted next to each change (e.g. GDV1); and
- (d) each GDV has a different colour.

# jobactive Deed 2015-2020

~~Effective 1 July 2015~~ GDV 1

~~Effective 18 January 2016~~ GDV 1 GDV 2

Effective 1 July 2016 GDV 2

## Reader's Guide to this Deed

This Deed is comprised of 'Parts' which are divided into 'Chapters', which are subdivided into 'Sections'.

There are five Parts:

1. Part A – GENERAL CONDITIONS
2. Part B – EMPLOYMENT PROVIDER SERVICES
3. Part C – NEW ENTERPRISE INCENTIVE SCHEME (NEIS) SERVICES
4. Part D – HARVEST LABOUR SERVICES
5. Part E – NATIONAL HARVEST LABOUR INFORMATION SERVICE

There are four Chapters and two Annexures in Part A - GENERAL CONDITIONS:

- A1. Introduction
- A2. Basic Conditions
- A3. Information Management
- A4. Deed Administration

Annexure A1 – Definitions

Annexure A2 – Joint Charter of Deed Management

There are four Chapters and three Annexures in Part B – EMPLOYMENT PROVIDER SERVICES:

- B1. General Employment Provider Services
- B2. Specific Employment Provider Services
- B3. Mutual Obligation Requirements and Activities
- B4. Payments

Annexure B1 – Transition in

Annexure B2 – Payments and Employment Fund credits

Annexure B3 – Service Guarantees

There is one Chapter in each of Part C – NEW ENTERPRISE INCENTIVE SCHEME, Part D – HARVEST LABOUR SERVICES and Part E – NATIONAL HARVEST LABOUR INFORMATION SERVICE.

There are two Schedules to this Deed, which contain details which are particular to individual Employment Providers:

1. Deed and business details
2. Service Delivery Plan

There are various information boxes and notes at various points in this Deed. Except where expressly stated to the contrary, none of these form part of this Deed for legal purposes. They are intended to make this Deed easier to understand and read.

The Provider must provide Services in accordance with Part A and the Schedules, and Parts B to E depending on the specific Services it is contracted to provide (see the Particulars and Schedule 1).

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# PART A - GENERAL CONDITIONS

## CHAPTER A1 – INTRODUCTION

### Section A1.1 – Definitions and interpretation GDV 1

#### 1. Definitions and interpretation

- 1.1 In this Deed, unless the contrary intention appears, all capitalised terms have the meaning given to them in the definitions in Annexure A1. All other words have their natural and ordinary meaning.
- 1.2 Unless the contrary intention appears:
- (a) the definitions in Annexure A1 apply to the whole of this Deed;
  - (b) words in the singular include the plural and vice versa;
  - (c) a reference to a person includes a partnership and a body whether corporate or otherwise, and in relation to the payment of Fees, only means a living individual;
  - (d) a reference to an entity includes an association of legal persons, however constituted, governed by deed, an incorporated body, an unincorporated association, a partnership and/or a trust;
  - (e) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time;
  - (f) the chapter headings, section headings, clause headings and subheadings within clauses, notes and information boxes are inserted for convenience only, and have no effect in limiting or extending the language of provisions of this Deed;
  - (g) any uncertainty or ambiguity in the meaning of a provision of this Deed is not to be interpreted against a Party just because that Party prepared the provision;
  - (h) a reference to an internet site or webpage includes those sites or pages as amended from time to time; and
  - (i) a reference to a Guideline, form or other document is to that Guideline, form or other document as revised or reissued from time to time; and
  - (j) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

#### GDV 1

- 1.3 The Provider agrees that:
- (a) Conditions of Offer form part of this Deed;
  - (b) Guidelines form part of this Deed;
  - (c) it must perform all obligations in this Deed in accordance with any Guidelines, even if a particular clause does not expressly refer to any Guidelines; ~~and~~
  - (d) Guidelines may be varied by the Department at any time and at the Department's absolute discretion; ~~and~~
  - (e) any action, direction, advice or Notice that may be taken or given by the Department under this Deed, may be taken or given from time to time and at the Department's absolute discretion.

## GDV 1

- 1.4 References to different services in this Deed are to be read on an 'as applicable' basis, i.e. applicable only if the Provider is contracted to provide a particular service (see Particulars).
- 1.5 The word 'Reserved' indicates that a particular clause is not applicable to the Services.
- 1.6 Unless the contrary intention appears, if there is any conflict or inconsistency between any part of:
- (a) the Parts of this Deed, including any Condition of Offer and the Annexures, except Annexure A2 [Joint Charter of Deed Management] and Annexure B3 [Service Guarantees];
  - (b) the Schedules;
  - (c) the Particulars;
  - (d) the Guidelines; and
  - (e) Annexure A2 [Joint Charter of Deed Management] and Annexure B3 [Service Guarantees],
- ~~(a) any Condition of Offer;~~
- ~~(b) this document;~~
- ~~(c) the Particulars;~~
- ~~(d) the Annexures;~~
- ~~(e) the Schedules; or~~
- ~~(f) any Guidelines;~~

then the material mentioned in any one of paragraphs (a) to (e) above has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

## GDV 1

# CHAPTER A2 – BASIC CONDITIONS

## Section A12.1 – Deed length

### GDV 1

#### 2. Term of this Deed

- 2.1 This Deed takes effect from the Deed Commencement Date and, unless terminated earlier, expires on the Completion Date.
- 2.2 The Department may, at its sole option, offer the Provider an extension of the Term of this Deed:
- (a) for one or more Extended Service Periods; and
  - (b) if the Department determines at its absolute discretion, on the basis of additional terms and conditions, or variations to existing terms and conditions,
- by giving Notice to the Provider not less than 20 Business Days prior to the end of the Service Period or any Extended Service Period, as relevant.
- 2.3 Subject to clauses 2.2 and 57, if the Provider accepts the Department's offer to extend the Term of this Deed, the Term of this Deed will be so extended and all terms and conditions of this Deed continue to apply, unless otherwise agreed in writing between the Parties.

### 3. Survival

- 3.1 The termination or expiry of this Deed for any reason does not extinguish or otherwise affect the operation of clauses 16, 21, 24, 26, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 50, 52, 54, 64 and 129 of this Deed, and any provisions, other than those aforementioned, that are expressly specified as surviving, or by implication from their nature are intended to continue.
- 3.2 Clause 40 of this Deed survives for seven years from the expiry or earlier termination of this Deed.

## Section A2.2 – Some basic rules about Services

### GDV 1

### 4. General Requirements

4.1 The Provider must carry out the Services:

- (a) in accordance with:
  - (i) this Deed, including any Guidelines, as relevant to the Services; and
  - (ii) any representation made by the Provider in its tender response to the request for tender for this Deed, unless otherwise agreed with the Department;
- (b) in a manner which meets the objective of the Services as specified in the request for tender for this Deed; and
- (c) so as to achieve optimum performance when measured against the Employment Provider Services KPIs and the NEIS KPIs, as relevant.

4.2 If the Provider becomes aware that:

- (a) it is unable to satisfy or has otherwise failed to comply with any of the requirements in this Deed or the undertakings it has given to the Department in its tender response;
- (b) it provided information in its tender response which is misleading or deceptive, or otherwise incorrect or inaccurate; or
- (c) it failed to provide information in its tender response which may have affected the Department's decision to enter into this Deed or otherwise take action under this Deed,

the Provider must Notify the Department immediately of:

- (d) ~~the details of the requirements or undertakings which it is unable to satisfy or failed to comply with and the information which it did or did not provide as part of its tender response; and if clause 4.2(a) applies, the details of the requirements or undertakings which it is unable to satisfy or failed to comply with;~~
- (e) ~~if clause 4.2(b) applies, the details of the information in its tender response which is misleading or deceptive, or otherwise incorrect or inaccurate;~~
- (f) ~~if clause 4.2(c) applies, the details of the information which it failed to provide in its tender response; and~~
- (g) any other information that the Department requests.

### GDV 2

4.3 The Provider must take all reasonable steps to minimise delay or the negative impact of any matter(s) that affects the Provider's ability to meet its obligations under this Deed.



## **5. Location and timing of the Services**

5.1 The Provider must deliver the Services from the Service Start Date until the end of the Service Period and any Extended Service Periods.

5.2 Unless otherwise directed by the Department and subject to this Deed, the Provider must provide:

- (a) Employment Provider Services in accordance with, and only as specified in, item 6 of Schedule 1;
- (b) subject to clause 5.3, NEIS Services in accordance with, and only as specified in, item 7 of Schedule 1;
- (c) Harvest Labour Services in accordance with, and only as specified in, item 8 of Schedule 1; and
- (d) NHLIS Services in accordance with, and only as specified in, item 9 of Schedule 1.

*Note: For Employment Provider Services and Harvest Labour Services, Schedule 1 specifies whether Services will be provided at Sites on a Full-time, Part-time or Outreach basis.*

5.3 Where a Site(s) is specified in item 7 of Schedule 1, the Provider is only required to deliver NEIS Services from that Site(s), if the Provider has specified in its tender response to the request for tender for this Deed, that it will do so.

5.4 The Provider must ensure that:

- (a) any location from which Services are provided is:
  - (i) accessible to people with a disability; and
  - (ii) presented in a manner that upholds and maintains the good reputation of the Services, as determined by the Department; and
- (b) it takes all reasonable steps to avoid acts or omissions which the Provider could reasonably foresee would be likely to cause injury to Participants or any other persons at the locations referred to in clause 5.4(a).

5.5 Except for NHLIS Services and NEIS Services, the Provider must ensure that its Sites are open for the provision of the Services:

- (a) on all Business Days and any other days specified in Schedule 1 and the Provider's tender response to the request for tender for this Deed; and
- (b) at the times specified in items 6.4, 6.5, 6.6, 8.3, 8.4 and 8.5 of Schedule 1,

unless otherwise Notified by the Department.

## **6. Provider's conduct**

6.1 The Provider must, at all times, act in good faith towards the Department and Participants, and in a manner that maintains the good reputation of the Services.

6.2 The Provider must:

- (a) not engage in, and must ensure that its Personnel, Subcontractors, [Third Party IT Providers](#) and agents do not engage in, any practice that manipulates or impacts, as relevant, any aspect of the Services including any:
  - (i) Record, including any Documentary Evidence;
  - (ii) Outcome or Work for the Dole Place;
  - (iii) Payment or Payment-related process;

- (iv) Participant or Employer; or
  - (v) monitoring of the Services by the Department,
- with the effect of improperly, as determined by the Department, maximising payments to, or otherwise obtaining a benefit for, the Provider or any other ~~entity or entities~~ ~~person or persons~~; and
- (b) without limitation to any rights of the Department under this Deed or at law where ~~such an improper~~ practice is identified by the Provider, immediately:
    - (i) take all action necessary to appropriately remedy the practice; and
    - (ii) Notify the Department of the practice identified and the remedial action taken and provide all information in relation to the situation as required by the Department.

#### GDV 1

6.3 The Provider must advise its officers and employees that:

- (a) they are Commonwealth public officials for the purposes of section 142.2 of the *Criminal Code Act 1995* (Cth);
- (b) acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties including imprisonment; and
- (c) disclosures of ~~wrongful~~ “disclosable conduct” under the *Public Interest Disclosure Act 2013* (Cth) can be made directly to their supervisors within the Provider, or to an Authorised Officer of the Department as specified on the Department’s website at <http://employment.gov.au/public-interest-disclosure-act-2013>, and where a disclosure of ~~relevant~~ “disclosable conduct” is made to a supervisor within the Provider, the supervisor is required ~~under section 60A of the Public Interest Disclosure Act 2013 (Cth) by law~~ to pass information about the conduct to an Authorised Officer of the Department.

*Note: For the avoidance of doubt, no right or obligation arising from this Deed is to be read or understood as limiting the Provider’s right to enter into public debate regarding policies of the Australian Government, its agencies, employees, servants or agents.*

#### GDV 1

## 7. Information provided to the Department

7.1 Subject to clause 15.4(a), the Provider must ensure that:

- (a) all information it provides to the Department, in any form and by any means, including all Documentary Evidence and information about change in the circumstances of Participants, is true, accurate and complete at the time of its provision to the Department;
- (b) it diligently, and in accordance with any Guidelines, takes all necessary steps to verify the truth, completeness and accuracy of any information referred to in clause 7.1(a); and
- (c) any data entered into the Department’s IT Systems is consistent with any associated Documentary Evidence held by the Provider.

7.2 Subject to clause 16.2, the Provider must submit Documentary Evidence to the Department within five Business Days of any request by the Department to do so.

## 8. Checks and reasonable care

### *Personnel and Supervisors*

8.1 Before arranging for any ~~personnel~~ or a potential Supervisor to ~~participate~~ be involved in the Services, including any ~~an~~ Activity, the Provider must arrange and pay for all checks, and comply with any other conditions in relation to the person's ~~participation involvement in the activity~~, as specified in:

- (a) any relevant legislation, and in particular, any Working with Children Laws, in effect in the jurisdiction(s) in which the Services are conducted; and
- (b) any Guidelines ~~or legislation~~.

#### **GDV 1**

8.2 The Provider must not allow any ~~personnel~~ or a potential Supervisor to participate in the Services, including any ~~an~~ Activity:

- (a) if any relevant legislation or any Guidelines provide or mean that the person must not be allowed to be so involved; or
- (b) if:
  - (i) a relevant check shows that they have been convicted of a crime and a reasonable person would consider that the conviction means that the person would pose a risk to other persons involved in the Services; or
  - (ii) there is otherwise a reasonably foreseeable risk that the person may cause loss or harm to any other person,

unless the Provider has put in place reasonable measures to remove or substantially reduce that risk.

~~if they have a record of convictions for crimes relevant to that Activity, or if any Guidelines otherwise provide that the person must not participate in the activity.~~

#### **GDV 1**

##### *Participants*

8.3 If an Activity or Employment involves close proximity with people who are elderly, disabled or otherwise vulnerable or Children (excluding other Participants), before arranging for a Participant to be involved in the Activity or placed in the Employment, the Provider must arrange and pay for all checks in relation to a Participant's involvement or placement as specified in:

- (a) any relevant legislation, and in particular, any Working with Children Laws, in effect in the jurisdiction(s) in which the Activity is conducted or the Employment exists; and
- (b) any Guidelines;

#### **GDV 1**

8.4 The Provider must not allow a Participant to be involved in an Activity or place a Participant into Employment:

- (a) if any relevant legislation or Guidelines provide or mean that the Participant must not be allowed to be so involved or placed; or
- (b) if:
  - (i) a relevant check shows that they have been convicted of a crime and a reasonable person would consider that the conviction means that the person would pose a risk to other persons involved in the Activity or Employment; or

- (ii) there is otherwise a reasonably foreseeable risk that the person may cause loss or harm to other persons involved in the Activity or Employment,

unless the Provider has put in place reasonable measures to remove or substantially reduce that risk.

*Note: Where the Provider places a Participant into Employment, 'reasonable measures' may include, if relevant and consistent with any requirements under the law, advising the Employer of any information that may be relevant to assisting the Employer to mitigate relevant risks.*

~~8.3 Without limiting clause 8.2, the Provider must not arrange for:~~

- ~~(a) a person, including a Supervisor, to be involved in an Activity; or~~
- ~~(b) a Participant to be placed into Employment,~~

~~where there is a reasonably foreseeable risk that the person or Participant may cause loss or harm to any other person, unless the Provider has put in place reasonable measures to remove or substantially reduce that risk, and where a Participant is placed into Employment, these measures may include, if relevant and with the Participant's permission, advising the Employer about the Participant's records of convictions for crimes.~~

## **GDV 1**

### **9. Provider's responsibility**

9.1 Subject to the express provisions of this Deed, the Provider is fully responsible for the performance of the Services, for ensuring compliance with the requirements of this Deed, and for all costs of meeting the Provider's obligations under this Deed, notwithstanding any other matter or arrangement, including any Subcontracting arrangements.

### **10. Joint Charter of Deed Management**

10.1 Subject to clause 10.2, the Department and the Provider agree to conduct themselves in accordance with the Joint Charter of Deed Management.

10.2 Clause 10.1 does not in any way limit the right of either party to take action or exercise rights that would, if not for the Joint Charter of Deed Management, be available to it under this Deed.

### **11. Liaison and directions**

11.1 The Provider must:

- (a) liaise with and provide information to the Department, or any other person nominated by the Department, as requested by the Department;
- (b) immediately comply with all of the Department's requests and directions; and
- (c) immediately Notify the Department of any matter or incident that could be damaging to the reputation of the Provider or the Department should it become publicly known.

*Note: 'other person' referred to in clause 11.1(a) includes, for example, an auditor appointed by the Department.*

11.2 The Department and the Provider must respectively nominate an Account Manager and a Contact Person for the Term of this Deed, and Notify of any change to the details of persons occupying those positions.

11.3 The day to day management of, and communication under, this Deed:

- (a) is to be handled by the Account Manager and the Contact Person or their delegates; and

(b) may be undertaken by the Account Manager and the Contact Person or their delegates by means of electronic mail.

11.4 The Provider must ensure that it has, and notifies to the Department, a valid electronic mail address for receipt of all communications with the Department.

11.5 The Provider must provide all reasonable assistance to the Commonwealth in relation to the Social Security Appeals Process including ensuring the availability of its Personnel, agents and Subcontractors to appear at hearings (including appeals to any court or tribunal) and to provide witness or other statements as required by the Department.

11.6 The Provider must notify DHS of any change in the circumstances of a Participant:

(a) as required in relation to any claim for a Pay Slip Verified Outcome Payment under any Guidelines; and

(b) that impacts on their Income Support Payments,

and do so within five Business Days of becoming aware of the change in circumstances.

11.7 The Provider must respond within five Business Days to any request for information by DHS or the Department about any change in circumstances referred to in clause 11.6.

## **12. Business level expectations**

12.1 The Department provides no guarantee of:

(a) the volume or type of business the Provider will receive, including the number of Referrals;

(b) the numbers of Participants for any Services under this Deed;

(c) the numbers of Participants for any Employment Region in relation to any Services under this Deed; or

(d) the accuracy of market and other information provided in the request for tender for this Deed.

## **13. Gap filling**

13.1 For the purposes of filling gaps in employment services, the Department and the Provider may agree to provision of additional Services by the Provider, on the same terms as specified in this Deed, at the times requested by the Department.

## **14. Additional Services**

14.1 The Department and the Provider may agree to the provision of other employment services or employment related services by the Provider to the Department, including applicable terms and conditions.

## **Section A2.3 – Some basic rules about financial matters**

### **GDV 1**

## **15. General**

15.1 Subject to sufficient funds being validly appropriated for jobactive and compliance by the Provider with this Deed to the Department's complete satisfaction, the Department will make Payments to the Provider, at the times and in the manner specified in this Deed, to the account(s) specified in item 5 of Schedule 1.

- 15.2 The Provider must not claim or accept a Payment from the Department if the requirements under this Deed which must be satisfied to qualify for the Payment have not been fully and properly met.
- 15.3 Where the Department determines that the Provider is in breach of clause 15.2, the Department may, at its absolute discretion, recover some or all of the relevant Payment from the Provider as a debt in accordance with clause 21, without prejudice to any other rights that the Department may have under this Deed or the law.
- 15.4 With the exception of Payments verified by DHS data in accordance with any Guidelines, [and Payments for Partial Outcomes under paragraph \(f\) of the definition of Partial Outcome](#), it is a precondition of the Provider's entitlement to be paid a Payment that the Provider has, at the time it makes a claim for or accepts the Payment, true, complete and accurate Documentary Evidence sufficient to prove that the Provider:
- (a) is entitled to the Payment;
  - (b) has delivered the Services relevant to its claim for Payment; and
  - (c) has done so in accordance with this Deed, including any Guidelines.

#### **GDV 1**

- 15.5 It is a further precondition of the Provider's entitlement to be paid a Payment that it:
- (a) has a valid ABN;
  - (b) immediately [n](#)otifies the Department if it ceases to have a valid ABN;
  - (c) correctly quotes its ABN on all documentation provided to the Department, where relevant;
  - (d) supplies proof of its GST registration, if requested by the Department;
  - (e) immediately [n](#)otifies the Department of any changes to its GST status; and
  - (f) submits Tax Invoices to the Department for payment, unless otherwise advised by the Department.

#### **GDV 2**

- 15.6 Without limiting the Department's rights under this Deed or at law, if the Provider identifies that it has claimed, or accepted, a Payment:
- (a) in breach of this Deed; or
  - (b) in circumstances where the requirements under this Deed to qualify for the Payment have not been fully and properly met,

it must immediately Notify the Department of the same and provide all information in relation to the situation as required by the Department.

- 15.7 [The Provider must:](#)
- (a) [ensure that any of its Personnel or Subcontractors that are required to submit claims for Payments, have successfully completed Claims Processing Training prior to submission of any claim for a Payment is made to the Department by them; and](#)
  - (b) [when requested by the Department, provide evidence that the relevant Personnel or Subcontractors have successfully completed Claims Processing Training.](#)

#### **GDV 1**

## **16. Evidence to support entitlement to Payments**

- 16.1 Subject to any Guidelines, the Provider must retain the Documentary Evidence specified at clause 15.4(a) for such period as is required under clause 37.9.
- 16.2 The Provider must submit the Documentary Evidence referred to in clause 16.1 to the Department:
- (a) if required by any Guidelines, at the time of making the relevant claim for a Payment, and through the Department's IT Systems; and
  - (b) otherwise, within five Business Days of any request by the Department to do so.
- 16.3 If:
- (a) the Provider does not comply with a request by the Department under clause 16.2, including if the Documentary Evidence provided is not true, complete and accurate;
  - (b) the Department has already paid the Provider the relevant Payment; and
  - (c) an extension of time has not been requested and agreed to by the Department,
- then:
- (d) the Provider will be taken not to have delivered the relevant Services in accordance with this Deed and not to be entitled to the relevant Payment; and
  - (e) the Department may, at its absolute discretion, recover the relevant Payment from the Provider as a debt in accordance with clause 21, without prejudice to any other rights that the Department may have under this Deed or the law.
- 16.4 The Department may contact Employers or Participants or any other relevant parties to verify Documentary Evidence provided by a Provider.

## **17. Exclusions**

- 17.1 The Department is not responsible for the payment of any money in excess of the Payments set out in this Deed.
- 17.2 The Department is not required to make any superannuation contributions in connection with this Deed.

~~17.3 The Provider declares that it is not entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing the same or similar services as provided under this Deed, and the Department may require the Provider to provide evidence, in a form acceptable to the Department, which proves that the Provider is not so entitled.~~

~~17.4~~ Unless otherwise agreed in writing with the Department, the Provider must not demand or receive any payment or any other consideration either directly or indirectly from any Participant for, or in connection with, the Services.

### **GDV 1**

## **18. Ancillary Payments**

- 18.1 The Department may pay the Provider Ancillary Payments on such terms and conditions as the Department determines and at the Department's absolute discretion, including on any terms and conditions specified in any Guidelines.

## 19. Overpayment and double payment

### *Overpayment*

- 19.1 If, at any time, the Department determines that an overpayment by the Department has occurred for any reason, including where a Tax Invoice is found to have been incorrectly rendered after payment, or a payment has been made in error, then the Department may, at its absolute discretion, recover some or all of the relevant payment amounts from the Provider as a debt ~~this amount is a debt owed to the Department~~ in accordance with clause 21, without prejudice to any other rights that the Department may have under this Deed or the law.

### **GDV 1 GDV 2**

### *Double payment*

- 19.2 The Provider warrants that neither it, and nor any Related Entities, are ~~not~~ entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing services that are the same as, or similar to, the services as provided under this Deed, and the Department may require the Provider to provide evidence, in a form acceptable to the Department, which proves that the Provider is not so entitled.

### **GDV 1 GDV 2**

- 19.3 ~~19.2~~ For the purposes of clause ~~19.27.3~~, if the Department determines, in its absolute discretion, that the Provider, or any Related Entity, is entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing the same or similar services as provided under this Deed, the Department may, at its absolute and unfettered discretion:
- (a) make the relevant payment;
  - (b) decide not to make the relevant payment; or
  - (c) recover any relevant payment made by the Department as a debt in accordance with clause 21.

### **GDV 1**

- 19.4 ~~19.3~~ Regardless of any action the Department may take under clause ~~19.23~~, the Department may, at any time, issue Guidelines setting out the circumstances in which the Department will or will not make payments in connection with any situation of the type described in clause ~~19.23~~.

### **GDV 1**

## 20. The Department may vary certain terms

- 20.1 Without prejudice to any other rights that the Department may have under this Deed or the law, the Department may, at any time, vary:
- (a) Payments under this Deed;
  - (b) Sites and/or Employment Regions of the Provider;
  - (c) Harvest Areas of the Provider;
  - (d) Referrals to the Provider and the number of Participants on the Provider's caseload; and/or
  - (e) the Business Share, or where relevant, the number of NEIS Places allocated to the Provider,
- for all or part of the Term of this Deed:



- (f) based on the Department's assessment of:
  - (i) projected changes to labour market conditions in a Harvest Area or an Employment Region (including past and/or future projected Participant demand); or
  - (ii) the number of Stream Participants who are transferred to or from the Provider pursuant to clause 81.1(d); or
- (g) acting reasonably, for any other reason as determined by the Department at its absolute discretion,

by providing Notice to the Provider.

20.2 If the Department exercises its rights under clause 20.1:

- (a) where relevant, this Deed is deemed to be varied accordingly; and
- (b) the Provider must perform all of its obligations under this Deed as varied.

## **21. Debts and offsetting**

21.1 Any amount owed to the Department, or deemed to be a debt to the Department under this Deed, including any Interest, will, without prejudice to any other rights available to the Department under this Deed or the law, be recoverable by the Department, at its absolute discretion, as a debt due to the Commonwealth from the Provider without further proof of the debt being necessary.

21.2 Unless otherwise agreed in writing by the Department, the Provider must pay to the Department any debt due to the Commonwealth from the Provider within 30 calendar days of receipt of a Notice from the Department requiring payment.

21.3 Unless otherwise agreed in writing by the Department, where any debt is owed to the Commonwealth under this Deed, Interest accrues on that debt if it is not repaid within 30 calendar days of receipt of a Notice from the Department requiring payment, until the amount is paid in full.

21.4 Without limiting the Department's rights under this Deed or the law, if the Provider owes the Commonwealth any debt or has outstanding or unacquitted money, under this Deed, or under any other arrangement with the Department or the Commonwealth, the Department may offset or deduct an amount equal to that debt owed, or outstanding or unacquitted money, against any Payments due to the Provider under this Deed.

21.5 The Department will Notify the Provider if it exercises its rights under clause 21.4 within 10 Business Days after having exercised those rights.

21.6 Notwithstanding any action taken by the Department under clause 21.4, the Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.

## **22. Taxes, duties and government charges**

22.1 Unless expressly stated to the contrary, all dollar amounts in this Deed are inclusive of GST.

22.2 If a Payment is not in relation to a Taxable Supply, the Provider must only claim or accept an amount exclusive of GST.

22.3 The Provider must give to the Department a Tax Invoice for any Taxable Supply before any Payments are made to the Provider as consideration for the Taxable Supply.

22.4 The Provider must not claim or accept from the Department any amount for which it can claim an Input Tax Credit.

- 22.5 Where any debt is repaid, including by offset under clause 21.4, an Adjustment Note must be provided to the Department if required by the GST Act.
- 22.6 Subject to this clause 22, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the Provider.

### **23. Fraud**

- 23.1 The Provider must not engage in, and must ensure that its Personnel, Subcontractors and agents do not engage in, fraudulent activity in relation to this Deed.

#### **GDV 1**

- 23.2 The Provider must take all reasonable steps to prevent fraud upon the Commonwealth, including the implementation of an appropriate fraud control plan, a copy of which must be provided to the Department on request.
- 23.3 If, after investigation, the Department determines that the Provider has been engaged in fraudulent activity, the Department may, without limitation to any other rights available to the Department:
- (a) take action under clause 52.2; or
  - (b) terminate this Deed under clause 56,

by providing Notice to the Provider.

*Note: The Criminal Code Act 1995 (Cth) provides that offences involving fraudulent conduct against the Commonwealth are punishable by penalties including imprisonment.*

## **Section A2.4 – Reports**

### **GDV 1**

### **24. General reporting**

- 24.1 Without limiting any other provisions of this Deed, the Provider must provide, as required by the Department **from time to time**:
- (a) specific Reports on:
    - (i) the Services, including on the results of internal and external audits of Payment claims and claim processes, action taken to address performance issues raised by the Department, and training provided to Personnel **and Subcontractors**; and
    - (ii) the financial status of the Provider; and
  - (b) a suitably qualified, informed and authorised representative at any meeting arranged by the Department, in order to discuss and accurately answer questions relating to the reports referred to at clause 24.1(a) or those otherwise required under this Deed.

#### **GDV 1**

- 24.2 The Provider must also provide any other Reports that may reasonably be required by the Department, within the timeframes requested by the Department.
- 24.3 The Provider must provide:
- (a) all Reports in a form acceptable to the Department; and
  - (b) if, in the Department's opinion, either the form or the content of a Report is not satisfactory, the Provider must submit a revised Report to the Department's satisfaction within ten Business Days of Notice to the Provider from the Department to do so.

### *Connections for Quality Indicators*

24.4 The Provider must report publicly against Connections for Quality Indicators in accordance with any Guidelines.

### **25. Financial statements and guarantees**

25.1 Subject to clause 25.3, the Provider must, for the Term of this Deed, provide to the Department audited financial statements:

- (a) within 20 Business Days of its annual general meeting, or where no annual general meeting is held, within 20 Business Days after the compilation of the financial statements; and
- (b) no later than 120 Business Days after the end of its financial year.

25.2 If the Provider is a Tendering Group or a partnership, then the Provider must provide one copy of the consolidated audited financial statements for the Tendering Group or partnership, if available, and individual annual audited financial statements for each member of the Tendering Group.

25.3 If required by the Department, the Provider must provide to the Department:

- (a) any other financial statements, in a form, with the content and at a frequency, as directed by the Department; and
- (b) within 20 Business Days of the relevant direction by the Department, a financial guarantee in a form and in terms satisfactory to the Department.

## **Section A2.5 – Assessment and management of Provider’s performance**

### **GDV 1**

### **26. Evaluation activities**

26.1 The Provider agrees that:

- (a) evaluation activities may be undertaken by the Department for the purposes of evaluating the Services, including the Provider’s performance, and may include, but are not limited to:
  - (i) the Department monitoring, measuring and evaluating the delivery of the Services by the Provider;
  - (ii) the Provider’s Personnel **and Subcontractors** being interviewed by the Department or an independent evaluator nominated by the Department; and
  - (iii) the Provider giving the Department or the Department’s evaluator access to its premises and Records in accordance with clause 40; and
- (b) it will fully cooperate with the Department in relation to all such activities.

### **GDV 1**

### **27. Programme Assurance Activities**

27.1 Throughout the Term of this Deed, the Department may conduct Programme Assurance Activities ~~to determine if the Provider is meeting its obligations under this Deed~~ and the Provider must fully cooperate with the Department in relation to all such activities as required by the Department.

### **GDV 1**

## 28. Performance assessments

28.1 During each Performance Period, the Department will monitor, measure and evaluate the Provider's performance against the requirements of this Deed, including, without limitation, and as relevant, the Employment Provider Services KPIs, the NEIS KPIs, the Joint Charter of Deed Management, the Service Delivery Plans, any representations in the Provider's tender response to the request for tender for this Deed, the Indigenous Outcomes Targets and the Service Guarantees.

### GDV 2

28.2 For the purposes of clause 28.115, the Department may rely on data collected from any source, including, without limitation, feedback from Participants, Employers, Work for the Dole Coordinators, Transition to Work Providers, ParentsNext Providers, NEIS Providers and HLS Providers and intelligence from the Department's Employment Services Tip off Line.

### GDV 1 GDV 2

28.3 After the end of each Performance Period, and at such other times as the Department determines, the Department may:

- (a) review the Provider's performance in each location, Employment Region and Harvest Area, as relevant, and at each Site where the Provider delivers Services; and
- (b) subsequently provide feedback to the Provider on the Department's assessment of its performance, including if the Department considers that the Provider's performance is such that it is likely to be in scope for an adjustment of its Business Share or NEIS Places under clause 101 and clause 132, where relevant.

28.4 This clause 28 does not in any way limit the rights of the Department under this Deed or at law, including rights to take remedial action against the Provider, arising out of the monitoring, measuring, evaluating or reviewing of the Provider's performance under this clause 28, or otherwise.

28.5 The Provider agrees that the Department may publish information the Department holds concerning the Provider's performance of the Services.

## 29. Sample reviews

### Reader's Guide

The Department may conduct sample reviews of claims for payments made by the Provider, based on a methodology that is verified by a qualified statistician or actuary as being statistically valid and producing results with a high confidence level. If a sample review identifies a proportion of invalid claims, the methodology will enable the extrapolation of that proportion across all claims within the relevant type or class of claims for the sample period. The Department may then apply remedies in relation to the deemed invalid claims.

*Example: The Department might decide to conduct a sample review of all claims for 26 Week Employment Outcomes for Stream C Participants made by the Provider during the six months immediately prior to the last Financial Year. The Department might choose to do so by reviewing a sample of 15% of all such claims, selected through a sampling methodology that meets the requirements of this clause 29. If the sample review finds that 20% of the sample claims are invalid, then the Department may treat up to 20% of all relevant Outcome Payment claims made by the Provider during the sample period as being invalid and apply relevant remedies under the Deed.*

- 29.1 Without prejudice to any other rights of the Department under this Deed or the law (including the right to engage in any other form of sampling activity):
- (a) the Department may:
    - (i) evaluate how the Provider has claimed Payments, by reviewing and investigating only a sample of claims for Payments generally, or of Payments of a particular type or class (**'Sample Review'**); and
    - (ii) for the purposes of a Sample Review, take into account data collected from any source without limitation; and
  - (b) if the results of a Sample Review show that the Provider has, in relation to all or a proportion of the claims for Payments included in a Sample Review, made claims for Payments:
    - (i) in breach of this Deed; or
    - (ii) in circumstances where it was not entitled to claim the Payments, as determined by the Department, then the Provider is, subject to clause 29.3, taken to have invalidly claimed all Payments, or that proportion of all Payments, as relevant:
      - (iii) generally; or
      - (iv) of the relevant type or class of Payments, as relevant to the Sample Review, for the period of the Sample Review (**'Deemed Invalid Claims'**).

29.2 In relation to Deemed Invalid Claims, the Department may, at its absolute discretion and without limiting its other remedies under this Deed or the law, do any one or more of the following by providing Notice to the Provider:

- (a) exercise its rights under clause 15.3 in respect of some or all of those claims;
- (b) exercise any remedies specified in clause 52.2;
- (c) recover any amounts under clause 54.1(b) in respect of those claims;
- (d) exercise any of its rights under clause 56;
- (e) exercise any of its rights to take remedial action in relation to the Provider's performance under clause 101 and/or clause 132, as relevant; or
- (f) recover any amounts under clause 130.3 in relation to those claims, where relevant.

*Sampling methodology*

29.3 For the purposes of clause 29.1, the Department may use any statistical methodology to undertake a Sample Review, provided that the Department has been advised by a statistician who is a Fellow of the Actuaries Institute of Australia or is accredited by the Statistical Society of Australia Inc. that the methodology:

- (a) is, or will give results that are, statistically valid for the purpose of demonstrating the matters covered by this clause 29; and
- (b) will provide at least a 95% confidence level that the proportion and/or value of invalid claims identified in the Sample Review can be extrapolated under clause 29.1(b) to that proportion and/or value of Payments generally or of the relevant type or class of Payments as relevant to the Sample Review, for the period of the Sample Review.

**GDV 1**

- 29.4 The Department must disclose the methodology used in a Sample Review to the Provider before exercising the Department's rights under clause 29.2.

## **Section A2.6 – Customer feedback**

### **GDV 1**

#### **30. Customer feedback process and Customer feedback register**

- 30.1 The Provider must establish and publicise to its Customers the existence and details of a Customer feedback process which will deal with feedback, including Complaints lodged by Customers, about its conduct of the Services. The process must:
- (a) be consistent with this clause 30, the Joint Charter of Deed Management, any representation made by the Provider in its tender response to the request for tender for this Deed and, for Employment Provider Services, the Service Guarantees and the Service Delivery Plan(s); and
  - (b) clearly indicate that Customers may also make a Complaint directly to the Department using the Department's National Customer Service Line.
- 30.2 If a Customer is dissatisfied with the results of the Customer feedback process, the Provider must refer the Customer to the Department's National Customer Service Line for further investigation of the matter.
- 30.3 Upon request, the Provider must give to the Department and Customers copies and details of the process it has established to manage Customer feedback.
- 30.4 The Provider must:
- (a) explain the Customer feedback process to each potential Participant upon their initial Contact with the Provider;
  - (b) ensure that all Complaints it receives are investigated by an appropriately senior staff member of the Provider;
  - (c) effectively and promptly communicate the outcome of any investigation and any action the Provider proposes to take about a Complaint to the relevant complainant and, if requested by the Department, to the Department; and
  - (d) when approached by the Department, actively assist:
    - (i) the Department in its investigation of any Complaint, including providing a detailed response to issues notified by the Department within the timeframe required by the Department;
    - (ii) in negotiating a resolution to any Complaint; and
    - (iii) other authorities in negotiating a resolution to any Complaint, where the relevant Customer has chosen to utilise other legislative or other complaints mechanisms.
- 30.5 The Provider must keep:
- (a) a Customer feedback register for each Site or in relation to NEIS Services, for each Employment Region, which includes the following information:
    - (i) details of all Customer feedback received directly by the Provider, and the outcome of any investigation where relevant;
    - (ii) details of all Customer feedback referred to the Provider by, or through, the Department; and

- (iii) in relation to Complaints, details which provide enough information to identify the nature of the Complaint, where detailed information relating to the Complaint is stored (if not in the Customer feedback register), the Site or Employment Region to which the Complaint relates, as relevant, and the date of the Complaint and the Customer(s) involved; and
- (b) Records, in accordance with the Records Management Instructions, as to how any Complaint was handled, the outcome of the relevant investigation and any follow up action required.

## CHAPTER A3 – INFORMATION MANAGEMENT

### Section 3A3.1 – Information Technology

#### GDV 1

#### 31. General

- 31.1 The Provider must conduct the Services using the Department's IT Systems provided by the Department for that purpose.
- 31.2 The Department may require that data relating to specific transactions must only be stored on the Department's IT Systems, and the Provider must comply with any such requirements.
- 31.3 The Department may:
  - (a) provide training in the use of the Department's IT Systems, by computer-assisted learning packages or otherwise; and
  - (b) require that Personnel and Subcontractors must not access or use the Department's IT Systems until they have successfully completed the relevant training, and the Provider must comply with any such requirement.

#### GDV 1

- 31.4 The Provider is responsible for all costs of meeting its obligations under this clause 31.

#### 32. Access and security

##### *Access to the Department's IT Systems*

- 32.1 The Provider must provide information technology systems, to access and use the Department's IT Systems and to carry out its other obligations under this Deed, that meet the requirements set out in this clause 32.

##### *Third Party Systems*

*Note: A 'Third Party System' includes an information technology system built or configured in-house by the Provider.*

- 32.2 The Provider must:
  - (a) advise the Department of any proposed use of a Third Party System to interface with the Department's IT Systems, and if the Department imposes any terms and conditions in respect of such use, comply with those terms and conditions;
  - (b) ensure that any Third Party System it uses:
    - (i) meets the minimum requirements of the Department, for entry to the Department's IT Systems and for record keeping and programme assurance purposes, as advised by the Department;

- (ii) does not negatively impact the performance, availability or data integrity of the Department's IT Systems;
  - (iii) does not introduce or permit the introduction of Harmful Code into the Department's IT Systems;
  - (iv) has secure log ons for each operator such that each operator's logon is uniquely identifiable to the Department and entries are traceable, and have date and time stamps;
  - (v) does not default answers to questions or input fields where the Department's IT Systems has no default setting; and
- (c) ensure that Records held in any Third Party System relating to the Services can be, and are, provided on request, to the Department and in an unadulterated form i.e. with no amendment to the Records.

32.3 The Department:

- (a) may make changes to the Department's IT Systems at any time, notwithstanding that such changes may affect the functioning of a Third Party System; and
  - (b) will provide reasonable information about those changes to the Provider; and
- the Provider:
- (c) must, notwithstanding any such change, at its sole cost, ensure that all Third Party Systems are consistent with the Department's IT System at all times; and
  - (d) agrees that the Department is not responsible for any loss, costs or legal liability of the Provider arising from such changes.

*System accreditation*

32.4 Subject to the Statement of Applicability ('SOA'), within 36 months from the Deed Commencement Date, the Provider must:

- (a) obtain accreditation for any Provider IT System in accordance with the requirements and timeframes set out in the SOA and bear any costs associated with doing so; and
- (b) maintain such accreditation until the Completion Date.

32.5 Where the Provider modifies a Provider IT System, it must ensure that any necessary reaccreditation activities are completed as required by the SOA.

32.6 For the purposes of clause 32.4(b), the Provider must obtain reaccreditation of all Provider IT Systems in accordance with the SOA at least once every three years.

32.7 Accreditation and reaccreditation under this clause 32 must be awarded by a qualified Information Security Registered Assessors Program ('IRAP') Assessor.

32.8 The Provider must Notify the Department immediately upon it obtaining relevant accreditation or reaccreditation and, if relevant, its failure to do so within the timeframes specified in this clause 32.

32.9 If the Provider does not obtain accreditation or reaccreditation within the timeframes specified in the SOA or this clause 32, the Provider must immediately cease using the relevant Provider IT System.

32.10 The Provider must:

- (a) keep Records of accreditation and reaccreditation awarded under this clause 32; and



- (b) when requested by the Department, provide those Records to the Department within the timeframe required by the Department.

32.11 If the SOA requires that any Personnel or Subcontractors of the Provider must obtain security clearances for the purposes of accreditation or reaccreditation:

- (a) the Provider must ensure that its relevant Personnel or Subcontractors obtain the required security clearances, and bear any costs associated with doing so; and
- (b) the Department will sponsor such clearances as required by the SOA.

#### GDV 1

##### *Third Party IT Providers*

32.12 The Provider must:

- (a) not give access to electronic Records, or any derivative thereof, to a Third Party IT Provider who has not entered into a Third Party IT Provider Deed with the Department, and only grant such access in accordance with the terms of the relevant Third Party IT Provider Deed and any Guidelines;
- (b) in any contract with a Third Party IT Provider:
  - (i) provide that the Third Party IT Provider may only subcontract its obligations under that contract to another Third Party IT Provider who has entered into a Third Party IT Provider Deed with the Department; and
  - (ii) reserve a right of termination to take account of the Department's right of termination in the relevant Third Party IT Provider Deed; and
- (c) on receipt of any advice from the Department that it has terminated a relevant Third Party IT Provider Deed, terminate the Provider's contract with the Third Party IT Provider and, at its own cost, promptly cease using the Third Party IT Provider.

##### *Technical advice*

32.13 The Provider must:

- (a) nominate Personnel to receive technical advice from the Department on the Department's IT Systems, and to provide advice to the Department on technical issues arising from accessing the Department's IT Systems ('IT Contact'); and
- (b) where the IT Contact changes, advise the Department accordingly.

##### *Security*

32.14 The Provider must comply, and ensure that its Subcontractors and Third Party IT Providers comply, with the Department's Security Policies and the Commonwealth's Cybersafety Policy, as relevant.

32.15 The Provider must ensure that a Security Contact is appointed at all times during the Term of this Deed, and that, at all times, the Department has up to date contact details for the current Security Contact.

32.16 The Provider must (through its Security Contact) promptly report all breaches of IT security to the Employment Systems Help Desk, including where Personnel suspect that a breach may have occurred or that a person may be planning to breach IT security and their resolution.

32.17 Where the Department considers that the Provider may be in breach of this clause 32, or there is a risk of such a breach, the Department may, at its absolute discretion, immediately suspend access to the Department's IT Systems for any one or more of the following:

- (a) any Personnel;
- (b) any Subcontractor;
- (c) any Third Party IT Provider;
- (d) the Provider; or
- (e) any Third Party System,

by providing Notice to the Provider.

- 32.18 Where the Department determines that the Provider is in breach of, or has previously breached, this clause 32, the Department may immediately take action including any one or more of the following:
- (a) suspending, terminating, or requiring the cessation of all access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Provider, Third Party System or the Provider;
  - (b) applying bandwidth throttling measures in respect of all access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Provider, Third Party System or the Provider;
  - (c) requiring the Provider to obtain new logon IDs for any Personnel, Subcontractor or Third Party IT Provider and if so, the Provider must promptly obtain such new logons; or
  - (d) requiring the Provider to prepare and implement an IT security plan to the Department's satisfaction, and if so, the Provider must do so within the timeframe required by the Department.
- 32.19 Any action taken by the Department under clauses 32.17 to 32.18 does not limit any other rights the Department has under this Deed, including pursuant to clause 52.2, or under the law.
- 32.20 If the Department gives Notice to the Provider that access to the Department's IT Systems is terminated for any particular Personnel, Subcontractor or Third Party IT Provider, the Provider must immediately take all actions necessary to terminate that access.

*Cybersafety Policy*

- 32.21 For the purposes of ~~this~~ clauses ~~32-32.21~~ to 32.25:
- 'Clients'** means persons who may use the Provider's computers and/or other digital technology that is supported through public funding provided pursuant to this Deed, and includes but is not limited to, the Provider, the Provider's staff and the public, whether they be adult or Children.
- 'Reasonable Steps'** means having in place strategies to minimise and manage risks of exposure to inappropriate or harmful on-line content by users of computers, particularly Children, and may include, but is not limited to, having a policy in place regarding appropriate use and protection for Clients, installation of filters, audits and provision of information or training to the Provider's staff regarding the risks of, and protection from, inappropriate or harmful on-line content.

**GDV 2**

- 32.22 The Commonwealth's Cybersafety Policy is that where an organisation is funded by the Commonwealth to carry out the Services using computers and/or other digital technology, the safety of Clients when using those computers and/or other digital technology must be assured.
- 32.23 The Provider must take Reasonable Steps to protect its Clients' cybersafety.

- 32.24 If the Department gives the Provider Notice requiring it, the Provider must provide the Department, within 10 Business Days of receiving the Notice, with evidence satisfactory to the Department that the Provider has complied with the requirements of this Cybersafety Policy.
- 32.25 The Provider agrees to include its obligations in relation to this Cybersafety Policy in all Subcontracts it enters into in relation to the Services.

## **Section 3BA3.2 – Property rights**

### **GDV 1**

#### **33. Ownership of Intellectual Property Rights and Material**

33.1 Subject to clause 34, as between the Department and the Provider (but without affecting the position between the Provider and a third party), the ownership of Intellectual Property Rights in, and the actual documents comprising:

- (a) Commonwealth Material; and
- (b) Deed Material,

vest at all times in the Department.

#### *Dealing with Intellectual Property Rights*

33.2 The Provider warrants that it:

- (a) is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in Deed Material and the Existing Material in accordance with this clause 33 and clause 34, as relevant; and
- (b) has obtained valid, unconditional and irrevocable written consents from all owners of Intellectual Property Rights in, and all authors (including Subcontractors) involved in creating Deed Material and Existing Material so that the Department's use of that Material in accordance with this clause 33 and clause 34, as relevant, will not infringe:
  - (i) the Intellectual Property Rights of any third party; or
  - (ii) any author's Moral Rights.

33.3 The Provider must:

- (a) if requested by the Department to do so, create, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to clause 33.1;
- (b) not deal with the Intellectual Property Rights in the Deed Material, except as expressly provided for in this Deed; and
- (c) deliver all Deed Material to the Department at the Completion Date, unless otherwise Notified by the Department.

33.4 For the purposes of [this](#) clause 33, 'infringe' includes unauthorised acts that would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layout Act 1989* (Cth), constitute an infringement.

### **GDV 1**

#### **34. Licensing of Intellectual Property Rights**

##### *Licence of Commonwealth Material and Deed Material*

- 34.1 The Department grants the Provider a licence to use, copy and reproduce Commonwealth Material and Deed Material, but only for the purposes of this Deed and in accordance with any conditions or restrictions Notified by the Department to the Provider.
- 34.2 The licence in clause 34.1 is revocable on 10 Business Days' Notice by the Department, and expires on the Completion Date.
- 34.3 If the Department specifies in the Records Management Instructions that Intellectual Property Rights in some Deed Material vests in the Provider, the Provider grants the Department a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Deed Material for any purpose as required by the Department.
- 34.4 The Provider must not do anything that would prejudice the Department's right title and interest in Commonwealth Material or Deed Material.

*Licence of Existing Material*

- 34.5 This Deed does not affect the ownership of any Intellectual Property Rights in any Existing Material. The Provider, however, grants to the Department or must arrange for the grant to the Department of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any purpose as required by the Department.
- 34.6 If requested by the Department to do so, the Provider must create, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 34.

*Commonwealth Coat of Arms*

- 34.7 The Provider must not use the Commonwealth Coat of Arms for the purposes of this Deed or otherwise, except as authorised in accordance with the Use of the Commonwealth Coat of Arms General Guidelines available at [http://www.dpmc.gov.au/sites/default/files/publications/Commonwealth Coat of Arms Information and Guidelines.pdf](http://www.dpmc.gov.au/sites/default/files/publications/Commonwealth%20Coat%20of%20Arms%20Information%20and%20Guidelines.pdf)

**Section 3CA3.3 – Control of information**

**GDV 1**

**35. Personal and Protected Information**

- 35.1 Clauses 35.1 to 35.3 apply only where the Provider deals with Personal Information for the purpose of conducting the Services under this Deed, and the terms 'agency', 'APP Code', 'contracted service provider', 'organisation', 'sensitive information' and 'Australian Privacy Principle' (APP) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

**GDV 1**

- 35.2 The Provider acknowledges that it is a contracted service provider and agrees, in respect of the conduct of the Services under this Deed:
- (a) to use or disclose Personal Information, including Sensitive Information, obtained in the course of conducting the Services ('relevant Personal Information'), only for the purposes of this Deed or where otherwise permitted under the Privacy Act;

- (b) except where this clause expressly requires the Provider to comply with an APP that applies only to an organisation, to carry out and discharge the obligations contained in the APPs as if it were an agency;
- (c) not to do any act or engage in any practice that if done or engaged in by an agency, or where relevant, an organisation, would be a breach of an APP;
- (d) to notify individuals whose Personal Information it holds, that:
  - (i) complaints about its acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against the Provider in appropriate circumstances; **and**
  - (ii) their Personal Information may be disclosed and passed on to the Department and to other persons in relation to providing the Services;
- (e) unless expressly authorised or required under this Deed, not engage in any act or practice that would breach:
  - (i) APP 7 (direct marketing);
  - (ii) APP 9 (adoption, use or disclosure of government related identifiers); or
  - (iii) any registered APP code that is applicable to the Provider;
- (f) to comply with any request under section 95C of the Privacy Act;
- (g) to comply with any directions, guidelines, determinations, rules or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 35;
- (h) not to transfer relevant Personal Information outside of Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Department;
- (i) to its name being published in reports by the Privacy Commissioner;
- (j) if the Provider suspends or terminates Personnel:
  - (i) to remove any access that the Personnel have to any relevant Personal Information; **and**
  - (ii) to require that the Personnel return to the Provider or the Department any relevant Personal Information held in the Personnel's possession; **and**
  - (iii) **it must remind the Personnel of their relevant obligations under this Deed; and**
- (k) to ensure that any of its Personnel who are required to deal with relevant Personal Information:
  - (i) where required by the Department, undertake in writing to comply with the APPs (or a registered APP code, where applicable); **and**
  - (ii) are made aware of their obligations in this clause 35, including to undertake in writing to comply with the APPs (or a registered APP code, where applicable).

#### **GDV 1 GDV 2**

35.3 The Provider must immediately Notify the Department if it becomes aware:

- (a) of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 35 by any Personnel or Subcontractor;
- (b) that a disclosure of Personal Information may be required by law; or

- (c) of an approach to the Provider by the Privacy Commissioner or by a person claiming that their privacy has been interfered with.

#### *Protected Information*

35.4 The Provider must ensure that when handling Protected Information, it complies with the requirements under Division 3 [Confidentiality] of Part 5 of the *Social Security (Administration) Act 1999* (Cth).

### **36. Confidential Information**

36.1 Subject to this clause 36, the Parties must not, without each other's prior written approval, disclose any of each other's Confidential Information to a third party.

36.2 In giving written approval to disclosure, a Party may impose conditions as it thinks fit, and the other Party agrees to comply with the conditions.

36.3 The obligations on the Parties under this clause 36 will not be breached if information:

- (a) is shared by the Department within the Department's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
- (b) is disclosed by the Department to the responsible Minister or the Minister's staff;
- (c) is disclosed by the Department, in response to a request or direction by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (d) is authorised or required by law to be disclosed; or
- (e) is in the public domain otherwise than due to a breach of this clause 36.

36.4 Nothing in this clause 36 limits the obligations of the Provider under clauses 35 or 40.

## **Section 3DA3.4 – Records management**

### **GDV 1**

### **37. Records the Provider must keep**

37.1 The Provider must create and maintain true, complete and accurate Records of the conduct of the Services, in accordance with the Records Management Instructions.

37.2 Notwithstanding this clause 37, if the Department considers it appropriate, the Department may, at its absolute discretion, impose special conditions in relation to Records management, and the Provider must comply with those special conditions as directed by the Department.

37.3 When requested by the Department, the Provider must provide the Records, including relevant Records maintained by a Third Party IT Provider, to the Department within the timeframe required by the Department.

#### *Financial Accounts and Records*

37.4 The Provider must keep financial accounts and Records of its transactions and affairs regarding Payments that it receives from the Department under this Deed:

- (a) in accordance with Australian Equivalents to International Financial Reporting Standards maintained by the Australian Accounting Standards Board created by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth); and
- (b) such that:

- (i) all Payments made by the Department are clearly and separately identified from each other and from other money of the Provider; and
- (ii) an auditor or other person may examine them at any time and thereby ascertain the Provider's financial position.

#### GDV 1

##### *Storage*

- 37.5 The Provider must store all Records created or maintained under clause 37.1, in accordance with the Records Management Instructions and the Department's Security Policies, and where relevant, its Privacy Act obligations.

##### ~~Control~~ Recording

- 37.6 The Provider must maintain an up to date list of the Records held by the Provider, as specified in the Records Management Instructions, and make this list available to the Department on request.

#### GDV 1

##### *Access*

- 37.7 Subject to clauses 35 and 40, the Provider must ensure that copying of, use of, and access to, Participant Services Records, is restricted to Personnel directly assisting the Provider with the provision of Services to a Participant, any Subcontractor or ~~to~~ any Third Party IT Provider.

##### *Transfer*

- 37.8 Subject to clause 35.2(h), the Provider must:
- (a) not, without the prior written approval of the Department, transfer, or be a party to an arrangement for the transfer of, custody of the Records created or maintained under clause 37.1, outside of Australia or to any person, entity or organisation other than to the Department; and
  - (b) where transferring Records created or maintained under clause 37.1, only transfer the Records in accordance with the Records Management Instructions or as otherwise directed by the Department.

##### *Retention*

- 37.9 Subject to clause 35, all Records created or maintained under clause 37.1 must be retained by the Provider for a period of no less than seven years after the creation of the Record, unless otherwise specified in the Records Management Instructions or advised by the Department.
- 37.10 At the Completion Date, the Provider must manage all Records created or maintained under clause 37.1 in accordance with the Records Management Instructions or as otherwise directed by the Department.

##### *Destruction*

- 37.11 The Provider must:
- (a) not destroy or otherwise dispose of Records created or maintained under clause 37.1, except in accordance with the relevant Records Management Instructions, or as otherwise directed by the Department; and
  - (b) provide a list to the Department of any Records that have been destroyed, as directed by the Department.

### **38. Access by Participants and Employers to Records held by the Provider**

- 38.1 Subject to this clause 38, the Provider must allow Participants and Employers who are individuals to access Records that contain their own Personal Information, and provide them with copies of such Records if they require, except to the extent that Commonwealth legislation would, if the Records were in the possession of the Commonwealth, require or authorise the refusal of such access by the Commonwealth including Records of the type set out in clause 38.3.
- 38.2 The Provider must, in providing access to the requested Records in accordance with clause 38.1:
- (a) ensure that the relevant Participant or Employer requesting the access in clause 38.1 provides proof of identity before access is given to the requested Records; and
  - (b) notate the relevant files with details of the Records to which access was provided, the name of the person granted access and the date and time of such access.
- 38.3 Where a Participant or an Employer requests access to records containing information falling within the following categories:
- (a) records also containing information about another person;
  - (b) medical/psychiatric records (other than those actually supplied by the Participant or Employer, or where it is clear that the Participant has a copy or has previously sighted a copy of the records);
  - (c) psychological records; and
  - (d) information provided by other third parties,
- the request must be directed by the Provider to the Department for consideration.
- 38.4 The Provider must comply with any direction given by the Department in relation to the provision, or refusal, of access to Records held by the Provider to a Participant or Employer.

### **39. Access to documents for the purposes of the *Freedom of Information Act 1982* (Cth)**

- 39.1 In this clause 39, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 39.2 The Provider agrees that:
- (a) where the Department has received a request for access to a document created by, or in the possession of, the Provider, any Subcontractor or any Third Party IT Provider, the Department may, at any time, by Notice, require the Provider to provide the document to the Department and the Provider must, at no additional cost to the Department, promptly comply with the Notice;
  - (b) the Provider must assist the Department in respect of the Department's obligations under the *Freedom of Information Act 1982* (Cth), as required by the Department; and
  - (c) the Provider must include in any Subcontract, or contract with a Third Party IT Provider, provisions that will enable the Provider to comply with its obligations under this clause 39.

#### **GDV 1**

### **40. Access to premises and Records**

- 40.1 The Provider must at all reasonable times give or arrange for any Department Employee:
- (a) unfettered access to:
    - (i) its Sites or premises and those of any Subcontractor or Third Party IT Provider;



- (ii) ~~Third Party Systems~~its information technology systems and those of any Third Party IT Provider;
  - (iii) all Material, including that relevant to claims for Payment, determining the Provider's financial viability, and compliance with relevant work, health and safety and industrial relations legislation; and
  - (iv) its Personnel, ~~Subcontractors and Third Party IT Providers~~; and
- (b) all assistance, as required by the relevant Department Employee, to:
- (i) inspect its Sites or premises ~~and those of any Subcontractor or Third Party IT Provider~~;
  - (ii) inspect the performance of Services; and
  - (iii) locate, inspect, copy and remove, all Material including data stored on the Provider's information technology systems or those of any ~~Subcontractor or Third Party IT Provider~~.

#### GDV 1

40.2 Subject to clause 40.3, the obligations referred to in clause 40.1 are subject to the provision of reasonable prior notice to the Provider and compliance with the Provider's reasonable security procedures.

40.3 If:

- (a) a matter is being investigated that, in the opinion of the Department, may involve:
  - (i) an actual or apprehended breach of the law;
  - (ii) a breach of this Deed; or
  - (iii) suspected fraud; or
- (b) the Department is otherwise conducting Programme Assurance Activities in relation to the Provider,

clause 40.2 does not apply, and Department Employees may remove and retain any Material that the Department determines is relevant to the investigation, including items stored on an electronic medium, provided that the Department returns a copy of all such Material to the Provider within a reasonable period of time.

*Note: There are additional rights of access under the Ombudsman Act 1976 (Cth), the Privacy Act 1988 (Cth), and the Auditor-General Act 1997 (Cth).*

## CHAPTER A4 – DEED ADMINISTRATION

### Section 4A4.1 – Indemnity and insurance

#### GDV 1

#### 41. Indemnity

41.1 The Provider must indemnify the Department against any:

- (a) loss, cost or liability incurred by the Department; and
- (b) loss or expense incurred by the Department in dealing with any claim against the Department, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Department,

arising from or in connection with:

- (c) any act or omission by:
  - (i) the Provider;
  - (ii) a Subcontractor (whether or not the relevant entity is a current Subcontractor); or
  - (iii) an Activity Host Organisation engaged by the Provider other than as a Subcontractor, in connection with this Deed, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
- (d) any breach by the Provider of this Deed or failure to meet an undertaking given under this Deed;
- (e) any publication of the information referred to in clauses 28.5 or 61, where the published information was provided by the Provider to the Department; or
- (f) the use by the Department of the Deed Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in Deed Material or Existing Material.

41.2 The liability of the Provider to indemnify the Department under this clause 41 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant cost, loss, damage, expense, or liability.

41.3 The Department's right to be indemnified under this clause 41 is in addition to any other right, power, or remedy provided by law, but the Department will not be entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

*Meaning of fault*

41.4 In this clause 41, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

**42. Insurance**

42.1 Subject to this clause 42 and unless the Department otherwise agrees in writing, the Provider must, for the Term of this Deed, effect and maintain or cause to be effected and maintained, the following insurances, which must be valid and enforceable and, except for the statutory workers compensation insurance referred to at clause 42.1(b)(i)(A) and the professional indemnity insurance or errors and omissions insurance at clause 42.1(d), be written on an occurrence basis:

- (a) public liability insurance with a limit of indemnity of at least \$10 million in respect of each and every occurrence, which covers:
  - (i) the Provider's liability and the liability of its Personnel, representatives and agents (including to the Department and to the Participants) at general law and additionally as assumed under the terms of clause 43; and
  - (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider, its Personnel, representatives and agents;

in respect of:

- (iii) loss of, or damage to, or loss of use of any real or personal property (including property of the Department in the care, custody or control of the Provider); and
- (iv) the bodily injury, disease or illness (including mental illness) or death of any person (other than a liability insured under the insurance referred to at clause 42.1(b)),

arising out of, or in connection with, the Provider's performance of this Deed;

- (b) insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Provider under this Deed:
  - (i) giving rise to a claim:
    - (A) under any statute relating to workers' compensation; and
    - (B) where common law claims by such workers are permissible outside of the statutory scheme referred to at clause 42.1(b)(i)(A), for employer's liability at common law with a limit of indemnity of at least \$50 million in respect of each and every occurrence;
  - (ii) in each Australian state or territory where the Services are performed or delivered; and
  - (iii) where possible under the relevant law or scheme governing workers compensation insurance and in respect of all employers' liability policies, extending to indemnify the Department for its liability as principal in relation to any such claim;
- (c) for any motor vehicle used in the performance of this Deed:
  - (i) insurance with a limit of indemnity of at least \$20 million in respect of each and every occurrence which covers:
    - (A) third party property damage arising from the use of any plant or vehicles (registered or unregistered) used in respect of the performance of this Deed (including transporting Participants); and
    - (B) the bodily injury, disease or illness (including mental illness) or death of, any person arising from the use of any unregistered plant or vehicles used in or in connection with the performance of the Services pursuant to this Deed (including transporting Participants);
  - (ii) compulsory third party motor vehicle insurance for all registrable vehicles used in the performance of this Deed (including transporting Participants in the Provider's or the Provider's employees vehicles);
- (d) for any Services provided in a professional capacity – professional indemnity insurance or errors and omissions insurance [to be maintained during the Term of this Deed and for at least seven years following the Completion Date](#) with a limit of indemnity of at least \$5 million in respect of each [and every occurrence claim and in the aggregate for all claims in any one 12 month policy period with one right of reinstatement](#) which covers the liability of the Provider at general law and additionally as assumed under the terms of clause 43 arising from:
  - (i) a breach of duty owed in a professional capacity in connection with the performance of this Deed or, where errors and omissions insurance is effected, arising from an error or omission in judgement by the Provider, its Personnel, representatives or agents; and
  - (ii) unintentional breaches of Intellectual Property Rights.
- (e) if the provision of the Services involves the provision a product – products liability insurance with a limit of indemnity of at least \$10 million in respect of each and every occurrence, which covers:
  - (i) the Provider's liability and the liability of its Personnel, representatives and agents (including to the Department and to the Participants) at general law and additionally as assumed under the terms of clause 43; and
  - (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider, its Personnel, representatives and agents;

in respect of:

- (iii) loss of, damage to, or loss of use of any real, personal or intangible property (including property of the Department in the care, custody or control of the Provider, and including the Department's IT Systems); and
- (iv) the bodily injury, disease or illness (including mental illness) or death of, any person (other than a liability insured under the insurance referred to in clause 42.1(b)),  
arising out of or in connection with any products installed, repaired, serviced, sold, supplied or distributed in the performance of the Services, or in connection with, this Deed;
- (f) personal accident insurance providing a sliding scale of benefits (in conformance with current insurance market practice for such policies) with a maximum benefit of at least \$250,000 in respect of each and every occurrence that covers Participants while:
  - (i) on the Provider's premises;
  - (ii) undertaking employment services activities, but not including undertaking an Activity or any other activity specified in any Guidelines; and
  - (iii) travelling by the most direct route between:
    - (A) the Provider's premises and the Participant's home or DHS following Referral;
    - (B) the Provider's premises and job interviews; and
    - (C) the Participant's home and job interviews, following referral by the Provider; and
- (g) if the Provider will use an aircraft or marine vessel for the purposes of performing this Deed and the aircraft or marine vessel is owned or chartered by the Provider, marine liability and/or aircraft liability insurance, as is appropriate, covering the liability of the Provider, its Personnel, representatives and agents (including to the Department, Participants and passengers) in respect of liability for third party personal injury or death or loss of or damage to third party property (including cargo) with a limit of indemnity of at least \$20 million in respect of each and every occurrence unless such liability is otherwise insured under the insurance effected in compliance with clause 42.1(a).

#### **GDV 1**

- 42.2 The Provider must also effect and maintain, or cause to be effected and maintained, any other insurance policies required to adequately cover the Provider's business risk that a similar Employment Provider, acting reasonably, would acquire, and any other insurance cover required by law.
- 42.3 Unless otherwise agreed by the Department in writing, all insurances required under this clause 42 (other than statutory workers compensation insurance and compulsory third party motor vehicle insurance) must be obtained from an insurer authorised by the Australian Prudential Regulation Authority.
- 42.4 Each of the insurances required by this clause 42 (other than statutory workers compensation insurance and compulsory third party motor vehicle insurance) that insures more than one person, must include:
  - (a) a cross-liability clause, whereby the insurer agrees that the policy shall be construed as if a separate policy has been issued to each insured person (but not so as to increase the overall limit of liability) (this clause does not apply to any professional indemnity or errors and omissions insurance required by this clause 42);

- (b) a waiver of subrogation clause, whereby the insurer agrees to waive all rights of subrogation or action that it may have or acquire against any or all of the persons insured (at least to the extent that they are insured under the policy);
- (c) a non-imputation clause, whereby the insurer agrees that any failure by any insured person to observe and fulfil the terms of the policy, or to comply with the terms of the policy, or to comply with that insured person's pre-contractual duty of disclosure does not prejudice the insurance of any other person insured under the policy;
- (d) a severability clause in which the insurer agrees to treat the insurance policy as if a separate policy has been issued to each insured person for the purposes of determining rights to indemnity; and
- (e) a clause whereby notice of a claim given to the insurer by any insured person will be accepted by the insurer as notice of a claim given by all the persons insured under the policy.

42.5 Clauses 42.4(a), (c) and (e) do not apply to any personal accident insurance required by this clause 42.

42.6 In relation to the insurances specified in this clause 42, the Provider must abide by the terms and conditions of any relevant policy, and do everything reasonably required to claim and to collect or recover monies due under any policy.

42.7 The Provider must Notify the Department immediately when it:

- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Provider is obliged to effect and maintain, that could materially reduce the available limits or involve the Department (other than a claim by the Department against the Provider which would be insured under the insurance referred to in clause 42.1(d)); or
- (b) receives a notice of cancellation in respect of any of the insurances that the Provider is obliged to effect and maintain.

42.8 The Provider must ensure that all Subcontractors retained by it to perform work in connection with this Deed are covered by insurance of the types specified in this clause 42, as is appropriate (including as to limits of indemnity) given the nature of the work to be performed by each such Subcontractor.

*Evidence of insurance*

42.9 Subject to clause 42.10, the Provider must obtain written independent professional advice that the insurances obtained by it and any Subcontractors pursuant to this clause 42 meets the requirements of this Deed:

- (a) before commencing the performance of any Services and in any event within 20 Business Days of the Deed Commencement Date; and
- (b) within 10 Business Days of the date of renewal of each of the insurances required under this Deed.

42.10 Where the advice referred to in clause 42.9 relates to insurances obtained by a Subcontractor, the written independent professional advice in relation to that insurance may be obtained by either the Provider or the Subcontractor.

42.11 Clause 42.9 does not apply to statutory workers compensation insurance or compulsory third party motor vehicle insurance.

42.12 The Provider must, within 10 Business Days of 1 July each year, or at any other time that the Department requests, provide to the Department an insurance declaration form, in the form required by the Department ~~from time to time~~.

## GDV 1

42.13 In relation to each insurance policy relied upon by the Provider in compliance with the Provider's obligations to effect and maintain, or cause to be effected and maintained, insurance as required by this Deed, the Provider must provide to the Department:

- (a) a full copy of the insurance policy;
- (b) a certificate of currency; and
- (c) a copy of the independent professional advice required by clause 42.9,

at any time that the Department requests.

*Note: Clause 42.13 allows the Department to request information relating to the insurances of any Subcontractor of the Provider.*

42.14 The Provider must not change, during the term of any policy, its insurer(s) unless the Department is satisfied that the change will not reduce or terminate any cover that exists prior to the proposed change and has agreed in writing to the change.

### *Assistance to the Department*

42.15 The Provider must:

- (a) give full, true and particular information, in respect of any proposal for a policy of insurance (including any policy issued pursuant to any self-insurance scheme of the Commonwealth) to be effected by the Department, of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payments of all or any benefits under a policy; and
- (b) provide all reasonable assistance to the Department, in order to facilitate the Commonwealth making a claim under any insurance policy or self-insurance scheme effected for the Commonwealth's benefit.

42.16 For the avoidance of doubt, the provisions of this clause 42 are not to be read so as to reduce a Party's liability under any other provision of this Deed, and compliance by the Provider with the provisions of this clause 42 does not limit its liability under any other provision of this Deed.

## **43. Liability of the Provider to the Department**

### *Joint and several liability*

43.1 To the extent permitted by law, where:

- (a) more than one Party is a signatory to this Deed as the Provider – each of those Parties;
- (b) the Provider is a partnership – each partner; or
- (c) the Provider is a Tendering Group – each member of the Tendering Group;

is jointly and severally liable for:

- (d) the performance of all of the obligations of the Provider under this Deed; and
- (e) all losses caused by any Subcontractor engaged for the purpose of this Deed.

### *Proportionate liability*

43.2 The Parties agree that, to the extent permitted by law:

- (a) the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* is excluded in relation to all and any rights, obligations and liabilities under, or in connection with, this Deed whether such

rights, obligations or liabilities are sought to be enforced as a breach of contract, a claim in tort or otherwise; and

- (b) in accordance with clause 68, this clause 43.2 applies to all and any rights, obligations and liabilities under, or in connection with, this Deed whether such rights, obligations or liabilities arise in the state of New South Wales or elsewhere in Australia.

~~43.3 The Parties agree that, in addition to clause 43.2, to the extent permitted by law:~~

- ~~(a) the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising in or connected with the state of New South Wales;~~
- ~~(b) the operation of Part 9A of the *Civil Liability Act 2002* (TAS) is excluded in relation to all and any rights, obligations and liabilities arising in or connected with the state of Tasmania;~~
- ~~(c) the operation of Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights, obligations and liabilities arising in or connected with the state of Western Australia; and~~
- ~~(d) the operation of Part 1F of the *Civil Liability Act 2002* (WA) (CI) and the operation of Part 1F of the *Civil Liability Act 2002* (WA) (CKI) are excluded in relation to all and any rights, obligations and liabilities arising in or connected with the territory of Christmas Island and the territory of the Cocos (Keeling) Islands, respectively,~~

~~under, or in connection with, this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, a claim in tort or otherwise.~~

*Note: clause 68 provides that this Deed is to be construed in accordance with, and any other matter related to it is to be governed by, the laws of the State of New South Wales.*

## **GDV 2**

### **44. Special rules about Tendering Groups**

44.1 If the Provider is a Tendering Group, the Provider:

- (a) agrees that its members are as specified at item 6.9 or 8.11 of Schedule 1, as relevant;
- (b) warrants that each of its members have given their authority to the member named in the Particulars this Deed as the Tendering Group's lead member to negotiate, bind and act on that member's behalf in relation to this Deed and any variations thereto; and
- ~~(b)~~(c) must not change its membership without the Department agreeing in writing, and the Provider complying with any direction from the Department in relation to the change.

## **GDV 1**

### **Section 4BA4.2 – Changes in persons delivering Services**

#### **GDV 1**

### **45. Corporate governance**

45.1 The Provider must provide a copy of its Constitution to the Department upon request.

45.2 The Provider must:

- (a) inform the Department in writing within five Business Days of any change:
  - (i) in its Constitution, structure, management or operations that could reasonably be expected to have an adverse effect on its ability to comply with the Provider's obligations under this Deed; and

- (ii) to the membership of its board of [eDirectors](#), board of management or executive during the Term of this Deed; and
- (b) obtain a completed credentials information form (as supplied by the Department) from any Director, or member of its board of management or executive, and supply it to the Department, if the Department requests it, within 10 Business Days of the Department's request.

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*Note: The credentials information form authorises the Department to undertake a credit check of a particular individual.*

#### *Personnel*

- 45.3 Unless otherwise agreed by the Department in writing at its absolute discretion, the Provider must not employ, engage or elect any person who would have a role in its management, financial administration or, if Notified by the Department, the performance of the Services, if:
- (a) the person is an undischarged bankrupt;
  - (b) there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
  - (c) the person has suffered final judgment for a debt and the judgment has not been satisfied;
  - (d) subject to Part VIIC of the *Crimes Act 1914* (Cth), the person has been convicted of an offence within the meaning of paragraph 85ZM(1) of that Act, or any other offence relating to fraud, unless there is clear evidence that:
    - (i) the conviction is regarded as spent under paragraph 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
    - (ii) the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
    - (iii) the person's conviction for the offence has been quashed, in accordance with any relevant law;
  - (e) the person is or was a Director or a person who occupied an influential position in the management or financial administration of an organisation that had failed to comply with the terms of any agreement with the Commonwealth and where that failure gave the Commonwealth the right to terminate the agreement; or
  - (f) the person is otherwise prohibited from being a member or Director or employee or responsible officer of the organisation of the Provider.
- 45.4 Unless otherwise agreed by the Department in writing at its absolute discretion, where a person falls, or is discovered as falling, within any of clauses 45.3(a) to 45.3(f) while employed or engaged by the Provider, or elected as an officer of the Provider, in a role in:
- (a) its management or financial administration, the Provider will be in breach of clause 45.3, if the Provider does not:
    - (i) transfer the person to a position that does not have a role in its management or financial administration; or
    - (ii) terminate the employment or engagement of the person or remove the person from office,



as the case may be, and immediately Notify the Department of its action; or

- (b) the performance of the Services, the Provider must Notify the Department on becoming aware that the person falls or has been discovered as falling within any of clauses 45.3(a) to 45.3(f), and take any action in respect of that person, that is Notified by the Department.

*Note: For the avoidance of doubt, clause 45.4(b) will also apply where a person is transferred in accordance with clause 45.4(a)(i), to a role in the performance of the Services.*

*Change in Control of the Provider or a Material Subcontractor*

- 45.5 The Provider must not, without the Department's prior written consent, cause or permit to occur a Change in Control of:
  - (a) the Provider; or
  - (b) any Material Subcontractor.
- 45.6 The Department may, at its absolute discretion, grant, or refuse to grant its consent to a Change in Control of the Provider or any Material Subcontractor. If the Department grants its consent, the Department may do so on such conditions as the Department sees fit.
- 45.7 The Provider must, within five Business Days of receiving a written request from the Department, provide such information and supporting evidence as the Department may request in relation to the:
  - (a) shareholdings;
  - (b) issued shares;
  - (c) board of Directors;
  - (d) board of management;
  - (e) executive;
  - (f) voting rights;
  - (g) partnership composition, if relevant; or
  - (h) Tendering Group membership, if relevant,of the Provider or any Material Subcontractor, including the dates of any changes to those matters.
- 45.8 If the Provider does not:
  - (a) obtain the Department's consent to a Change in Control as required by clause 45.5; or
  - (b) provide the Department with any information required by the Department in accordance with clause 45.7,the Department may do either or both of the following:
  - (c) take action under clause 52.2; or
  - (d) terminate this Deed under clause 56.

**46. Provider's Personnel**

- 46.1 The Department may give Notice, on reasonable grounds related to the performance of the Services or risk to the Services or the Commonwealth, requiring the Provider to remove Personnel from work on the Services. The Provider must, at its own cost, promptly arrange for the removal of such Personnel from work on the Services and their replacement with Personnel acceptable to the Department.

- 46.2 For the purposes of clause 46.1, if the Provider is unable to provide replacement Personnel who are acceptable to the Department, the Department may terminate this Deed under clause 56.
- 46.3 The Provider must provide for, and ensure that its Personnel participate in, any training as directed by the Department ~~from time to time~~.

## GDV 1

### 47. External administration

- 47.1 Without limiting any other provisions of this Deed, the Provider must provide the Department, immediately upon receipt or generation by the Provider, a copy of:
- (a) any notice requiring the Provider to show cause why the Provider should not come under any form of external administration referred to in clause 47.1(b);
  - (b) any record of a decision of the Provider, notice or orders that the Provider has, or will, come under one of the forms of external administration referred to in:
    - (i) Chapter 5 of the *Corporations Act 2001* (Cth);
    - (ii) the equivalent provisions in the incorporated associations legislation of the Australian states and territories; or
    - (iii) Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
  - (c) any statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
  - (d) any proceedings initiated with a view to obtaining an order for the Provider's winding up;
  - (e) any decisions and orders of any court or tribunal made against the Provider, or involving the Provider, including an order for the Provider's winding up;
  - (f) any notice that a shareholder, member or Director is convening a meeting for the purpose of considering or passing any resolution for the Provider's winding up; or
  - (g) being an individual, any notice that the Provider has become bankrupt or has entered into a scheme of arrangement with his or her creditors.
- 47.2 The Provider must, immediately upon the event happening, give Notice to the Department that the Provider:
- (a) has decided to place itself, or has otherwise come under, any one of the forms of external administration, referred to in clause 47.1(b); or
  - (b) is ceasing to carry on business.

### 48. Subcontracting

- 48.1 The Provider must not, without the Department's prior written approval:
- (a) enter into a Subcontract for the performance of any of its obligations under this Deed;
  - (b) terminate a Subcontractor who has been approved by the Department; or
  - (c) replace an approved Subcontractor with another Subcontractor.
- 48.2 In giving approval under clause 48.1, the Department may impose such terms and conditions as the Department thinks fit and the Provider must comply with any such terms and conditions.

- 48.3 The Subcontractors that the Department has approved at the Deed Commencement Date, and any terms and conditions relating to their use, are identified in items 6.10 and 8.12 of Schedule 1.
- 48.4 The Provider must ensure that any arrangement it enters into with a Subcontractor is in writing.
- 48.5 The Provider is liable to the Department for all losses caused under, or in connection with, this Deed by the acts or omissions of any Subcontractor whether or not the relevant entity is a current Subcontractor.
- 48.6 The Provider must ensure that every Subcontractor is aware of all terms and conditions of this Deed relevant to the Subcontractor's part in the provision of the Services.
- 48.7 The Provider must pay its Subcontractors in accordance with the terms of the relevant Subcontract.
- 48.8 The Department may revoke its approval of a Subcontractor on any reasonable ground by giving Notice to the Provider, and, on receipt of the Notice, the Provider must, at its own cost, promptly cease using that Subcontractor and arrange for its replacement by Personnel or another Subcontractor acceptable to, and approved by, the Department.
- 48.9 The Provider must, in any Subcontract:
- (a) reserve a right of termination to take account of the Department's right of termination under clauses 55 and 56 and the Department's right of revocation of approval of a Subcontractor under clause 48.8, and the Provider must, where appropriate, make use of that right in the Subcontract in the event of a termination, or revocation of approval of the Subcontractor, by the Department; and
  - (b) bind the Subcontractor, with respect to the Department, to all relevant terms and conditions of this Deed including clauses 35, 36, 37, 40, 42, 63, and 69.
- 48.10 The Provider must not enter into a Subcontract under this Deed with a Subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
- 48.11 The Department may publically disclose the names of any Subcontractors engaged to perform any of the Provider's obligations under this Deed.
- 48.12 The Provider must inform all Subcontractors that their participation in performing any of the Provider's obligations under this Deed may be publically disclosed.
- 48.13 If the Provider does not comply with this clause 48, the Department may:
- (a) take action under clause 52.2; or
  - (b) terminate this Deed under clause 56.

#### **49. Assignment and novation**

- 49.1 The Provider must not assign any of its rights under this Deed without the Department's prior written approval.
- 49.2 The Provider must not enter into an arrangement that will require the novation of this Deed, without the Department's prior written approval.

### **Section 4CA4.3 – Resolving Problems**

#### **GDV 1**

## **50. Dispute Resolution**

50.1 Each Party agrees that they will:

- (a) only seek to rely on this clause in good faith, and only where the Party seeking to rely on this clause has made a reasonable assessment that the rights and obligations of the Parties in respect of a matter subject to this clause 50, are genuinely in dispute; and
- (b) cooperate fully with any process instigated in accordance with this clause, in order to achieve a prompt and efficient resolution of any dispute.

### *Informal resolution*

50.2 Subject to clause 50.5, the Parties agree that any dispute arising in relation to this Deed will be dealt with, in the first instance, through the process outlined in the Joint Charter of Deed Management.

### *Formal resolution*

50.3 Subject to clause 50.5, if any dispute arising in relation to this Deed cannot be resolved using the process in clause 50.2, the Parties will use the following process:

- (a) the Party claiming that there is a dispute will give the other Party a Notice setting out the nature of the dispute;
- (b) within five Business Days of receipt of the Notice under clause 50.3(a), each Party will nominate a representative who has not been previously involved in the dispute;
- (c) the Parties' representatives will try to settle the dispute by direct negotiation between them;
- (d) if the dispute is not resolved within 10 Business Days of the date on which the last Party to do so nominates a representative under clause 50.3(b), the Party claiming that there is a dispute will refer the dispute to an independent third person, as agreed between the Parties, with power to mediate and recommend some form of non-binding resolution;
- (e) if the dispute is not resolved within 10 Business Days of the date on which the dispute was referred to an independent third person in accordance with clause 50.3(d), the Party claiming that there is a dispute will refer the dispute to an independent third person, as agreed between the Parties, with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; and
- (f) if:
  - (i) agreement on an independent third person cannot be reached under clauses 50.3(d) or 50.3(e); or
  - (ii) the dispute is not resolved within 20 Business Days of referring the dispute to an independent third person pursuant to clause 50.3(e),either Party may commence legal proceedings.

### *Costs and application of this clause*

50.4 Each Party will bear its own costs of complying with this clause 50, and the Parties must bear equally the cost of any independent third person engaged under clauses 50.3(d) and 50.3(e).

50.5 This clause 50 does not apply to the following circumstances:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) where action is taken, or purportedly taken, by the Department under clauses 15, 16, 19, 20, 21, 23, 28, 29, 32, 38, 40, 45, 46, 48, 51, 52, 53, 54, 55, 56, 101 or 132;

- (c) where the Department is conducting its own breach of contract or fraud investigation or taking consequential action; or
- (d) where an authority of the Commonwealth, or of a state or a territory is investigating a breach, or suspected breach, of the law by the Provider.

50.6 Despite the existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform their obligations under this Deed.

## **51. Provider suspension**

51.1 Without limiting the Department's rights under this Deed or at law, the Department may, in addition to taking any other action available to it under clause 52, and prior to taking action under clause 56, take action under clause 52.2(a), if the Department is of the opinion that:

- (a) the Provider may be in breach of its obligations under this Deed, and while the Department investigates the matter;
- (b) the Provider's performance of any of its obligations under this Deed, including achievement against the Employment Provider Services KPIs or the NEIS KPIs, as relevant, is less than satisfactory to the Department;
- (c) the Provider has outstanding or unacquitted money under any arrangement, whether contractual or statutory, with the Commonwealth; or
- (d) the Provider may be engaged in fraudulent activity, and while the Department investigates the matter.

51.2 Notwithstanding any action taken by the Department under clause 51.1, the Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.

## **52. Remedies**

52.1 Without limiting any other rights available to the Department under this Deed or at law, if:

- (a) the Provider fails to rectify a breach, or pattern of breaches, of this Deed, as determined and specified by the Department, to the Department's satisfaction, within 10 Business Days of receiving a Notice from the Department to do so, or such other period specified by the Department;
- (b) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified, as determined by the Department;
- (c) the Provider's performance of any of its obligations under this Deed is less than satisfactory to the Department;
- (d) an event has occurred which would entitle the Department to terminate the Deed in whole or in part under clause 56; or
- (e) this Deed otherwise provides for the Department to exercise rights under clause 52.2,

the Department may, at its absolute discretion and by providing Notice to the Provider, immediately exercise one or more of the remedies set out in clause 52.2.

52.2 The remedies that the Department may exercise are:

- (a) suspending any or all of the following, until otherwise Notified by the Department:
  - (i) Referrals in respect of some or all of the Services, including at some or all Sites;
  - (ii) any Payment under this Deed, in whole or in part;

- (iii) access to the Employment Fund; and/or
- (iv) access to all or part of the Department's IT Systems for the Provider, any Personnel, Subcontractor, Third Party IT Provider, Third Party System and/or other person;
- (b) terminating, or requiring the cessation of all access to the Department's IT Systems for any particular Personnel, Subcontractor, Third Party IT Provider, Third Party System or any other person;
- (c) requiring the Provider to obtain new logon IDs for any Personnel, Subcontractor, ~~or~~ or Third Party IT Provider **and/or other person**, and if so **required**, the Provider must promptly obtain such new logons; ~~or~~
- (d) imposing special conditions on:
  - (i) the claiming or making of Payments;
  - (ii) access to the Employment Fund; and/or
  - (iii) the management of Records,
 as the Department thinks fit, and the Provider must comply with any such special conditions;
- (e) reducing or not paying specific Payments that would otherwise have been payable in respect of a relevant obligation;
- (f) reducing the total amount of any Payments, permanently or temporarily;
- (g) where the Department has already made Payments, recovering, at the Department's absolute discretion, but taking into account the extent and nature of the breach, some or all of those Payments, as a debt;
- (h) imposing additional financial or performance reporting requirements on the Provider;
- (i) reducing Business Share (including to zero in one or more Employment Regions, and by reducing Referrals to the Provider or transferring Participants to another Employment Provider);
- (j) reducing the number of NEIS Places allocated to the Provider, where relevant, permanently or temporarily;
- (k) reducing the scope of this Deed; and
- (l) taking any other action set out in this Deed.

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52.3 If the Department takes any action under this clause 52:

- (a) where relevant, this Deed is deemed to be varied accordingly; and
- (b) the Provider is not relieved of any of its obligations under this Deed.

52.4 For the avoidance of doubt, any reduction of Business Share, NEIS Places, Payments or the scope of this Deed under this clause 52 does not amount to a reduction of scope or termination for which compensation is payable.

### **53. Performance under past Commonwealth agreements**

53.1 Where the Provider was engaged to deliver services under the Employment Services Deed 2012-2015 or any other [Commonwealth agreement employment services or employment related services agreements](#) in operation [within seven years](#) prior to 1 July 2015 between the Provider and the Commonwealth ('a **past Commonwealth agreement**') and the Department determines that the Provider:

- (a) [has](#) failed to fulfil, or was in breach of, any of its obligations under a past Commonwealth agreement; or
  - (b) without limiting clause 53.1(a), claimed payment(s) under a past Commonwealth agreement and the requirements under the past Commonwealth agreement to be entitled to, or to qualify for the payment(s) were not fully or properly satisfied by the Provider,
- the Department may, at its absolute discretion and by Notice to the Provider:
- (c) exercise one or more of the remedies set out in clause 52.2 of this Deed; or
  - (d) terminate this Deed, if the failure, breach, or conduct under clause 53.1(a) or (b) permitted the Commonwealth to terminate the relevant past Commonwealth agreement.

#### **GDV 1**

53.2 A termination of this Deed under clause 53.1(d) entitles the Department to claim damages from, and exercise any other rights against, the Provider as a result of that termination, including Liquidated Damages under clause 54, as if the termination was for a breach of an essential term of the Deed at law.

53.3 Any action taken by the Department under this clause 53 does not in any way limit any rights of the Department under a past Commonwealth agreement, under this Deed (including, but not limited to, rights in relation to debts and offsetting under clause 21) or at law.

### **54. Liquidated damages**

54.1 Without limiting any other rights available to the Department under this Deed or the law, if the Provider:

- (a) ceases to deliver Services at a Site, or notifies the Department that it is not willing or able to deliver the Services at a Site, and the Provider has not either:
  - (i) obtained the consent of the Department for the cessation of the Services at the Site (such consent must not be unreasonably withheld by the Department); or
  - (ii) secured an alternative Employment Provider, acceptable to the Department, to provide the Services at the relevant Site from the date on which the Provider ceases, or will cease, to deliver the Services; or

(b) has made invalid claims for Payments as specified in this clause at any time in a Financial Year, the Provider must, if required by the Department, pay Liquidated Damages to the Department in the amount of:

- (c) where clause 54.1(a) applies, \$25,000 per select tender and \$50,000 per open tender, used to secure an alternative Employment Provider acceptable to the Department; and
- (d) where clause 54.1(b) applies:
  - (i) \$3,000, where the Department identifies that the Provider has made 100 to 149 invalid claims in a Financial Year;

- (ii) \$6,250, where the Department identifies that the Provider has made 150 to 199 invalid claims in a Financial Year;
- (iii) \$9,750, where the Department identifies that the Provider has made 200 to 249 invalid claims in a Financial Year; and
- (iv) \$13,500, where the Department identifies that the Provider has made 250 or more invalid claims in a Financial Year, and for every 50 invalid claims the Department identifies that the Provider has made in excess of 250 in a Financial Year, an additional amount of \$3,750 per 50 such invalid claims will apply.

*Note 1: for the purposes of clause 54.1(b) and (d), and by way of example, the total amount payable for 350 invalid claims made in a Financial Year would be \$21,000.*

*Note 2: for the purposes of clause 54.1(b) and (d), the amount of Liquidated Damages that the Department may require the Provider to pay at a particular time will depend on whether the number of invalid claims are identified by the Department at one time, or at various times throughout the relevant Financial Year. For example, if the Department identifies that the Provider has made 100 invalid claims during the first three months of a Financial Year and requires the Provider to pay Liquidated Damages in the amount of \$3,000, and later determines that the Provider has made a further 100 invalid claims in the relevant Financial Year, the Department may only require the Provider to pay the difference between the amounts specified at clauses 54.1(d)(iii) and 54.1(d)(i), namely \$6,750 (that is, the Provider would be liable to pay \$9,750 to the Department for that Financial Year in total).*

- 54.2 Where clause 54.1(a) or (b) applies, the Parties agree that all relevant loss and damage will, having regard to the governmental and non-commercial nature of the Services and their significance to the Commonwealth's provision of employment services, be impossible, complex or expensive to quantify accurately in financial terms, and therefore the Parties agree that the Liquidated Damages are a reasonable and genuine pre-estimate of the loss incurred by the Commonwealth in relation to:
- (a) in the case of clause 54.1(a), identifying, selecting and entering into contractual relations with an alternative Employment Provider to provide services at the relevant Site(s), and transferring Participants, records, monies and relevant materials to the alternative Employment Provider; and
  - (b) in the case of clause 54.1(b), the administrative costs in processing and resolving invalid claims for Payments.

54.3 For the avoidance of doubt:

- (a) clause 54.1(a) does not apply where the Department reallocates business at the relevant Site(s) without going to tender;
- (b) clause 54.1(b) does not apply where the Provider self identifies invalid claims for Payments through its internal compliance practices and Notifies the Department of those invalid claims; and
- (c) the Department may, at its absolute discretion, recover the amount of Liquidated Damages from the Provider as a debt will become a debt due to the Commonwealth for the purposes of clause 21, if and when the Commonwealth Notifies the Provider that it elects to recover the Liquidated Damages as a debt under clause 21.

## GDV 1



## **55. Termination or reduction in scope with costs**

- 55.1 The Department may, at any time by Notice to the Provider, terminate this Deed in whole or in part, or reduce the scope of any part, or all of this Deed, without prejudice to the rights, liabilities, or obligations of either Party accruing before the date on which the termination or reduction takes effect.
- 55.2 If this Deed is terminated in whole or part or reduced in scope under this clause 55.1, the Department is only liable for:
- (a) payment of Fees as set out in clause 55.3; and
  - (b) subject to clauses 55.6, 55.7, 55.8 and 55.9, any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination, in whole or in part, or a reduction in scope of this Deed.

### *Payments*

- 55.3 Subject to clause 55.4, where the Department terminates this Deed in whole or in part or reduces the scope of this Deed, under clause 55.1:
- (a) the Department will only be liable to make Payments which are properly due to the Provider before the date on which the termination or reduction in scope takes effect;
  - (b) any Payments that would have been Payments in advance will abate according to the extent that they relate to the conduct of the Services after the date on which the termination or reduction in scope takes effect; and
  - (c) the Department will be entitled to recover from the Provider any Payments paid in advance that relate to the conduct of the Services after the date on which the termination or reduction in scope takes effect.

### *Reimbursements*

- 55.4 Where the Department terminates this Deed in whole or in part, or reduces the scope of this Deed, under clause 55.1, the Department will only be liable to make Reimbursements to the extent that relevant monies have been legally committed by the Provider before receipt of the notice of termination, or as otherwise commensurate with any reduction in scope of any part, or all of this Deed.

### *Provider's obligations*

- 55.5 Upon receipt of a Notice of termination or reduction in scope under this clause 55, the Provider must:
- (a) cease or reduce the performance of this Deed in accordance with the Notice;
  - (b) not legally commit any further monies;
  - (c) immediately return to the Department any Payments in accordance with clause 55.3(c);
  - (d) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the Notice; and
  - (e) continue work on any part of the Services not affected by the Notice.

### *Abatement of the Payments*

- 55.6 If there is a reduction in scope of this Deed, the Department's liability to pay any part of the Payments will, unless otherwise agreed, abate proportionately to the reduction in the obligations under this Deed.

### *Limit on compensation*

- 55.7 The Department's liability to pay any compensation under or in relation to this clause 55 is subject to the Provider's:
- (a) strict compliance with this clause 55; and
  - (b) substantiation of any amounts claimed under clause 55.3.
- 55.8 The Department will not be liable:
- (a) to pay compensation for loss of prospective profits attributable to a termination or reduction in scope under this clause 55;
  - (b) for loss of any benefits that would have been conferred on the Provider had a termination or a reduction in scope made under this clause 55 not occurred; or
  - (c) for any amounts that would, in aggregate, exceed the maximum Payments that would have been payable by the Department under this Deed in respect of the relevant Services, but for a termination or a reduction in scope made under this clause 55.
- 55.9 In addition, in relation to a reduction in scope under this clause 55, the Department will not be liable to pay the Provider, and the Provider agrees that its reasonable costs do not include:
- (a) any amounts owed by the Provider under any contract of employment or to any of its Subcontractors; and
  - (b) payment of any liabilities arising from commitments the Provider has made in relation to the conduct of the Services beyond the end of the Financial Year in which the reduction in scope takes place.
- 55.10 If the Department terminates, or reduces the scope of, this Deed under this clause 55:
- (a) the Department's actions will not constitute a breach of this Deed; and
  - (b) the Parties agree that the amounts payable to the Provider under this clause 55, represent a reasonable pre-estimate of any loss that may be incurred by the Provider.

## **56. Termination for default**

- 56.1 The Department may terminate this Deed in whole or in part, by giving Notice to the Provider, if any of the following events or matters arise:
- (a) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified (as determined by the Department);
  - (b) the Provider is in breach of any of its obligations under this Deed that are capable of being rectified, and fails to rectify the breach, or pattern of breaches, within 10 Business Days, or such other period specified by the Department, of receiving a Notice from the Department to do so;
  - (c) the Provider fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
  - (d) any event referred to in clause 47 occurs, other than an event under clause 47.1(c);
  - (e) the Department is otherwise satisfied that the Provider is unable to pay all of its debts as and when they become due and payable;
  - (f) the Department becomes aware of any information which indicates that, prior to entering into this Deed, the Provider has, including in any tender response to the request for tender for this Deed:

- (i) engaged in misleading or deceptive conduct;
- (ii) made a statement that is incorrect or incomplete; or
- (iii) omitted to provide information to the Department, and

the Department is satisfied that such information may have affected the Department's decision to enter into this Deed or any action taken by the Department under this Deed;

- (g) notice is served on the Provider or proceedings are taken to cancel its incorporation or cancel its registration or to dissolve the Provider as a legal entity; or

*Note: For the avoidance of doubt, clause 56.1(g) does not apply where a Provider has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.*

- (h) the Department becomes expressly entitled to terminate this Deed under any other provision of this Deed (excluding clause 55) including under any other provision of this Deed which gives the Department the right to terminate under this clause 56.

56.2 Subject to clause 56.3, where the Department terminates this Deed in whole or in part under clause 56.1:

- (a) the Department is liable to pay Payments and entitled to recover Payments as set out in clause 55.3; and
- (b) clauses 55.4 and 55.5 apply as if the Deed were terminated in accordance with clause 55.1.

56.3 Clause 56.1 does not limit or exclude any of the Department's other rights under this Deed or at law, including the right to recover any other amounts from the Provider on termination of this Deed, the right to reduce (including to zero) payments due on termination on the basis of breach or poor performance, or any rights of offset.

## **Section 4DA4.4 – Other matters**

### **GDV 1**

#### **57. Transition out**

##### *Transition Period*

57.1 The Department may Notify the Provider of a Transition Period at any time and for any reason.

57.2 If there is:

- (a) any form of procurement or other process after the Deed Commencement Date, under which the Commonwealth seeks the delivery of the Services or services similar to the Services for a new period commencing after the Completion Date, and the Provider:
  - (i) does not submit a response to this process;
  - (ii) refuses an offer to provide further services;
  - (iii) is not successful in obtaining a further agreement;
  - (iv) is successful in obtaining a subsequent agreement, but the subsequent agreement does not require the Provider to provide the Services, or services similar to the Services, on the same or similar terms and conditions for which the Provider is contracted to deliver Services under this Deed,

from the date of the announcement of the allocation of agreements or business to new Employment Providers, or earlier if both Parties agree; or

- (b) any other situation in which the Provider will not be providing the same level of services to the Department after the Completion Date,

the Department may, at its absolute discretion, Notify the Provider that:

- (c) the Department is ceasing or reducing the number of Referrals to the Provider, or in the case of a NEIS Provider, the number of NEIS Places;
- (d) the Services, or a part of the Services, are not to be provided; and/or
- (e) certain provisions of this Deed do not apply to the provision of Services,

during the Transition Period, and where the Provider receives any such Notice, the Provider must comply with the Notice.

57.3 Unless notified otherwise by the Department, the Provider must, during the Transition Period, continue to provide all Services which is it required to provide under this Deed.

57.4 If the Provider will be providing services to the Department similar to the Services after the Completion Date, the Department may, during the Transition Period:

- (a) increase the number of Referrals and transfer Participants to the Provider;
- (b) negotiate with the Provider in relation to gap filling in accordance with clause 13; and
- (c) take any other action to facilitate transition of business or Participants to the Provider, or to transition the Provider to services after the Completion Date.

*Provider's obligation to assist and cooperate with the Department and others*

57.5 The Provider must, if directed by the Department, provide sufficient assistance and cooperation to any person nominated by the Department to enable services to continue to be provided to Participants who are transferred to another employment services provider:

- (a) on the termination of this Deed in whole or in part before the Completion Date;
- (b) at the Completion Date;
- (c) in accordance with clauses 80 and 81; or
- (d) at any time for any other reason.

57.6 The sufficient assistance and cooperation the Provider must provide under clause 57.5 includes complying with the Department's directions in relation to:

- (a) the transfer or destruction of Deed Material and Commonwealth Material in the Provider's possession or control, including that stored in Third Party Systems; and
- (b) the redirection of Participants,

to any person nominated by the Department, or to the Department.

## **58. Indigenous Procurement Policy**

58.1 The Provider must use reasonable endeavours to increase its:

- (a) purchasing from Indigenous Enterprises; and
- (b) employment of Aboriginal or Torres Strait Islander persons, in the delivery of the Services.

58.2 For the purposes of clause 58.1(a), purchases from Indigenous Enterprises may be in the form of engagement of an Indigenous Enterprise as a Subcontractor, and/or use of Indigenous Enterprises in the Provider's supply chain.

*Note 1: The Indigenous Procurement Policy is the Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (for further information, see the Indigenous Procurement Policy, available at <http://www.dpmpc.gov.au/indigenous-affairs/publication/commonwealth-indigenous-procurement-policy>).*

## GDV 1

### ~~58. Indigenous Training, Employment and Supplier Plan~~

~~58.1 This clause 58 only applies to the Provider if the Department Notifies the Provider that it applies.~~

~~Note: The Provider will only be Notified by the Department that this clause 58 applies if it is providing Services in regions where significant populations of Aboriginal and Torres Strait Islander peoples exist.~~

~~58.2 The Provider must, by 1 July 2015 or such later date as advised by the IOP Administrator, produce and have approved by the IOP Administrator, an Indigenous Training, Employment and Supplier Plan in accordance with any requirements specified by the IOP Administrator.~~

~~58.3 The Provider must maintain and implement a current ITES Plan throughout the Term of this Deed and such implementation in no way diminishes the Provider's other obligations under, or in connection with, this Deed.~~

~~58.4 The Provider must apply for re-approval of its ITES Plan no less than two months prior to the expiry of its existing ITES Plan, or as otherwise advised by the IOP Administrator.~~

~~58.5 The Provider must provide the IOP Administrator with an annual Implementation and Outcomes Report that meets the requirements stipulated in the *Indigenous Opportunities Policy Guidelines*, which must be submitted in accordance with the requirements of the IOP Administrator.~~

~~58.6 The Department of Prime Minister and Cabinet, or any other Commonwealth entity, may publicise or report:~~

~~(a) on the Provider's performance in relation to, and level of compliance with, its ITES Plan; and~~

~~(b) any information contained in any Implementation and Outcomes Report required by clause 58.5.~~

~~58.7 Without limiting the Department's rights, if the Provider does not:~~

~~(a) maintain a current ITES Plan under clause 58.3; or~~

~~(b) report under clause 58.5 to the satisfaction of the IOP Administrator,~~

~~the Department may take action under clause 52.2.~~

## GDV 1

### **59. Aboriginal and Torres Strait Islander peoples**

59.1 The Provider must:

(a) by 1 July 2015, develop an indigenous employment strategy which is designed to attract, develop, and retain Aboriginal or Torres Strait Islander persons as employees within the Provider's Own Organisation;

(b) implement and maintain that strategy for the Term of this Deed; and

~~59.2~~ (c) provide a copy of this strategy to the Department on request.

## GDV 1

- 59.2 The Provider must work in partnership with Jobs, Land and Economy Programme providers, Employers, and community service organisations, on employment related strategies or initiatives to maximise employment of Aboriginal and Torres Strait Islander peoples in local jobs.

## GDV 1

- 59.3 The Provider may enter into agreements with relevant Jobs, Land and Economy Programme providers in locations where they are both operating for the purpose of maximising employment outcomes for Aboriginal and Torres Strait Islander peoples in relation to specific Jobs, Land and Economy Programme projects.

## 60. Acknowledgement and promotion

- 60.1 The Provider must, in all publications, and in all promotional, publicity and advertising Materials or activities of any type undertaken by, or on behalf of, the Provider relating to the Services or this Deed:
- (a) comply with any promotion and style guidelines issued by the Department [from time to time](#);
  - (b) use badging and signage in accordance with any Guidelines;
  - (c) acknowledge the financial and other support the Provider has received from the Commonwealth, in the manner consistent with any Guidelines; and
  - (d) deliver to the Department (at the Department's request and at the Provider's own cost) copies of all promotional, publicity and advertising Materials that the Provider has developed for the purposes of this Deed.

## GDV 1

- 60.2 The Provider must market and promote the Services, as required by the Department, and deal with enquiries relating to the Provider's provision of the Services, in accordance with any Guidelines.

## 61. The Department's right to publicise the Services and best practice

- 61.1 The Department may, by any means, publicise and report on the Services and on the awarding of this Deed to the Provider, including the name of the Provider, the amounts of Fees paid, or expected to be paid to the Provider, and a description of the Services.
- 61.2 Where the Department identifies best practice on the part of the Provider, the Department may disseminate advice of such best practice to any other person, including other Employment Providers.

## 62. Conflict of interest

- 62.1 The Provider warrants that, to the best of its knowledge and belief after making diligent inquiries, at the Deed Commencement Date, no Conflict exists, or is likely to arise, in the performance of its obligations under this Deed.
- 62.2 The Provider must not during this Deed enter into, or engage in, any arrangement, scheme or contract, however described, which may cause a Conflict in the performance of its obligations under this Deed.
- 62.3 If, during the Term of this Deed, a Conflict arises, or is likely to arise, including as determined and Notified by the Department, the Provider must:
- (a) immediately Notify the Department of the Conflict and the steps that the Provider proposes to take to resolve or otherwise deal with the Conflict;

- (b) make full disclosure to the Department of all relevant information relating to the Conflict; and
- (c) take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.

62.4 If the Provider:

- (a) fails to take action in accordance with this clause 62; and/or
- (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department,

the Department may terminate this Deed under clause 56.

### **63. Negation of employment, partnership and agency**

63.1 The Provider, its Personnel, ~~partners~~, agents, ~~and~~ Subcontractors ~~and Third Party IT Providers~~ are not, by virtue of this Deed or any Subcontract, or for any purpose, deemed to be, Department Employees, ~~partners~~, agents or subcontractors or otherwise able to bind or represent the Commonwealth.

#### **GDV 1**

63.2 Subject to this Deed, the Provider must not represent itself, and must ensure that it's Personnel, ~~partners~~, agents, ~~and~~ Subcontractors ~~and Third Party IT Providers~~ do not represent themselves, as being Department Employees, ~~partners~~, agents or subcontractors or as otherwise able to bind or represent the Commonwealth.

#### **GDV 1**

### **64. Waiver**

- 64.1 If either Party does not exercise (or delays in exercising) any rights under this Deed, that failure or delay does not operate as a waiver of those rights.
- 64.2 A single or partial exercise by either Party of any of its rights under this Deed does not prevent the further exercise of any right.
- 64.3 Waiver of any provision of, or right under, this Deed must be in writing signed by the Party entitled to the benefit of that provision or right and is effective only to the extent set out in the written waiver.
- 64.4 In this clause 64, 'rights' means rights provided by this Deed, or at law.

### **65. Severance**

65.1 If a court or tribunal says that any provision of this Deed has no effect, or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

### **66. Entire agreement**

66.1 This Deed records the entire agreement between the Parties in relation to its subject matter and supersedes all communications, negotiations, arrangements, and agreements, whether oral or written, between the Parties about the subject matter of this Deed.

### **67. Variation of Deed**

67.1 Except for action the Department is expressly authorised to take elsewhere in this Deed, no variation of this Deed is binding unless it is agreed in writing and signed by the Parties.

**68. Applicable law and jurisdiction**

- 68.1 This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the laws of the State of New South Wales.
- 68.2 Both Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales in respect to any dispute under this Deed.

**69. Compliance with laws and government policies**

- 69.1 The Provider must, in carrying out its obligations under this Deed, comply with:
- (a) all relevant laws and requirements of any Commonwealth, state, territory or local authority, including the WHS Laws and the *Workplace Gender Equality Act 2012 (Cth)*; and
  - (b) any Commonwealth policies Notified by the Department to the Provider in writing, referred to or made available by the Department to the Provider (including by reference to an internet site), including any listed in this Deed.
- 69.2 The Provider must, when using the Department's premises or facilities, comply with all reasonable directions and procedures relating to work health, safety and security in effect at those premises or in regard to those facilities, as advised by the Department or as might reasonably be inferred from the use to which the premises or facilities are being put.

*Workplace Gender Equality Act 2012 (Cth)*

- 69.3 Clauses 69.3 to 69.5 apply only to the extent that the Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* ('the WGE Act').
- 69.4 The Provider must:
- (a) Notify the Department as soon as practicable if the Provider becomes non-compliant with the WGE Act during the Term of this Deed; and
  - (b) provide a current letter of compliance issued to the Provider by the Commonwealth Workplace Gender Equality Agency within 18 months from the Deed Commencement Date, and following this, annually, to the Department.
- 69.5 Compliance with the WGE Act does not relieve the Provider from its responsibility to comply with its other obligations under this Deed.

*Work health and safety*

- 69.6 The Provider must at all times:
- (a) ensure that the Services are carried out in a safe manner;
  - ~~(b) be aware of, understand and comply with the Department's work health and safety policy and procedures that are in any way applicable to this Deed, including as specified in any Guidelines;~~
  - ~~(c)~~(b) comply with any reasonable instruction from the Department relating to work health and safety and any directions issued by any person having authority under the WHS Laws to do so;
  - ~~(d)~~(c) communicate, consult and coordinate with the Department in relation to health and safety matters arising from the Services (including meeting with the Department as required by the Department and communicating any issues or concerns, or any specific requirements applying to the Services under or arising from the WHS Laws, as soon as practicable);
  - ~~(e)~~(d) if the Provider is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Services:



- (i) at the same time, or as soon as is possible in the circumstances, give Notice of such incident, and a copy of any written notice provided to the Regulator, to the Department; and
  - (ii) provide to the Department, within such time as the Department specifies, a Report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future;
- ~~(f)~~(e) within 24 hours of becoming aware of such circumstances, inform the Department of the full details of:
- (iii) any suspected contravention of the WHS Laws relating to the Services;
  - (iv) any workplace entry by a WHS Entry Permit Holder, or an inspector appointed under the WHS Act, to any place where the Services are being performed or undertaken; and
  - (v) any proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws; and
  - (vi) any cessation or direction to cease work relating to the Services, due to unsafe work, immediately upon the Provider being informed of any such cessation or direction; and
- ~~(g)~~(f) provide the Department with copies of all notices and correspondence issued to the Provider by any person under the WHS Laws, within 24 hours of receiving any such notice or correspondence.

#### GDV 1

- 69.7 The Provider must cooperate with any investigation undertaken by the Department concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, or any audit of the Provider's work health and safety performance, arising out of, or in respect of, the Services.
- 70. Use of interpreters**
- 70.1 The Provider must, when carrying out the Services, provide an interpreter to facilitate communication between the Provider and Participants wherever necessary, including where a Participant requires assistance:
- (a) to communicate comfortably and effectively with the Provider, on account of language or hearing barriers;
  - (b) to understand complex information of a technical or legal nature;
  - (c) during stressful or emotional situations where a Participant's command of English may decrease temporarily; or
  - (d) at group forums or public consultations, where Participants do not speak or understand English, or have a hearing impairment.
- 70.2 The Provider must provide access to interpreter services fairly and without discrimination, based on a proper assessment of a Participant's needs.
- 70.3 Where a Participant requests the use of an interpreter and the Provider refuses to provide one, the Provider must record the reason for the Provider's decision.
- 70.4 The Provider must ensure that those of its Personnel and Subcontractors who, when providing Services, engage with Participants who may require interpreter services, have received training in the use of interpreters in accordance with the training requirements specified in any Guidelines or as otherwise advised by the Department.

## GDV 1

### 71. Notices

- 71.1 A Party giving Notice or Notifying under this Deed must do so in writing, or by email, addressed to the Account Manager or the Contact Person, as relevant, and if:
- (a) in writing, the Notice must be hand delivered or sent by pre-paid post to the street address;
  - (b) by email, the Notice must be sent to the email address of the Account Manager or the Contact Person, as relevant.
- 71.2 A Notice given in accordance with clause 71.1 is taken to be received:
- (a) if hand delivered, on delivery;
  - (b) if sent by pre-paid post, 5 Business Days after the date of posting, unless it has been received earlier; and
  - (c) if sent by email, upon actual receipt by the addressee.
- 71.3 For the purposes of this clause 71, the Account Manager's and the Contact Person's address details are as specified in items 1 and 2 of Schedule 1.

# Annexure A1 – Definitions

## *Social Security Law definitions*

The terms ‘**Carer Payment**’, ‘**Disability Support Pension**’, ‘**Income Support Payment**’, ‘**Newstart Allowance**’, ‘**Parenting Payment**’, ‘**Partial Capacity to Work**’, ‘**Partner Service Pension**’, ‘**Principal Carer**’ and ‘**Youth Allowance**’ have the meanings given to them, respectively and in their decapitalised form, in the *Social Security Act 1991* (Cth).

## *General definitions*

‘**4 Week Period**’ means, for Employment which satisfies the requirements of an Employment Outcome, a period of 4 Consecutive Weeks:

- (a) from the Employment Outcome Start Date; and
- (b) which does not overlap with ~~any other 4 Week Period~~ the Outcome Period for any other Outcome that has been claimed in relation to the relevant Stream Participant by any Employment Provider, except a 12 Week Period that begins from the same Employment Outcome Start Date or as otherwise provided in any Guidelines.

## **GDV 1**

‘**12 Week Period**’ means, for Employment which satisfies the requirements of an Employment Outcome, a period of 12 Consecutive Weeks:

- (a) from the Employment Outcome Start Date; and
- (b) which does not overlap with ~~any any other 12 Week Period~~ the Outcome Period for any other Outcome that has been claimed in relation to the relevant Stream Participant by any Employment Provider, except a 4 Week Period that begins from the same Employment Outcome Start Date or as otherwise provided in any Guidelines.

## **GDV 1 GDV 2**

‘**26 Week Period**’ means, for Employment which satisfies the requirements for an Employment Outcome, a period of 14 Consecutive Weeks which:

- (a) follows and is in addition to the completion of a 12 Week Period; and
- (b) does not overlap with any ~~any other 12 Week Period or 26 Week Period~~ the Outcome Period for any other Outcome that has been claimed in relation to the relevant Stream Participant by any Employment Provider, except as otherwise provided in any Guidelines.

## **GDV 1**

‘**ABN**’ has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth).

‘**Aboriginal or Torres Strait Islander person**’ means a person who:

- (a) is identified as such on the Department’s IT Systems; or
- (b) is of Aboriginal and/or Torres Strait Islander descent;
- (c) identifies as an Aboriginal and/or Torres Strait Islander person; and
- (d) is accepted as such in the community in which the person lives or has lived.

‘**Account Manager**’ means the person for the time being holding, occupying or performing the duties of the position specified in item 1 of Schedule 1, who has authority to receive and sign Notices and written communications for the Department under this Deed.

‘**Activity**’ means an activity approved by the Department and specified in Section B3.2 and any Guidelines.

‘**Activity Host Organisation**’ means an organisation that hosts an Activity.

‘**Activity Host Organisation Agreement**’ means a written and signed agreement between the Provider and an Activity Host Organisation in relation to the provision of Activities, [in accordance with any Guidelines](#).

## **GDV 1**

‘**Adjustment Note**’ has the meaning given in section 195-1 of the GST Act.

**‘Administration Fees’** means the Fees, set out in Table 2A in Annexure B2, paid in accordance with clause 123 for the provision of all Employment Provider Services except those expressly related to Employment Outcomes and Education Outcomes.

**‘Administration Fee Period’** means a sequential period of six months during the Payment Period.

**‘Ancillary Payment’** means a payment which the Department may at its absolute discretion pay the Provider subject to the Provider satisfying any applicable terms and conditions relating to the Ancillary Payment, including those specified in any Guidelines, where relevant.

**‘Annual Activity Requirement’** means the number of hours that a Fully Eligible Participant must participate in Activities in the Work for the Dole Phase, as specified in any Guidelines or otherwise advised by the Department.

**‘Appointment’** means a time for a meeting between the Provider and a Stream Participant in accordance with clause 83, including for an Initial Interview or a Contact.

**‘Assessment’** means a formal assessment of a Stream Participant’s level of disadvantage by either DHS or a Provider, using a JSCI, or by DHS through an ESAt or JCA, and includes specification of the Stream under which Services will be provided to the Stream Participant.

**‘Asset’** means any item of tangible property which has a value equal to or greater than \$1,000 and is purchased, leased, created or otherwise brought into existence either wholly or in part with the use of a Work for the Dole Fee for the purpose of a Group Based Activity.

*Note: For the avoidance of doubt, and subject to any Guidelines, Asset does not include property provided for the exclusive and individual use of a Fully Eligible Participant or a third party.*

**‘Australian Equivalents to International Financial Reporting Standards’ or ‘AEIFRS’** refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 261 of the *Australian Securities and Investments Commission Act 2001 (Cth)*.

#### GDV 1

~~**‘Australian JobSearch’** means the Australian JobSearch database that is owned and maintained by the Department, and accessible via the internet.~~

#### GDV 1

**‘Authorised Officer’** means a person who is an ‘authorised officer’ as defined under the *Public Interest Disclosure Act 2013 (Cth)*.

**‘Basic Rate’** has the meaning given to the term ‘basic rate’ by the *Social Security Act 1991 (Cth)*, where the term applies in relation to the payment of Income Support Payments.

**‘Broker’** means to acquire Activities from an Activity Host Organisation or a Supervisor, without the payment of money, and in accordance with any Guidelines.

**‘Business Day’** means in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.

**‘Business Share’** means, in relation to Employment Provider Services, the proportion of Fully Eligible Participants for each Employment Region specified in item 6.2 of Schedule 10.

**‘Case Management Phase’** means the SPI Case Management Phase, Stream A Case Management Phase, Stream B Case Management Phase and Stream C Case Management Phase.

**‘Certification Audit’** means an audit of the Provider, undertaken by a Quality Auditor in accordance with any Guidelines, to determine whether the Provider adheres to the Quality Principles.

**‘Certification Report’** means a complete and unedited report by a Quality Auditor resulting from a Certification Audit.

**‘Change in Control’** means:

- (a) subject to paragraph (b) below, in relation to a Corporation, a change in any of the following:
  - (i) Control of more than one half of the voting rights attaching to shares in the Corporation, whether due to one or a series of transactions occurring together or on different occasions;

- (ii) Control of more than one half of the issued share capital of the Corporation, whether due to one or a series of transactions occurring together or on different occasions, excluding any part of the issued share capital which carries no right to participate beyond receipt of an amount in the distribution of either profit or capital; or
  - (iii) Control of more than one half of the voting rights attaching to membership of the Corporation, where the Corporation does not have any shareholders;
- (b) in relation to a Corporation which is owned or controlled by a trustee company, any change as set out in paragraph (a) above in relation to either that Corporation or its corporate trustee;
- (c) in relation to a partnership:
- (i) the sale or winding up or dissolution of the business by the partners;
  - (ii) a change in any of the partners; or
  - (iii) the retirement, death, removal or resignation of any of the partners;
- (d) in relation to an Exempt Public Authority, a change in relation to any of the following:
- (i) the composition of the board of Directors;
  - (ii) ownership of any shareholding in any share capital; or
  - (iii) the enabling legislation so far as it affects Control, if any;
- (e) in relation to a Tendering Group:
- (i) any change in the membership of the Tendering Group;
  - (ii) a change of the lead member of the Tendering Group, if the Tendering Group has appointed a lead member for the purposes of this Deed; or
  - (iii) a Change in Control as defined in paragraphs (a) to (d) above in any member of the Tendering Group.

**‘Change of Circumstances Reassessment’** means a reassessment of a Stream Participant’s level of disadvantage, which is arranged in accordance with clause 79 and results in specification of the Stream in which Employment Provider Services will be provided to the Stream Participant.

**‘Child’** means a person under the age of 18 years, and **‘Children’** has a corresponding meaning.

**‘Claims Processing Training’** means the online training provided by the Department for Providers in relation to the processing of claims for Payment.

#### **GDV 1**

**‘Commence’** or **‘Commencement’** means for Stream Participants, the time at which the Provider has recorded either the completion of the Initial Interview (which includes entering into, or updating, a Job Plan, as relevant) or the completion of an Initial Interview for a New Stream, whichever is relevant, on the Department’s IT Systems.

**‘Commercially Viable’** means that a NEIS Business is likely to provide a net income of at least equal to the single 22 or over, no children Basic Rate of Newstart Allowance, or such other rate as advised by the Department in writing ~~from time to time~~, by the end of 52 weeks from commencement on NEIS Assistance for each NEIS Participant in the business.

#### **GDV 1**

**‘Commonwealth’** means the Commonwealth of Australia and includes officers, delegates, employees and agents of the Commonwealth of Australia.

**‘Commonwealth Coat of Arms’** means the Commonwealth Coat of Arms as set out at:

[http://www.dpmc.gov.au/guidelines/docs/CCoA\\_guidelines.pdf](http://www.dpmc.gov.au/guidelines/docs/CCoA_guidelines.pdf)

[http://www.dpmc.gov.au/sites/default/files/publications/Commonwealth\\_Coat\\_of\\_Arms\\_Information\\_and\\_Guidelines.pdf](http://www.dpmc.gov.au/sites/default/files/publications/Commonwealth_Coat_of_Arms_Information_and_Guidelines.pdf)

#### **GDV 2**

**‘Commonwealth Material’** means any Material provided by the Department to the Provider for the purposes of this Deed and Material which is copied or derived from Material so provided, and includes Commonwealth Records.

**'Commonwealth Records'** means any Records provided by the Department to the Provider for the purposes of this Deed, and includes Records which are copied or derived from Records so provided.

~~**'Community Action Group Activity'** means an activity which may occur on private property and which contributes to recovery efforts following a disaster event in local communities as specified in any Guidelines or advised by the Department from time to time.~~

#### **GDV 1**

~~**'Community Development Programme'** means the Commonwealth programme of that name, or such other name as advised by the Department of Prime Minister and Cabinet from time to time, which was formerly known as the 'Remote Jobs and Communities Programme'.~~

#### **GDV 1**

~~**'Community Support Project'** means an activity which may occur on private property and which contributes to recovery efforts following a disaster event in local communities, or an activity for nationally significant projects at a local level, as specified in any Guidelines or advised by the Department.~~

#### **GDV 1**

**'Competent Person'** means a person who has acquired through training, qualification or experience the knowledge and skills to carry out specific work health and safety tasks, and as otherwise specified in any Guidelines.

**'Complaint'** means any expression of dissatisfaction with the Provider's policies, procedures, employees or the quality of the Services the Provider offers or provides, but does not include:

- (a) a request by a Participant or potential Participant for Services, unless it is a second or further request;
- (b) a request for information or for an explanation of a policy or procedures; or
- (c) the lodging of any appeal against a decision when this is a normal part of standard procedure or policy.

**'Complementary Service'** means an employment or training programme administered by the Commonwealth, including the Department, or provided by a state or territory government (including by state or territory government funded providers), as advised by the Department ~~from time to time~~, which the Provider may access to provide additional specialised assistance to a Fully Eligible Participant.

#### **GDV 1**

**'Completion Date'** means either:

- (a) the day after the latest of the following:
  - (ii) the Service Period end date; or
  - (iii) the latest Extended Service Period end date; or
- (b) if this Deed is terminated before any of the days specified in paragraph (a), the day after the day on which this Deed is terminated.

**'Compliance Activities'** means intensive activities of 200 hours over eight weeks at 50 hours per fortnight, generally with some participation required every Business Day, or as otherwise directed by DHS.

**'Compliance Indicator'** means an indicator to assess whether claims for Payments have been made and processed, and the Services have been conducted, in compliance with this Deed, as calculated by the Department at its absolute discretion.

**'Comprehensive Compliance Assessment'** means an assessment conducted by DHS to determine whether:

- (a) a penalty should be applied to a Fully Eligible Participant (Mutual Obligation) where they have been found by DHS to have wilfully and persistently failed to meet their obligations under their Job Plan; or
- (b) the Fully Eligible Participant (Mutual Obligation) requires additional assistance in order to comply.

**'Condition of Offer'** means a condition placed by the Department on its offer of this Deed to the Provider.

**'Confidential Information'** means all information that the Parties agree to treat as confidential by Notice to each other after the Deed Commencement Date; or that the Parties know, or ought reasonably to know, is confidential to each other.

**'Conflict'** refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Provider engaging in any activity or obtaining any interest that may interfere with or restrict the Provider in performing the Services to the Department fairly and independently.

**'Conformity Assessment Body'** means a third party assessment organisation appointed by the Department to its QAF Auditor List.

**'Connections for Quality Indicator'** means an indicator, specified as such in any Guidelines, that demonstrates linkages to wrap around servicing, engagement with Employers and services offered to Participants, particularly those with multiple disadvantages.

**'Consecutive Weeks'** means a continuous period of weeks broken only by one or more Permissible Breaks, except in the case of Partial Outcomes where no Permissible Breaks are permitted, and as adjusted by DHS.

**'Constitution'** means (depending on the context):

- (a) a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or
- (b) in relation to any other kind of body:
  - (i) the body's charter, rules or memorandum; or
  - (ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members.

**'Contact'** means a contact between the Provider and a Stream Participant in accordance with clause 84.

**'Contact Person'** means the person specified in item 2 of Schedule 1 who has authority to receive and sign Notices and written communications for the Provider under this Deed and accept any request or direction in relation to the Services.

**'Control'** has the meaning given to that term in section 50AA of the *Corporations Act 2001* (Cth).

**'Corporation'** has the meaning given to that term in section 57A of the *Corporations Act 2001* (Cth).

**'Corrective Action Plan'** means a plan developed by the Provider, in accordance with any Guidelines and agreed by the Quality Auditor, for the purposes of addressing one or more Non-conformances.

**'Customer'** includes a Participant, potential Participant, Employer and any other user of the Services.

**'Cybersafety Policy'** means the Commonwealth policy of that name as specified at clauses 32.21 to 32.25.

**'Deed'** means this document, as varied or extended by the Parties from time to time in accordance with this Deed, and includes any Conditions of Offer, the Particulars, all Annexures, the Schedules, any Guidelines and any documents incorporated by reference.

**'Deed Commencement Date'** means the later of 1 July 2015, or the date on which this Deed is signed by the last Party to do so.

**'Deed Material'** means all Material:

- (a) developed or created or required to be developed or created as part of or for the purpose of performing this Deed;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a) above; or
- (c) copied or derived from Material referred to in paragraphs (a) or (b); and

includes all Deed Records.

**'Deed Records'** means all Records:

- (a) developed or created or required to be developed or created as part of or for the purpose of performing this Deed;
- (b) incorporated in, supplied or required to be supplied along with the Records referred to in paragraph (a) above; or
- (c) copied or derived from Records referred to in paragraphs (a) or (b); and

includes all Reports.

**'Delegate'** means:

- (a) for a ParentsNext Volunteer, a person engaged by the ParentsNext Volunteer's ParentsNext Provider; and
- (b) for all other Stream Participants, a person engaged by the Provider, who is a delegate of the Secretary of the Department under the Social Security Law.

#### GDV 1 GDV 2

**'Department'** means the Commonwealth Department of Employment or such other agency or department as may administer this Deed on behalf of the Commonwealth from time to time, and where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.

**'Department Employee'** means an employee of the Commonwealth working for the Department and:

- (a) any person notified by the Department to the Provider as being a Department Employee; and
- (b) any person authorised by law to undertake acts on behalf of the Department.

**'Department's IT Systems'** means the Department's IT computer system accessible by a Provider, delivered as web-browser applications optimised for Internet Explorer 11, and through which information is exchanged between the Provider, Subcontractors, DHS and the Department in relation to the Services.

**'Department's National Customer Service Line'** means a free call telephone service which puts Participants and Employers in contact with a Department Customer Service Officer, and is 1800 805 260, or such other number as Notified by the Department ~~from time to time~~.

#### GDV 1

**'Department's Security Policies'** means policies relating to the use and security of the Department's IT Systems and Records, and includes the policy by the name of the Department's *External Security Policy - For Contracted Service Providers and Users* and any other security policies Notified by the Department ~~from time to time~~. Relevant policies are available on the Department's IT Systems through the following path: Provider Portal > [jobactive Employment Provider Services](#) > Provider Operations > IT Security & Access, or at such other location as advised by the Department ~~from time to time~~.

#### GDV 1

**'DES Participant'** means a person who is in receipt of services from a DES Provider.

**'DES Provider'** means a contracted provider of services under the Disability Employment Services Deed.

**'DHS'** means the Department of Human Services [and includes its officers, delegates, employees, contractors and agents](#).

#### GDV 1

**'DHS Fortnight'** means the period determined under section 43(1)(b) of the *Social Security (Administration) Act 1999* (Cth) that applies to a Stream Participant.

**'Direct Registration'** or **'Directly Register'** means Registration by the Provider of a Vulnerable Youth, Vulnerable Youth (Student), Volunteer, Harvest Worker or any other person identified in any Guidelines who does not have a Referral, in accordance with clause 78 or clause 134.4 (for Harvest Workers) and any Guidelines.

**'Director'** means any of the following:

- (a) a person appointed to the position of a director or alternate director, and acting in that capacity, of a body corporate within the meaning of the *Corporations Act 2001* (Cth) regardless of the name given to their position;
- (b) a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (c) a member of the committee of an organisation incorporated pursuant to state or territory laws relating to the incorporation of associations;
- (d) a person who would be a director of the body corporate under paragraph (a) above if the body corporate were a body corporate within the meaning of the *Corporations Act 2001* (Cth);
- (e) a person who acts in the position of a director of a body corporate;



- (f) a person whose instructions or wishes the directors of a body corporate are accustomed to acting upon, and not simply because of the person's professional capacity or business relationship with the directors or the body corporate; and
- (g) a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate.

'**Disability Employment Services**' means the services provided under the Disability Employment Services Deed administered by the Department of Social Services.

'**Disability Employment Services Deed**' means the agreement for the provision of Disability Employment Services with the Department of Social Services.

'**Disability Support Pension Recipient (Compulsory Requirements)**' means a Fully Eligible Participant who is in receipt of the Disability Support Pension, is under the age of 35, and has compulsory requirements.

'**Dispose**' or '**Disposal**' means to sell, license, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts.

'**Documentary Evidence**' means those Records of the Provider, including any Records held in a Third Party System, as specified in this Deed including in any Guidelines, which evidence that Services were provided by the Provider as required under this Deed and/or that the Provider is entitled to a Payment.

'**DVA War Widow/er Pension**' means a pension paid to a person:

- (a) under Part II or Part IV of the *Veterans' Entitlements Act 1986* (Cth); or
- (b) who is receiving the weekly amount mentioned in paragraph 234(1)(b) of the *Military Rehabilitation Compensation Act 2004*.

'**Early School Leaver**' means a person who falls within the meaning given to the term 'early school leaver' by the *Social Security Act 1991* (Cth) and who has early school leaver participation requirements under the Social Security Law.

'**Education**' means any education activity unless otherwise advised by the Department.

'**Education Outcome**' means that a Stream Participant completes:

- (a) six months of a Qualifying Education Course; ~~or~~
- (b) a Qualifying Training Course ~~that is 12 weeks or more in duration; or~~
- (c) a Qualifying Training Course that is less than 12 weeks in duration where:
  - (i) the Qualifying Training Course leads directly to Employment that is related to the course within 8 weeks of completing the course; and
  - (ii) the Stream Participant achieves a 4 Week Period Employment Outcome,

~~which~~ and the relevant course was commenced when the Stream Participant was aged 15 to 17 years or 15 to 21 years for Early School Leavers.

## GDV 1

'**Education Outcome Start Date**' means, in relation to an Education Outcome, the first day of:

- (a) six months of a Qualifying Education Course; ~~or~~
- (b) a Qualifying Training Course.

## GDV 1

'**Effective Exit**' means the automatic removal of:

- (a) a Volunteer from the Department's IT Systems when they have reached a maximum of six months Period of Service in Stream A; or
- (b) a Fully Eligible Participant from the Department's IT Systems as being eligible for the full range of Services when:
  - (i) the Department is advised by DHS that the Fully Eligible Participant has stopped receiving an Income Support Payment;

- (ii) the Department is advised by DHS that the Fully Eligible Participant is fully meeting their part-time Mutual Obligation Requirements and no longer needs to remain connected to the Provider;
- (iii) the Fully Eligible Participant is commenced in Disability Employment Services or the [Remote Jobs and Communities Community Development](#) Programme or equivalent;
- (iv) the Fully Eligible Participant becomes a NEIS Participant; or
- (v) the Fully Eligible Participant participates in an activity, or an event occurs in relation to the Fully Eligible Participant, that the Department may advise [from time to time](#) as being an Effective Exit.

#### GDV 1

**‘Electronic Diary’** means the Department’s system used for Referrals, for making and managing a Stream Participant’s Appointments and for referrals by the Provider to other relevant service providers.

**‘Employer’** means an entity that has the legal capacity to enter into a contract of employment with a Participant, ~~but does not include the Provider.~~

#### GDV 2

**‘Employment’** or **‘Employed’** means the status of a person who is in paid work under a contract of employment or who is otherwise deemed to be an employee under relevant Australian legislation.

**‘Employment Fund’** means funding collectively available for the General Account and the Wage Subsidy Account.

**‘Employment Outcome’** means:

- (a) a Partial Outcome; or
- (b) a Full Outcome.

**‘Employment Outcome Start Date’** means:

- (a) in the case of a Stream Participant who is:
  - (i) in receipt of an Income Support Payment, the first day of the DHS Fortnight that applies to the Stream Participant following the ~~ir commencement in Employment~~ [relevant Job Seeker Placement Start Date](#); ~~or~~
  - ~~(b)~~ (ii) not in receipt of an Income Support Payment, the [relevant Job Seeker Placement Start Date day of their commencement in Employment](#); or
- (b) as otherwise specified in any Guidelines or advised by the Department.

#### GDV 1

**‘Employment Provider’** means any entity contracted to the Commonwealth to provide Employment Provider Services under the jobactive Deed 2015-2020.

**‘Employment Provider Services’** means Services under Streams A to C.

**‘Employment Provider Services Key Performance Indicators’** or **‘Employment Provider Services KPIs’** means the indicators specified in clause 99 or as Notified by the Department [from time to time](#).

#### GDV 1

**‘Employment Region’** means a geographical area:

- (a) identified and displayed at [lmip.gov.au](http://lmip.gov.au), as varied by the Department [from time to time](#) at the Department’s absolute discretion; and
- (b) that the Provider is contracted to service under this Deed, as specified in item 6.1 of Schedule 1.

#### GDV 1

**‘Employment Services Assessment’** or **‘ESAt’** means an assessment of a Stream Participant’s barriers to employment and work capacity conducted by DHS.

**‘Employment Services Tip off Line’** means a telephone and email service, developed primarily for current and former employees of Employment Providers who suspect, or have evidence of incorrect claims or acceptance of Payments, or

any other activities that may be a breach of the Deed that Employment Providers have signed with the Department, and which allows those persons to report their concerns to the Department.

**'Employment Systems Help Desk'** means the Department's centralised point of IT support for employment service providers in relation to the Department's IT Systems, including the Employment Services System and Employment and Community Services Network.

**'Enterprise Agreement'** has the same meaning given to it under the *Fair Work Act 2009*.

## GDV 2

**'Exceptional Circumstances'** means circumstances beyond the control of the Provider and/or a Stream Participant and includes:

- (a) where the Stream Participant resides in:
  - (i) an area which is affected by extreme weather conditions (if agreed to by the Department);
  - (ii) an area affected by a natural disaster; or
  - (iii) an area affected by public transport strikes;
- (b) when a Stream Participant is participating in full-time Training or Education and their participation in those activities restricts their availability to participate in an Initial Interview; or
- (c) other circumstances advised by the Department ~~from time to time~~.

## GDV 1

**'Exempt Public Authority'** has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

**'Exemption'** means circumstances recorded by DHS, resulting in an exemption by DHS from Mutual Obligation Requirements of a Fully Eligible Participant (Mutual Obligation) for a specified period of time.

**'Existing Material'** means all Material, except Commonwealth Material, in existence prior to the Deed Commencement Date:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Deed Material.

**'Exit'** means an exit of a Stream Participant from Employment Provider Services in accordance with clause 95.1 and **'Exited'** has an equivalent meaning.

**'Extended Service Periods'** means one or more periods of time from the end of the Service Period.

**'Extraordinary Audit'** means a QAF Audit, for any reason, as required by the Department.

**'Extraordinary Report'** means a complete and unedited audit report by a Quality Auditor, in accordance with any Guidelines, resulting from an Extraordinary Audit.

**'Fair Work Ombudsman'** means the Fair Work Ombudsman established under the *Fair Work Act 2009* (Cth) and includes any other entity that may, from time to time, perform the functions of the Fair Work Ombudsman.

## GDV 1

**'Fees'** means any amounts payable by the Department under this Deed specified to be Fees and any amounts not expressly identified as a Reimbursement or an Ancillary Payment.

**'Financial Quarter'** means any one of the following:

- (a) 1 July to 30 September;
- (b) 1 October to 31 December;
- (c) 1 January to 31 March; or
- (d) 1 April to 30 June.

**'Financial Year'** means a period from 1 July in one year to 30 June in the following year.

**'Full Outcome'** means that, for the duration of a 4 Week Period, 12 Week Period or 26 Week Period, as relevant, a Stream Participant:

- (a) who ~~was is~~ in receipt of a Newstart Allowance or a Youth Allowance (other) ~~on the relevant Employment Outcome Start Date:~~
  - (i) generates sufficient income from Employment or Unsubsidised Self-Employment or a full-time apprenticeship or traineeship or part-time apprenticeship or traineeship to have caused the Fully Eligible Participant's Basic Rate of Newstart Allowance or Youth Allowance (other) to cease; or
  - (ii) remains each week in a full-time apprenticeship or traineeship;
- (b) who ~~was: has~~
  - (i) receiving Newstart Allowance, Youth Allowance (other) or Parenting Payment (Partnered or Single) with part-time Mutual Obligation Requirements; and
  - (ii) ~~been identified and recorded~~ on the Department's IT Systems ~~by DHS or another party identified by the Department~~ as a parent or as having a disability,

~~and who is receiving Newstart Allowance, Youth Allowance (other) or Parenting Payment (Partnered or Single) with part-time Mutual Obligation Requirements on the relevant Employment Outcome Start Date,~~ is, for at least 30 hours or more each fortnight, in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship;
- (c) who is:
  - (i) not in receipt of Newstart Allowance, Youth Allowance (Other) or Parenting Payment and is not otherwise identified in paragraphs (d) or (e) below; or
  - (ii) a Disability Support Pension Recipient (Compulsory Requirement); and

is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship for at least 80 hours over a 4 Week Period, or 240 hours over a 12 Week Period, and 280 hours over a 26 Week Period;
- (d) who ~~was has been~~ identified ~~and recorded~~ on the Department's IT Systems ~~on the relevant Employment Outcome Start Date~~ as having a disability and a Partial Capacity to Work, is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship that equals or exceeds the minimum number of hours per week in the range as assessed by DHS through an ESA or JCA, but is not less than eight hours of work each week;
- (e) who:
  - (i) ~~was is~~ in receipt of a Parenting Payment (Partnered or Single) without Mutual Obligation Requirements, or Carer Payment, ~~on the relevant Employment Outcome Start Date;~~ and
  - (ii) ~~and who~~ chooses to work reduced hours due to caring responsibilities (this choice being ~~recorded identified~~ on the Department's IT Systems ~~by DHS or another party identified by the Department on or before the relevant Employment Outcome Start Date~~),

is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship for at least 30 hours each fortnight; or
- (f) meets the requirements for any other event that the Department may Notify the Provider of ~~from time to time~~ as being a Full Outcome.

#### GDV 1

**'Full Outcome Conversion'** means a change, as specified in any Guidelines, in a Stream Participant's Employment and the change:

- (a) occurs during a 26 Week Period;
- (b) is permanent and results in a Full Outcome; and
- (c) is recorded on the Department's IT Systems in accordance with any Guidelines.

**'Full-Time'** means:

- (a) for a Site, Monday to Friday from 9am to 5pm daily on Business Days, or as otherwise agreed with the Department; and

- (b) for a NEIS Business, the number of hours as a minimum, as set out in any Guidelines, a NEIS Participant must work in their NEIS Business.

**‘Full-Time Study’** means:

- (a) a university course that, for the purposes of the Higher Education Contribution Scheme, represents a standard student load for the equivalent of a full-time student;
- (b) a course that is at least 15 class contact hours a week; or
- (c) a course determined as being full-time by the relevant educational institution.

**‘Fully Eligible Participant’** means a person, who is identified by DHS, the Department, or the Provider on the Department’s IT Systems as fully eligible for all Employment Provider Services, and includes a Fully Eligible Participant (Mutual Obligation), a Fully Eligible Participant (Voluntary), a Disability Support Pension Recipient (Compulsory Requirements) and any other person identified in any Guidelines, but excludes a Volunteer.

**‘Fully Eligible Participant (Mutual Obligation)’** means a Fully Eligible Participant with Mutual Obligation Requirements, including an SPI Participant and any other Fully Eligible Participant as specified in any Guidelines, but excluding a Disability Support Pension Recipient (Compulsory Requirements).

**‘Fully Eligible Participant (Voluntary)’** means a Fully Eligible Participant who:

- (a) is subject to an Exemption;
- (b) has part-time Mutual Obligation Requirements and is fully meeting his or her Mutual Obligation Requirements;
- (c) has a temporary reduced work capacity of less than 15 hours per week, as determined by an ESA or JCA, for the period determined by an ESA or JCA;
- (d) is a PCW Participant with a current and future work capacity of less than 15 hours per week; or
- (e) is otherwise identified by the Department as being a Fully Eligible Participant (Voluntary),

and volunteers to participate in additional activities.

**‘General Account’** means a flexible pool of funds which is part of the Employment Fund and held by the Department, and which is nominally credited to the Provider at the Site level.

**‘Group Based Activity’** means a Work for the Dole activity, hosted by an Activity Host Organisation and designed for more than one Fully Eligible Participant, which involves carrying out tasks as part of a specific group project.

**‘Group Based Activity Budget’** means the Group Based Activity budget described in clause 124.9(b)(ii).

**‘Group Based Activity Overhead Costs’** means the costs directly associated with the establishment and running of a Group Based Activity, including:

- (a) the costs of Supervisors, capital equipment, transportation of Fully Eligible Participants, rent and associated infrastructure, activity materials and training;
- (b) insurance (limited only to the additional costs of insurance where the nature of a Group Based Activity means that it is not covered by Department funded insurance, or insurance that the Provider is required to obtain in accordance with clause 42, being insurance only for the period of the Group Based Activity); and
- (c) any other item as specified by the Department,

but does not include the cost of items provided to individual Fully Eligible Participants.

**‘GST’** has the meaning as given in section 195-1 of the GST Act.

**‘GST Act’** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**‘Guide to Social Security Law’** means the guidelines published by the Department of Social Services, as amended ~~from time to time~~ and available at the following website: <http://guides.dss.gov.au/guide-social-security-law>.

## GDV 1

**‘Guidelines’** refers to the guidelines, if any, as described in this Deed and issued by the Department, as amended ~~from time to time~~ by the Department.

## GDV 1

**‘Harmful Code’** means any software or code that is designed to infiltrate a computer, system, network or other infrastructure without an end user’s informed consent, such as malware, virus, trojans, worms, spam, phishing e-mail, backdoors, botspyware, adware, diallers, toolkits, keyloggers, highjackers, web bug, exploits, cracking tools, and hacking tools.

**‘Harvest Area’** means the areas specified at item 8.1 of Schedule 1, which are comprised of one or more SA2 geographical regions defined by the Australian Bureau of Statistics, as specified in item 8.10 of Schedule 1, in which the Provider must provide Harvest Labour Services.

**‘Harvest Employers’** means Employers who are primary producers within the Harvest Area(s).

**‘Harvest Information’** means information about a harvest, Harvest Work and Harvest Vacancies, including information regarding:

- (a) accommodation that Harvest Workers can get;
- (b) possible means of transportation to Harvest Work;
- (c) conditions of employment and pay rates relating to Harvest Work;
- (d) relevant legislative requirements relating to hiring or employing Harvest Workers;
- (e) relevant legislative requirements relating to the provision of Harvest Work;
- (f) major horticultural areas in Australia;
- (g) available work in major horticultural areas in Australia;
- (h) the type of clothing recommended for undertaking Harvest Work;
- (i) physical requirements for Harvest Work;
- (j) the weather conditions in major horticultural areas in Australia;
- (k) wages for Harvest Work;
- (l) contact details for organisations hiring Harvest Workers; and
- (m) any other information the Provider or the Department considers relevant.

**‘Harvest Labour Services’** or **‘HLS’** means the Services specified in Part D.

**‘Harvest Period’** means a time period of that name set out in item 8.9 of Schedule 1, as varied by the Department in accordance with clause 134.3.

**‘Harvest Placement’** means the placement of a Harvest Worker into a Harvest Vacancy.

**‘Harvest Placement Fee’** means the Fee for a Harvest Placement that the Provider may claim in accordance with clause 135.1.

**‘Harvest Service Fee’** means those Fees the Provider may claim in accordance with clause 135.5.

**‘Harvest Trail Website’** means the website hosted by the Department available at [www.harvesttrail.gov.au](http://www.harvesttrail.gov.au).

**‘Harvest Vacancy’** means a vacancy that:

- (a) involves Harvest Work;
- (b) takes place during the Harvest Period;
- (c) does not contravene Commonwealth, state or territory legislation;
- (d) provides terms and conditions of employment which are consistent with the relevant workplace relations laws, or any instrument made under such laws, and work health and safety laws, or any instrument made under such laws; and
- (e) is as otherwise described in any Guidelines.

**‘Harvest Work’** means work that includes:

- (a) harvesting, cleaning and packing fruit and vegetables;
- (b) harvesting cereals and other horticultural crops;
- (c) pruning and trimming vines and fruit trees;

- (d) thinning and trimming flowers;
- (e) chipping and weeding;
- (f) operating harvesting equipment; and
- (g) any other like activities, as specified in any Guidelines,

but does not include:

- (h) planting of any horticultural crops in preparation for a harvest; or
- (i) any work in relation to any crops which are not horticultural crops, as determined by the Department at its absolute discretion, and including as specified in any Guidelines.

**'Harvest Worker'** means a person who is not prohibited by law from working in Australia.

~~**'Implementation and Outcomes Report'** means a report in accordance with the Indigenous Opportunities Policy Guidelines.~~

#### GDV 1

**'Indigenous Enterprise'** means an organisation that is 50 per cent or more owned by Aboriginal or Torres Strait Islander persons and is operating as a business.

#### GDV 1

~~**'Indigenous Opportunities Policy Administrator'** or **'IOP Administrator'** means the Indigenous Opportunities Policy Administrator in the Department of Prime Minister and Cabinet, or any other agency or department as may administer the Indigenous Opportunities Policy on behalf of the Commonwealth from time to time.~~

#### GDV 1

~~**'Indigenous Opportunities Policy Guidelines'** means the Guidelines relating to Indigenous Training, Employment and Supplier Plans, as amended by the Department of Prime Minister and Cabinet from time to time, and available at: <http://docs.Employment.gov.au/node/12516>.~~

#### GDV 1

**'Indigenous Outcomes Targets'** means the Provider's requisite proportion of 4 Week Period, 12 Week Period and 26 Week Period Full Outcomes for Aboriginal or Torres Strait Islander persons, as Notified by the Department to the Provider ~~from time to time~~.

#### GDV 2

~~**'Indigenous Training, Employment and Supplier Plan'** or **'ITES Plan'** means a plan:~~

- ~~(a) in accordance with the Indigenous Opportunities Policy Guidelines; and~~
  - ~~(b) of five years duration from 1 July 2015, or such other date advised by the IOP Administrator, that specifies how the Provider intends to:~~
  - ~~(c) provide training and employment opportunities to local Aboriginal and Torres Strait Islander peoples; and~~
  - ~~(d) utilise Aboriginal and Torres Strait Islander businesses that are small to medium enterprises,~~
- ~~in each Employment Region in which the Provider provides Services and in which significant populations of Aboriginal and Torres Strait Islander peoples exist, as Notified to the Provider by the Department.~~

#### GDV 1

**'Individual Hosted Activity'** means a Work for the Dole activity, hosted by an Activity Host Organisation, in which the Work for the Dole Place(s) are designed for individual Fully Eligible Participants.

**'Initial Interview'** means an initial Contact between the Provider and a Stream Participant in accordance with clause 85, and where appropriate, includes an Initial Interview for a New Stream.

**'Initial Interview for a New Stream'** means an initial Contact between the Provider and a Fully Eligible Participant when the Fully Eligible Participant has moved into a higher Stream due to a Change of Circumstances Reassessment, and in accordance with clause 85.

**'Input Tax Credit'** has the meaning given in section 195-1 of the GST Act.

**'Intellectual Property Rights'** includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions (including patent rights), plant varieties, trademarks (including service marks), designs, circuit layouts; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,

but does not include:

- (d) Moral Rights;
- (e) the non-proprietary rights of performers; or
- (f) rights in relation to confidential information.

**'Interest'** means interest calculated at a rate determined by the Department that will be no higher than the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points.

**'Intervention'** means a specialist service provided by a private sector or community entity or an employment or training programme administered by the Commonwealth or by a state or territory government (including by state or territory government funded providers) that the Provider may access, to provide specialised assistance to Stream Participants to increase job competitiveness or address Non-vocational Barriers.

**'jobactive'** means the Commonwealth programme of that name (or such other name as advised by the Department from time to time), administered by the Department.

**'jobactive Website'** means the jobactive website that is owned and maintaining by the Department and accessible via the internet.

#### GDV 1

**'Job Capacity Assessment'** or **'JCA'** means an assessment conducted by DHS to determine eligibility for the Disability Support Pension and includes assessment of barriers to employment and work capacity.

**'Job Plan'** means:

- (a) for ParentsNext Volunteers, the plan defined as a 'Participation Plan' under the ParentsNext Funding Agreement; and
- (b) for all other Stream Participants, the plan described in clause 87, and which includes an employment pathway plan under the *Social Security Act 1991* (Cth) and a participation plan for Disability Support Pension recipients with compulsory requirements under the *Social Security Act 1991* (Cth), or, if the *Social Security Act 1991* (Cth) is amended, any other such plans agreements.

#### GDV 1 GDV 2

**'Job Search'** means an instance of active contact with a potential Employer to apply for a job, and includes a contact by phone or in person, by submitting a written application, or by attending a job interview.

*Note: Relevant job vacancies do not need to have been publically advertised to count as a Job Search. However, looking for job vacancies in newspapers or online does not count as a Job Search unless actual contact is made with the relevant potential Employer.*

**'Job Search Period'** means, unless otherwise specified in any Guidelines, the first month and each successive month thereafter, of a Fully Eligible Participant's (Mutual Obligation) or Disability Support Pension Recipient's (Compulsory Requirements) Period of Unemployment.

**'Job Search Requirement'** means the number of Job Searches that a Fully Eligible Participant (Mutual Obligation) or a Disability Support Pension Recipient (Compulsory Requirements) must complete as specified in any Guidelines.

**'Job Seeker Classification Instrument'** or **'JSCI'** means the tool used by DHS and Providers to measure a Stream Participant's relative level of disadvantage based on the expected difficulty in finding the Stream Participant employment because of the Stream Participant's personal circumstances and labour market skills.

**'Job Seeker Placement'** means ~~the placement of a Stream Participant by the Provider into~~ a Vacancy or a position in an apprenticeship or a traineeship, that is recorded or lodged on the Department's IT Systems by the Provider as being occupied by the Stream Participant in accordance with this Deed.

#### GDV 1



**'Job Seeker Placement Start Date'** means:

- (a) the date on which the Stream Participant first commences in a Job Seeker Placement; ~~or~~
- (b) if the Job Seeker Placement includes an initial Paid Induction Period, either:
  - (i) the day on which the Stream Participant first commences in the Job Seeker Placement; or
  - (ii) the first day of continuous Employment following the Paid Induction Period,  
whichever the Provider selects; ~~or~~
- (c) if clause 125.1(d) applies to the Stream Participant, the date of the Significant Increase which the Provider records on the Department's IT Systems, or as otherwise specified in any Guidelines or advised by the Department.

#### GDV 1

**'Job Services Australia'** or **'JSA'** means the Commonwealth programme of that name (or such other name as advised by the Department from time to time), administered by the Department up to 30 June 2015.

**'Jobs, Land and Economy Programme'** means the Commonwealth programme administered by the Department of Prime Minister and Cabinet which aims to get adult Aboriginal or Torres Strait Islander persons into work, foster viable indigenous businesses and assist Aboriginal or Torres Strait Islander persons to generate economic and social benefits from land and sea use and native title rights.

**'Joint Charter of Deed Management'** means the charter at Annexure A2 which embodies the commitment by the Department and Employment Providers to work cooperatively to achieve shared goals and outcomes in the delivery of employment services.

**'Lead Provider'** means an Employment Provider who has been identified as such by a Work for the Dole Coordinator, the Department's IT Systems or the Department, in accordance with any Guidelines.

**'Liquidated Damages'** means the amount that the Department may recover from a Provider in accordance with clause 54.

**'LTU and Indigenous Wage Subsidy'** means the Wage Subsidy ~~of that name~~ which provides incentives for: ~~long-term unemployed (a) Stream Fully Eligible Participants, who have been registered with an Employment Provider and out of Employment for at least 12 months; and (b) Aboriginal and Torres Strait Islander persons who have been registered with an Employment Provider and been out of Employment for six months or more; and (c) any other persons, in accordance with specified in any Guidelines.~~

#### GDV 1

~~'LTU Wage Subsidy Account' means funding within the Wage Subsidy Account reserved for LTU Wage Subsidies, which is nominally credited to the Provider.~~

#### GDV 1

**'Major Non-conformance'** means a major non-conformance with a Quality Standard or the Quality Principles in accordance with any Guidelines and as determined by the Department.

**'Material'** includes equipment, software (including source code and object code), goods, and Records stored by any means including all copies and extracts of the same.

**'Material Subcontractor'** means any Subcontractor of the Provider subcontracted to perform a substantial part (as determined by the Department) of the Services.

**'Modern Award'** means a modern award made under Part 2-3 of the *Fair Work Act 2009*.

#### GDV 2

**'Moral Rights'** has the meaning given to the term 'moral rights' by the *Copyright Act 1968* (Cth).

**'Mutual Obligation Requirement'** means the activity test or participation requirements that a Fully Eligible Participant must meet in order to receive an Income Support Payment in accordance with any Guidelines.

**'National Harvest Guide'** means the document of that name specified in clause 136.9.

**‘National Harvest Labour Information Service’** or **‘NHLIS’** means the Services of that name specified in clause 136.

**‘National Harvest Telephone Information Service’** means the Services of that name specified in clause 136.8.

**‘National Minimum Wage’** means the national minimum wage as set in a national minimum wage order made under Part 2-6 of the *Fair Work Act 2009*.

## **GDV 2**

**‘National Work Experience Programme’** means the Commonwealth programme of that name, administered by the Department, which aims to provide eligible Stream Participants as specified in any Guidelines with opportunities to enhance their vocational skills and experience in a work-like environment.

## **GDV 1**

**‘National Work Experience Programme Placement’** means a short-term unpaid work experience placement that meets the eligibility requirements for a National Work Experience Programme Placement, as specified under clause 109.1 and any Guidelines.

## **GDV 1**

**‘NEIS Allowance’** means an allowance payable by the Department to a NEIS Participant in accordance with the NEIS Participant Agreement.

**‘NEIS Assistance’** means the assistance provided to a NEIS Participant in accordance with this Deed, including any Guidelines:

- (a) including, where applicable, the payment of NEIS Allowance and NEIS Rental Assistance, NEIS Business Mentoring, monthly contact, business advice and counselling; and
- (b) for a period of 52 weeks (or as otherwise extended or reduced by the Department), commencing on the date on which the relevant NEIS Participant Agreement is approved by the Department, but excluding any period during which the NEIS Participant Agreement is suspended by the Department.

**‘NEIS Business’** means the NEIS Participant’s business, the details of which are set out in the schedule to the NEIS Participant Agreement, and which is to be operated in accordance with the NEIS Business Plan.

**‘NEIS Business Eligibility Criteria’** means the criteria specified in any Guidelines against which a proposed NEIS Business is assessed to determine if it meets the eligibility requirements for a NEIS Business.

**‘NEIS Business Mentoring’** means mentoring support provided by a NEIS Provider to a NEIS Participant and includes assistance and advice about organisational, financial and marketing issues to help the NEIS Participant to develop their business, and other requirements specified in any Guidelines.

**‘NEIS Business Mentoring Report’** means a Report that provides, in accordance with any Guidelines, a description of the delivery of NEIS Business Mentoring.

**‘NEIS Business Plan’** means a plan that sets out, at a minimum, how a NEIS Prospective Participant’s proposed NEIS Business and, where approved, how a NEIS Participant’s NEIS Business will operate, the business insurance required, and a forecast of the cash flow each Financial Quarter.

**‘NEIS Commencement’** means the date on which a NEIS Participant commences receipt of NEIS Assistance, as identified in the Department’s IT Systems.

**‘NEIS Eligible’** means that a Stream Participant or a DES Participant, as relevant, meets the eligibility requirements for NEIS in accordance with any Guidelines.

**‘NEIS External Income’** means any gross income that the Australian Taxation Office would regard as income, received by a NEIS Participant while he or she is in receipt of NEIS Assistance, and includes types of income which satisfy the requirements in any Guidelines.

**‘NEIS External Income Test’** is a test, as specified in any Guidelines, based upon the NEIS Income Statement of a NEIS Participant’s NEIS External Income, and used to determine whether the total gross NEIS External Income in a Financial Quarter is more than twice the rate of NEIS Allowance for that Financial Quarter.

**‘NEIS Fee’** means the fee of \$5,580 which is payable for the provision of NEIS Services in accordance with clause 130, and excludes Fees payable under clause 133.6.

**'NEIS Financial Information'** is financial information about a NEIS Business which includes any information specified in any Guidelines.

**'NEIS Income Statement'** means a correctly completed statement of a NEIS Participant's gross NEIS External Income, and any other information specified by the Department, in a form approved by the Department.

**'NEIS Key Performance Indicators'** or **'NEIS KPIs'** means the performance indicators for NEIS specified in clause 131, or as Notified by the Department [from time to time](#).

#### GDV 1

**'NEIS Participant'** means a person who is a party to a current NEIS Participant Agreement and who is in receipt of NEIS Assistance.

**'NEIS Participant Agreement'** means an agreement, in a form prescribed by the Department:

- (a) entered into between a NEIS Prospective Participant and the Department; and
- (b) for a period of 52 weeks (or as otherwise extended or reduced by the Department), commencing on the date on which the relevant NEIS Participant Agreement is approved by the Department, but excluding any period during which the NEIS Participant Agreement is suspended by the Department.

~~**'NEIS Participant Agreement (pre 1 July 2015)'** means an agreement entered into on or before 30 June 2015 between the Department and a NEIS Transitioned Participant for the provision of NEIS services.~~

#### GDV 2

**'NEIS Places'** means the maximum number of NEIS Commencements which the Provider may achieve in each Financial Year in each Employment Region as set out at item 7.2 of Schedule 1, or as otherwise agreed by the Department in writing [from time to time](#).

#### GDV 1

**'NEIS Post-Programme Outcome'** means a situation where a NEIS Participant is verified by the Department as not being in receipt of any Income Support Payment, 13 weeks after cessation of their NEIS Participant Agreement, unless:

- (c) the NEIS Participant was previously in receipt of Parenting Payment (Single), Disability Support Pension, Carer Payment or DVA War Widow/er or Partner Service Pension; or
- (d) the NEIS Participant was not in receipt of Newstart Allowance, Youth Allowance or any other Income Support Payment on commencement of their NEIS Participant Agreement,

in which case, a NEIS Post-Programme Outcome only occurs if the NEIS Participant is in Employment (of at least 20 hours per week) 13 weeks after cessation of their NEIS Participant Agreement.

**'NEIS Prospective Participant'** means a Stream Participant or a DES Participant who has been assessed by the NEIS Provider as NEIS Eligible and has not yet executed a NEIS Participant Agreement.

**'NEIS Provider'** means any entity that is contracted by the Commonwealth to provide NEIS Services under Part C of the jobactive Deed 2015-2020, including the Provider, where relevant.

**'NEIS Rental Assistance'** means rental assistance payable by the Department to a NEIS Participant in accordance with the NEIS Participant Agreement.

**'NEIS Services'** means the Services that must be provided by the NEIS Provider to NEIS Prospective Participants and NEIS Participants in accordance with Part C and clause 97, including for the purpose of ~~which is to~~ assisting NEIS Participants in establishing and running viable new small businesses in accordance with any Guidelines or written instructions issued by ~~of~~ the Department ~~issued~~ [from time to time](#).

#### GDV 1 GDV 2

**'NEIS Training'** means training for a Certificate IV in New Small Business Management or Certificate III in Micro Business Operations, or as otherwise advised by the Department [from time to time](#), and which must be undertaken in a face to face setting, unless otherwise specified in any Guidelines.

#### GDV 1 GDV 2

~~**'NEIS Transition Services'** means NEIS Services which:~~

- ~~(a) are the same as the outstanding services specified in the relevant NEIS Transitioned Participant's NEIS Participant Agreement (pre 1 July 2015); or~~
- ~~(b) the Department otherwise directs a NEIS Provider to provide to a NEIS Transitioned Participant or a NEIS Transitioned Prospective Participant; and~~
- ~~(c) are provided by the NEIS Provider in accordance with clauses 133.4 to 133.6, any Guidelines and any written instructions issued by the Department.~~

## GDV 2

~~'NEIS Transitioned Participant'~~ means a Stream Participant or DES Participant who was receiving NEIS services and had commenced receiving NEIS assistance, on or before 30 June 2015.

## GDV 2

~~'NEIS Transitioned Prospective Participant'~~ means a Stream Participant or DES Participant who was receiving NEIS services as a prospective NEIS participant and:

- ~~(a) had commenced in NEIS Training but not yet completed that training, on or before 30 June 2015; or~~
- ~~(b) had completed NEIS Training but had not yet commenced receiving NEIS Assistance on or before 30 June 2015.~~

## GDV 2

**'Non-Attendance Report'** means an electronic report sent by the Provider, through the Department's IT Systems, to DHS notifying of its assessment that a Fully Eligible Participant's (Mutual Obligation) has failed to attend an Appointment without a Valid Reason or Reasonable Excuse.

**'Non-conformance'** means a non-conformance with a Quality Standard or the Quality Principles in accordance with any Guidelines.

**'Non-conformance Report'** means a report in accordance with any Guidelines, which forms part of each Quality Report, and details Non-conformances identified in a QAF Audit.

**'Non-Payable Outcome'** means one or more of the following:

- (a) Employment, **including a retail position**, involving nudity or in the sex industry;
- (b) volunteer work;
- (c) Activities;
- (d) unpaid work;
- (e) a training course not eligible for Austudy, Abstudy, or Youth Allowance(Student);
- (f) a training course delivered by a training institution that is not approved to deliver the respective training course as specified at <https://training.gov.au>;
- (g) a training course duplicating, or having significant components similar to, employment services, such as training for work preparation or job search skills;
- (h) a job that involves taking up employment in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company;
- (i) a job involving illegal activity;
- (j) a job involving income or funds from gambling deemed to be inappropriate by the Department;
- (k) **a Qualifying Education Course** ~~education or training related activity~~, that started before the Commencement of the relevant Stream Participant, unless the Stream Participant is a Vulnerable Youth (Student);
- (l) Employment that started before the Commencement of the relevant Stream Participant **except as permitted by clause 125.1(d)**;
- (m) a programme, including a Work Trial programme, funded by the Australian Government, or a state or territory government, including a Complementary Service and as advised by the Department **from time to time**;
- (n) non-ongoing Employment or a Work Trial where the Stream Participant's wages are subsidised by the Provider's own funds and the Provider subsequently seeks Reimbursement of the subsidy from the Employment Fund;

- (o) an education or training course in circumstances where the Provider has already received an Outcome Payment for that Stream Participant in the same Period of Unemployment;
- (p) ~~Employment in the same or a similar position vacated in the previous 14 days by a Stream Participant who attracted an Outcome Payment~~ a 4 Week Period Employment Outcome if:
  - (i) the Provider has claimed an Outcome Payment in relation to another Stream Participant that previously occupied the same or a similar position (the *prior outcome*); and
  - (ii) the Employment Outcome Start Date occurs less than 12 weeks after the end of the Outcome Period for the *prior outcome*;
- (q) Employment that contravenes Commonwealth, state or territory legislation or provides terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws, ~~excluding where the Employment has not been paid in accordance with any applicable Enterprise Agreement, Modern Award or the National Minimum Wage~~;
- (r) Employment that pays a commission as either the entire remuneration or part of the remuneration, except where the commission being paid to the Stream Participant is in addition to an amount which is paid to the Stream Participant in accordance with any applicable Commonwealth, state or territory legislation and any applicable ~~Modern Award or the National Minimum Wage order~~;
- (s) Employment or Unsubsidised Self-Employment which is Recurring, except for 4 Week Period Full Outcomes and 4 Week Period Partial Outcomes; or
- (t) any other situation that the Department may advise ~~from time to time~~ or as specified in any Guidelines.

#### GDV 1 GDV 2

**'Non-regional Location'** means a location identified on the Department's IT Systems as not attracting a regional loading ~~as specified in Annexure B2~~.

*Note: Table 4 of Annexure B2 indicates the locations that do not attract a regional loading, however, to the extent of any inconsistency between this table and the Department's IT Systems with respect to relevant locations, the Department's IT Systems prevails.*

#### GDV 2

**'Non-vocational Barriers'** means the range of barriers that can prevent a person from obtaining and sustaining employment or education or from undertaking further skills development, including homelessness, mental illness, drug or alcohol addiction, sexual abuse or violence and physical or mental abuse.

**'Notice'** means a written notice in accordance with clause 71 and **'Notify'** has an equivalent meaning.

**'Notifiable Incident'** has the meaning given in the WHS Act.

**'Ombudsman'** means the Commonwealth Ombudsman established under the *Ombudsman Act 1976* (Cth) and includes any other entity that may, from time to time, perform the functions of the Commonwealth Ombudsman.

**'Other Provider'** means:

- (a) an Employment Provider or a ParentsNext Provider that refers a Stream Participant; or
- (b) a DES Provider that refers a DES Participant,

to a NEIS Provider.

#### GDV 2

**'Outcome'** means only an Employment Outcome, an Education Outcome and a NEIS Post-Programme Outcome.

**'Outcome Payment'** means a Fee for an Employment Outcome and an Education Outcome as set out in Table 1A and 1B in Annexure B2.

**'Outcome Period'** means:

- (a) for an Employment Outcome, the period from the relevant Employment Outcome Start Date to the achievement of a 4 Week Period, 12 Week Period or 26 Week Period, as relevant; and
- (b) for an Education Outcome:

- (i) six months of a Qualifying Education Course; or
  - (ii) the period from commencement to completion of a Qualifying Training Course that is 12 weeks or more in duration; or
  - (iii) the period from commencement of a Qualifying Training Course that is less than 12 weeks in duration to the achievement of a the relevant 4 Week Period Employment Outcome, and
- (c) for a NEIS Post-Programme Outcome, the period of 13 weeks immediately following cessation of the relevant NEIS Participant Agreement.

#### GDV 1 GDV 2

‘**Outreach**’ means, for a Site, a regular presence other than Part-Time or Full-Time - for example, on a monthly, seasonal or ‘as the need arises’ basis.

‘**Own Organisation**’ means the Provider or that part of the Provider that delivers Services under this Deed.

‘**Paid Induction Period**’ is a period before the start of continuous Employment of a Stream Participant where the Stream Participant undergoes associated job training supported by the Employer and where the Employer remunerates the Stream Participant in compliance with all applicable legislation.

‘**ParentsNext**’ means the Commonwealth programme of that name (or such other name as advised by the Department), administered by the Department.

#### GDV 2

‘**ParentsNext Funding Agreement**’ means the agreement for the provision of ParentsNext services with the Department as varied from time to time.

#### GDV 2

‘**ParentsNext Provider**’ means any entity that is a party to a ParentsNext funding agreement with the Department.

#### GDV 2

‘**ParentsNext Volunteer**’ means a Volunteer who is participating in ParentsNext.

#### GDV 2

‘**Parents Wage Subsidy**’ means the Wage Subsidy of that name which provides incentives for the employment of parents who are Fully Eligible Participants, in accordance with any Guidelines.

#### GDV 1

‘**Part-Time**’ means, for a Site, set weekly hours on Business Days with hours of operation less than Full-Time, as agreed with the Department.

‘**Partial Outcome**’ means that, for the duration of a 4 Week Period or a 12 Week Period, as relevant, a Stream Participant:

- (a) who ~~was~~ is in receipt of Newstart Allowance or Youth Allowance (other) on the relevant Employment Outcome Start Date, generates sufficient income in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship to reduce the Fully Eligible Participant’s Basic Rate of Newstart Allowance or Youth Allowance (other) by an average of at least 60 per cent;
- (b) who ~~is~~-was:
  - (i) in receipt of Newstart Allowance, Youth Allowance (other) or Parenting Payment (Partnered or Single) with part time Mutual Obligation Requirements; and
  - (ii) ~~who is~~ identified and recorded on the Department’s IT Systems ~~prior to the Fully Eligible Participant commencing Employment~~ as a parent or as having a disability,

on the relevant Employment Outcome Start Date, is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship for an average of 10 or more hours per week;
- (c) who is:
  - (i) not in receipt of Newstart Allowance, Youth Allowance (Other) or Parenting Payment and is not otherwise identified in paragraphs (d) or (e) below; or

- (ii) a Disability Support Pension Recipient (Compulsory Requirements); and
- is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship for an average of 15 or more hours per week, which does not lead to a Full Outcome;
- (d) who ~~was has been~~ identified ~~and recorded~~ on the Department's IT Systems ~~on the relevant Employment Outcome Start Date prior to their commencing employment~~ as having a disability and a Partial Capacity to Work, is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship that is on average at least 70 per cent of the minimum number of hours per week in the range as assessed by DHS through an ESAT or JCA; but is not less than an average of 8 hours of work per week;
  - (e) who:
    - (i) ~~is was~~ in receipt of a Parenting Payment (Partnered or Single) without Mutual Obligation Requirements or Carer Payment ~~on the relevant Employment Outcome Start Date~~; and
    - (ii) ~~who~~ chooses to work reduced hours due to caring responsibilities (this choice being ~~identified recorded~~ on the Department's IT Systems ~~on or before the relevant Employment Outcome Start Date prior to their commencing employment~~),

is in Employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship for an average of 10 hours or more per week;
  - (f) has in operation an executed NEIS Participant Agreement and is receiving NEIS Assistance; or
  - (g) meets the requirements for any other event that the Department may Notify the Provider ~~from time to time~~ as being a Partial Outcome.

#### GDV 1

**'Participant'** means a Stream Participant, a Harvest Worker, and a NEIS Participant.

**'Participant Services Records'** means Deed Records (including documents associated with the Customer feedback register) about a Participant, that are directly created for the purposes of providing Services.

**'Participation Report'** means an electronic report sent by the Provider through the Department's IT System to DHS detailing a Fully Eligible Participant's (Mutual Obligation) act or acts of potential non-compliance with any or all of his or her Mutual Obligation Requirements as specified in any Guidelines.

**'Particulars'** means the document of that name in which the Parties execute this Deed.

**'Party'** means a party to this Deed.

**'Payments'** means the Fees, Reimbursements and Ancillary Payments payable under this Deed.

**'Payment Period'** means the period which:

- (a) starts on the day on which a Stream Participant is first Commenced; and
- (b) runs continuously until the Stream Participant Exits, except where:
  - (i) the Stream Participant is Suspended (in which case the Payment Period operates in accordance with clause 92.1); or
  - (ii) clauses 95.4 and 95.5 apply.

**'Pay Slip Verified Outcome Payment'** means an Outcome Payment for an Employment Outcome that is verified by a pay slip, ~~or~~ payroll summary ~~or other evidence~~ in accordance with any Guidelines.

#### GDV 1

**'Performance Period'** means each consecutive six month period during the Term of this Deed, unless otherwise advised by the Department.

**'Period of Registration'** means the period of continuous registration of a Stream Participant on the Provider's caseload, beginning on their Commencement and ending when they are transferred from the Provider in accordance with this Deed or Exited, but which is halted in accordance with clause 92 when the Stream Participant is Suspended.

**'Period of Service'** means a period:

- (a) which begins on Commencement of a Stream Participant in a Stream;

- (b) which halts when the Stream Participant is Suspended and recommences when the Suspension ends;
- (c) which ends when the Stream Participant is either:
  - (i) Exited; or
  - (ii) moved into another Stream, except in the case of an SPI Participant who moves from Stream A to Stream B and remains an SPI Participant; or
  - (iii) for Volunteers, when they have received a total of six months of Employment Provider Services including from any other Employment Provider; and
- ~~(d)~~ during which the Provider must provide Employment Provider Services to the Stream Participant.

## GDV 2

**'Period of Unemployment'** means the period which commences on the date on which a Stream Participant registers with DHS or directly with the Provider as unemployed, and concludes in accordance with clause 94.1.

**'Permissible Break'** means, where a Stream Participant is working towards a Full Outcome, a period of time during which a Stream Participant has a break in Employment caused by a situation which is outside the control of the Stream Participant or the Provider and which satisfies the requirements specified in any Guidelines.

**'Personal Information'** has the same meaning as under section 6 of the Privacy Act which currently is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

**'Personnel'** means:

- (a) in relation to the Provider, any natural person who is an officer, employee, volunteer or professional advisor of the Provider; and
- (b) in relation to any other entity, any natural person who is an officer, employee, volunteer or professional advisor of the entity.

**'Pre-existing Employment'** means a position in Employment, Unsubsidised Self Employment, an apprenticeship or traineeship occupied by the Stream Participant prior to them receiving Employment Provider Services from any Employment Provider.

## GDV 1

**'Pre-release Prisoner'** means a Stream Participant who is identified as a Pre-release Prisoner in the Department's IT Systems and specified as such in any Guidelines.

**'Privacy Act'** refers to the *Privacy Act 1988* (Cth).

**'Privacy Commissioner'** means the person appointed to the position of that name and responsible for the administration of the Privacy Act under relevant legislation.

**'Programme Assurance Activities'** refers to activities that may be conducted at any time, to assist the Department in determining whether the Provider is meeting its obligations under the Deed, including any Guidelines.

~~**'Project of National Significance'** means an activity, which may occur on private property, for nationally significant projects at a local level across a range of localities as specified in any Guidelines or advised by the Department from time to time.~~

## GDV 1

**'Protected Information'** has the same meaning as under section 23 of the *Social Security Act 1991*.

**'Provider'** means the employment services provider contracted under this Deed, and includes its Personnel, successors and assigns, and any constituent entities of the Provider's organisation, and includes reference to a Tendering Group contracted under this Deed, where applicable.

**'Provider Appointment Report'** means an electronic report sent by the Provider, through the Department's IT Systems, recommending that a financial penalty be investigated and applied to a Fully Eligible Participant (Mutual Obligation) for



non-attendance at an Appointment, where the Provider has assessed the Fully Eligible Participant (Mutual Obligation) has failed to attend without a Valid Reason or Reasonable Excuse.

**'Provider Exit'** means the manual exiting of a Stream Participant from the Employment Provider Services by the Provider, through its recording the exit and the relevant reasons on the Department's IT Systems, in accordance with this Deed including any Guidelines.

**'Provider Records'** means all Records, except Commonwealth Records, in existence prior to the Deed Commencement Date:

- (a) incorporated in;
  - (b) supplied with, or as part of; or
  - (c) required to be supplied with, or as part of,
- the Deed Records.

**'Provider IT System'** means an information technology system:

- (a) supplied to the Provider by a Third Party IT Provider; or
  - (b) built or configured in-house by the Provider, including with the assistance of a Third Party IT Provider,
- to ~~replace or~~ be an adjunct to the Department's IT Systems.

## GDV 2

**'Purchase'** means to acquire Activities from an Activity Host Organisation or a Supervisor by the payment of money, in accordance with any Guidelines, but excludes transfer or payment of money between Employment Providers as part of collaborating on Work for the Dole activities.

**'Qualifying Education Course'** means a single qualification course that is:

- (a) approved for Austudy or Youth Allowance (Student) or Abstudy purposes;
- (b) more than six months in duration;
- (c) delivered face-to-face by a training organisation approved to deliver the course as specified on training.gov.au;
- (d) Full-Time Study; ~~and~~
- (e) not less than Year 12 or equivalent, or Certificate III; and
- ~~(e)~~ (f) as otherwise specified in any Guidelines.

## GDV 1

**'Qualifying Training Course'** means a training course which ~~is~~ (a) is specified in any Guidelines and which: ~~from time to time;~~

- ~~(b)~~ (a) may have been commenced, but must not have been completed, before the start of the Stream Participant's current Period of Unemployment;
- ~~(e)~~ (b) the Stream Participant has completed after the start of his or her current Period of Unemployment;
- ~~(d)~~ (c) results in the attainment of a qualification not less than Certificate III level;
- ~~(e)~~ (d) is approved for Austudy or Youth Allowance (Student) or Abstudy purposes; and
- ~~(f)~~ (e) is as otherwise specified in any Guidelines.

## GDV 1

**'Quality Assurance Framework'** or **'QAF'** means the Department's framework for assessing the quality of Employment Provider Services delivered by Employment Providers to Stream Participants, Employers and the Department.

**'Quality Assurance Framework Audit'** or **'QAF Audit'** means a Quality Standards Audit and a Quality Principles Audit.

**'Quality Assurance Framework Auditor List'** or **'QAF Auditor List'** means the list of Conformity Assessment Bodies appointed by the Department to conduct QAF Audits.

**'Quality Assurance Framework Certificate'** or **'QAF Certificate'** means a certificate, issued by the Department that certifies that the Provider:

(a) complies with a Quality Standard; and

(b) adheres to the Quality Principles,

in accordance with any Guidelines.

**‘Quality Assurance Framework Audit Plan’ or ‘QAF Audit Plan’** means a plan for the conduct of a Quality Principles Audit in accordance with any Guidelines.

**‘Quality Auditor’** means a Conformity Assessment Body appointed by the Department to its QAF Auditor List and includes an auditor with authority from a Conformity Assessment Body to conduct Quality Principles Audits on behalf of that body.

**‘Quality Principles’** means the principles developed by the Department against which Providers must demonstrate adherence to under the Quality Assurance Framework.

**‘Quality Principles Audit’** means any audit, conducted for the purposes of the Quality Assurance Framework, to determine whether the Provider complies with, or continues to comply with, the Quality Principles, and includes Certification Audits, Surveillance Audits and Extraordinary Audits.

**‘Quality Principles Report’** means a Certification Report, Surveillance Report or an Extraordinary Report.

**‘Quality Report’** means a Quality Standards Report and a Quality Principles Report.

**‘Quality Standard’** means a quality standard approved by the Department for the purposes of gaining a Quality Assurance Framework Certificate in accordance with the any Guidelines.

**‘Quality Standards Audit’** means any audit conducted in accordance with a Quality Standard.

**‘Quality Standards Report’** means a complete and unedited report by a Quality Auditor, in accordance with a Quality Standard, resulting from a Quality Standards Audit.

**‘Reasonable Excuse’** has the meaning given to the term ‘reasonable excuse’ in the Social Security Law.

**‘Records’** means documents, information and data stored by any means and all copies and extracts of the same, and includes Deed Records, Commonwealth Records and Provider Records.

**‘Records Management Instructions’** means any Guidelines provided by the Department ~~from time to time~~ in relation to the management, retention and disposal of Records.

## GDV 1

**‘Recurring’** means Employment or Unsubsidised Self-Employment which results in more than one Employment Outcome for the same Stream Participant during the same Period of Unemployment with the same Employer, as specified in any Guidelines.

**‘Re-engagement’** means the process by which DHS re-engages a Stream Participant with employment services or refers the Stream Participant to a more appropriate programme for assessment following an incident (or incidents) of non-compliance with his or her Mutual Obligation Requirements, a period of Exemption or the completion of an approved activity.

**‘Re-engagement Appointment’** means an Appointment for the purposes of Re-engagement that a Provider books when contact is made with a Fully Eligible Participant (Mutual Obligation) following non-attendance at an Appointment where the Provider has made an assessment that the Fully Eligible Participant (Mutual Obligation) did not have a Valid Reason or Reasonable Excuse and a determination to report the non-attendance to DHS through a Non-Attendance Report or Provider Appointment Report.

**‘Referral’ or ‘Referred’** means a referral of a person to the Provider by DHS, the Department, or another employment services provider.

**‘Regional Location’** means a location identified on the Department’s IT Systems as attracting a regional loading ~~as specified in Annexure B2~~.

*Note: Table 4 of Annexure B2 indicates the locations that attract a regional loading, however, to the extent of any inconsistency between this table and the Department’s IT Systems with respect to relevant locations, the Department’s IT Systems prevails.*

## GDV 2

'Register', 'Registration' or 'Registered' means the act of registering the creation or activation of a Participant's record on the Department's IT Systems.

'Regulator' means the person who is the regulator within the meaning of the WHS Act.

'Reimbursement' means any amounts payable by the Department under this Deed as a reimbursement, or such other payments that may [from time to time](#) be Notified by the Department to be a reimbursement.

#### GDV 1

'Related Entity' means:

- (a) those parts of the Provider other than Own Organisation;
- (b) 'entities connected with a corporation' as defined in section 64B of the *Corporations Act 2001* (Cth) with the word 'Provider' substituted for every occurrence of the word 'corporation' in that section;
- (c) an entity that:
  - (i) can control, or materially influence, the Provider's activities or internal affairs;
  - (ii) has the capacity to determine, or materially influence, the outcome of the Provider's financial and operating policies; or
  - (iii) is financially interested in the Provider's success or failure or apparent success or failure;
- (d) if the Provider is a company, an entity that:
  - (i) is a holding company of the Provider;
  - (ii) is a subsidiary of the Provider;
  - (iii) is a subsidiary of a holding company of the Provider;
  - (iv) has one or more [dDirectors](#) who are also [dDirectors](#) of the Provider; or
  - (v) without limiting clauses (d)(i) to (iv) of this definition, controls the Provider; or
- (e) an entity, where a familial or spousal relationship between the principals, owners, [dDirectors](#), officers or other like persons exists between that entity and the principals, owners, [dDirectors](#), officers or like persons of the Provider.

#### GDV 1

'Relevant Harvest Bodies' includes the following:

- (a) national and state farmer and grower organisations;
- (b) local economic and development organisations;
- (c) tourist and accommodation operators that operate in or near major horticultural areas in Australia;
- (d) transport company officials;
- (e) providers of Harvest Labour Services;
- (f) growers' associations;
- (g) employers of Harvest Workers;
- (h) relevant Commonwealth, state, territory and local government bodies; and
- (i) any other parties that the Provider or the Department considers relevant.

'Relocation Assistance to Take Up a Job Agreement' or 'RATTUAJ Agreement' means a written agreement, entered into between a Provider and a RATTUAJ Participant in relation to a RATTUAJ Payment, in a form as specified in any Guidelines.

'Relocation Assistance to Take Up a Job Participant' or 'RATTUAJ Participant' means a Fully Eligible Participant who meets the eligibility requirements for a RATTUAJ Participant, as specified in any Guidelines.

'Relocation Assistance to Take Up a Job Payment' or 'RATTUAJ Payment' means a payment to assist a RATTUAJ Participant to prepare to relocate, to move and/or to settle into a new location, in the amounts the RATTUAJ Participant is eligible in accordance with any Guidelines.

**‘Relocation Assistance to Take Up a Job Placement’** or **‘RATTUAJ Placement’** means an Employment position that meets the eligibility requirements for a RATTUAJ Placement, as specified in any Guidelines.

~~‘Remote Jobs and Communities Programme’ means the Commonwealth programme of that name, or such other name as advised by the Department of Prime Minister and Cabinet from time to time.~~

#### GDV 1

**‘Report’** means Deed Material that is provided to the Department for the purposes of reporting on the Services.

**‘Restart Programme’** means the Commonwealth programme of that name which provides incentives for the employment of mature age Stream Participants.

**‘Schedule’** means a schedule to this Deed.

~~‘Secretary’ means the Secretary of the Department.~~

#### GDV 1

**‘Security Contact’** means one or more Personnel with responsibility:

- (a) for ensuring the Provider’s compliance with the Department’s Security Policies;
- (b) to use the online identity and access management tool to manage system access; and
- (c) to communicate with the Department in relation to IT security related matters.

**‘Self-help Facilities’** means personal computers or similar devices with broadband internet connectivity, printers and other sundry equipment and local area wireless technology that allows an electronic device to exchange data or connect to the Internet (i.e. Wi-Fi access) at no charge to Stream Participants which accord with any specifications notified by the Department ~~from time to time~~ and any Guidelines.

#### GDV 1

**‘Self Service and Job Activity Phase’** means the period from the Initial Interview to the end of six months of a Stream A (General) Participant’s Period of Service.

~~‘Sensitive Information’ has the meaning given to the term ‘sensitive information’ in the Privacy Act.~~

#### GDV 1

**‘Serious Non-vocational Barrier’** means, for a Vulnerable Youth and Vulnerable Youth (Student), a Non-vocational Barrier that requires immediate intervention with a view to stabilising the circumstances of the Vulnerable Youth or Vulnerable Youth (Student).

**‘Service Delivery Plan’** means a statement of representations made by the Provider to the Department in regards to the Services it will deliver, as specified in Schedule 2.

**‘Service Guarantees’** means a set of minimum service standards for Employment Provider Services as specified in Annexure B3.

**‘Service Period’** means, subject to any contrary stipulation in this Deed, the period of that name specified in item 4 of Schedule 1.

**‘Service Start Date’** means the date of that name specified in item 3 of Schedule 1.

**‘Services’** means the services that the Provider is contracted to perform and provide under this Deed.

**‘Significant Increase’** means circumstances where the income received or hours worked (as relevant) by the Stream Participant from Pre-existing Employment increases:

- (a) after their commencement in jobactive;
- (b) from less than the level of income or hours described at the relevant item (a)-(g) of the definition of a Partial Outcome to the level of income or hours described at the relevant item (a)-(f) of the definition of a Full Outcome; and
- (c) as specified in any Guidelines or advised by the Department.

#### GDV 1

**‘Site’** means the one or more physical locations in the case of:

- (a) Employment Provider Services or NEIS Services, in an Employment Region; or
  - (b) Harvest Labour Services, in a Harvest Area,
- specified in items 6.3, 7.3 and 8.2 of Schedule 1, as relevant.

**'Social Security Appeals Process'** means reviews and appeals of decisions made under the *Social Security Act 1991* (Cth) or *Social Security (Administration) Act 1999* (Cth).

**'Social Security Law'** means the *Social Security Act 1991* (Cth), ~~the~~ *Social Security (Administration) Act 1999* (Cth), and includes all relevant subordinate legislation and the Guide to Social Security Law and instruments, each as amended from time to time.

#### GDV 1

**'SPI Case Management Phase'** means, unless otherwise directed by the Department, one of the following periods:

- (a) from the Initial Interview to the beginning of an SPI Participant's initial SPI Work for the Dole Phase;
- (b) from the end of an SPI Participant's initial SPI Work for the Dole Phase to the beginning of their second SPI Work for the Dole Phase; and
- (c) each alternative six month period thereafter,

of an SPI Participant's Period of Service.

**'SPI Measure'** means the 'Stronger Participation Incentives for Job Seekers under 30' measure announced in the 2014-2015 Budget as amended by the 'Streamlining Intensive Servicing for Young Job Seekers' measure announced in the Mid-Year Economic and Fiscal Outlook 2015-2016.

#### GDV 2

**'SPI Participant'** or **'Stronger Participation Incentives Participant'** means a Stream A (SPI) Participant and/or a Stream B (SPI) Participant.

#### GDV 2

**'SPI Work for the Dole Phase'** means any period during which an SPI Participant must participate in Work for the Dole activities or any other Activities, as specified in any Guidelines.

**'Star Rating'** means the relative measure of performance of the Provider for Employment Provider Services, calculated by the Department at its absolute discretion.

**'Statement of Applicability'** or **'SOA'** means the document of that name that specifies the accreditation requirements for Provider IT Systems, issued by the Department as amended from time to time.

#### GDV 1

**'Stream'** means Services under Streams A, B or C.

**'Stream A'** means the grouping of Services specified as Stream A for Stream A Participants.

**'Stream A Case Management Phase'** means, unless otherwise directed by the Department, one of the following periods:

- (a) from the end of 12 months to the end of 18 months;
- (b) from the end of 24 months to the end of 30 months; and
- (c) each alternative six month period thereafter,

of a Stream A (General) Participant's Period of Service.

**'Stream A (General) Participant'** means a Stream A Participant who is not a Stream A (SPI) Participant.

**'Stream A Participant'** means:

- (a) a Fully Eligible Participant who is placed in Stream A by DHS or the Provider in accordance with this Deed, and includes a Stream A (SPI) Participant; and
- (b) a Volunteer.

**'Stream A (SPI) Participant'** means a Stream A Participant who is identified as a Stream A (SPI) Participant in the Department's IT Systems.

**'Stream A Work for the Dole Phase'** means, unless otherwise directed by the Department, one or all of the following periods:

- (a) from the end of six months until the end of 12 months;
- (b) from the end of 18 months to the end of 24 months; and
- (c) each alternative six month period thereafter,

of a Stream A (General) Participant's Period of Service.

**'Stream B'** means the grouping of Services specified as Stream B for Stream B Participants.

**'Stream B Case Management Phase'** means, unless otherwise directed by the Department, one of the following periods:

- (a) from the Initial Interview to the end of 12 months;
- (b) from the end of 18 months to the end of 24 months; and
- (c) each alternative six month period thereafter,

of a Stream B (General) Participant's Period of Service.

**'Stream B Work for the Dole Phase'** means, subject to clause 104.2 and any direction to the contrary by the Department, one or all of the following periods:

- (a) from the end of 12 months to the end of 18 months; and
- (b) each alternative six month period thereafter,

of a Stream B (General) Participant's Period of Service.

**'Stream B (General) Participant'** means a Stream B Participant who is not a Stream B (SPI) Participant.

**'Stream B Participant'** means a Fully Eligible Participant who is placed in Stream B by DHS or the Provider in accordance with this Deed, and includes a Stream B (SPI) Participant.

**'Stream B (SPI) Participant'** means a Stream B Participant who is identified as a Stream B (SPI) Participant in the Department's IT Systems.

**'Stream C'** means those Services specified as Stream C for Stream C Participants.

**'Stream C Case Management Phase'** means, unless otherwise directed by the Department, one of the following periods:

- (d) from the Initial Interview to the end of 12 months;
- (e) from the end of 18 months to the end of 24 months; and
- (f) each alternative six month period thereafter,

of a Stream C Participant's, Period of Service.

**'Stream C Participant'** means a Fully Eligible Participant who is placed in Stream C by DHS or the Provider in accordance with this Deed.

**'Stream C Work for the Dole Phase'** means, subject to clause 104.2 and any direction to the contrary by the Department, one or all of the following periods:

- (c) from the end of 12 months to the end of 18 months; and
- (d) each alternative six month period thereafter,

of a Stream C Participant's Period of Service.

**'Stream Participant'** means a Fully Eligible Participant and a Volunteer.

~~**'Stronger Participation Incentives for Job Seekers under 30 measure'** or **'SPI measure'** means the measure of that name announced in the 2014-2015 Budget.~~

**‘Structural Adjustment Package’** means a package of services and support available to eligible Stream Participants as part of a labour or structural adjustment programme announced by the Australian Government and included in any Guidelines.

**‘Subcontract’** means any arrangement entered into by the Provider by which some or all of the Services under this Deed are provided by another entity.

**‘Subcontractor’** means any party which has entered into a Subcontract with the Provider, including a Material Subcontractor.

**‘Supervisor’** means a person who has the responsibility for the Supervision of Fully Eligible Participants engaged in an Activity.

**‘Supervision’** means the action or process of directly monitoring and managing Fully Eligible Participants participating in Activities.

**‘Surveillance Audit’** means an audit of the Provider undertaken by a Quality Auditor, to determine whether the Provider continues to adhere to the Quality Principles, in accordance with the any Guidelines.

**‘Surveillance Report’** means a complete and unedited report by a Quality Auditor, in accordance with any Guidelines, resulting from a Surveillance Audit.

**‘Suspend’** or **‘Suspended’** means the act of imposing a Suspension.

**‘Suspension’** means a period of time of that name, as recorded by either the Provider (in accordance with this Deed), the Department or DHS on the Department’s IT System, during which Administration Fees will not be triggered for payment and the requirement to provide Employment Provider Services to a Stream Participant is suspended in accordance with clause 92.

**‘Tasmanian Jobs Programme’** means the Commonwealth programme of that name which provides incentives for the employment of Participants [who are eligible for that programme](#).

#### **GDV 1**

**‘Tax Invoice’** has the meaning given in section 195-1 of the GST Act.

**‘Taxable Supply’** has the meaning given in section 195-1 of the GST Act.

**‘Tendering Group’** means a group of two or more entities, however constituted, other than a partnership, which have entered into an arrangement for the purposes of jointly delivering the Services, and which may have appointed a lead member of the group with authority to act on behalf of all members of the group for the purposes of this Deed, as specified in the Particulars.

**‘Term of this Deed’** refers to the period described in clause 2.1.

**‘Third Party IT Provider’** means an entity contracted by the Provider to provide information technology services to the Provider for the purposes of providing the Services, whether or not the entity is a Subcontractor, and includes a third-party hosting entity and an outsourced information technology service provider.

**‘Third Party IT Provider Deed’** means an agreement between a Third Party IT Provider and the Department in the terms and form as specified at <http://www.employment.gov.au/employment-services-procurement-information>.

**‘Third Party System’** means

- (a) a Provider IT System; or
- (b) an information technology system of a Third Party IT Provider.

**‘Transition Date’** means the date on which a Transitioned Participant is transferred to the Provider in the Department’s IT Systems, or as otherwise Notified by the Department.

**‘Transitioned Participant’** means a person identified as transitioned to the Provider by the Department’s IT Systems.

**‘Transition Period’** means the period, if any, Notified by the Department to the Provider in accordance with clause 57.1.

**‘Transition to Work Participant’** means a Participant who is participating in the Transition to Work Service.

#### **GDV 1**

**'Transition to Work Provider'** means any entity contracted by the Commonwealth to provide Transition to Work Services under the *Transition to Work Deed 2016-2020*.

#### GDV 1

**'Transition to Work Service'** means the Commonwealth service of that name (or such other name as advised by the Department), administered by the Department.

#### GDV 1

~~**'Unpaid Work Experience Placement'** means a short-term unpaid work experience placement that allows a Stream Participant to gain vocational skills.~~

#### GDV 1

**'Unsubsidised Self-Employment'** means self-employment where a Stream Participant does not receive a personal income subsidy of any kind.

**'Unsuitable'** means that a ~~Vacancy~~ position is, in accordance with any Guidelines:

- (a) a position, ~~including a retail position~~, involving nudity or in the sex industry;
- (b) a position in volunteer work, work experience or unpaid work;
- (c) ~~except in relation to wage rates~~, a position in contravention of Commonwealth, state or territory legislation or which involves terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (d) in relation to wage rates, a position sourced by the Provider where the wage rate paid is not at least equivalent to the rate specified in clause 91.3(a)(i) or (ii), as relevant;
- ~~(e)~~(e) a position in a training course;
- ~~(f)~~(f) a ~~position placement~~ in a programme funded by the Commonwealth or by a state or territory government as advised by the Department ~~from time to time~~;
- ~~(g)~~(g) in another country, regardless of whether the salary is paid in Australian dollars or by an Australian company; ~~or~~
- ~~(g)~~(h) a position involving illegal activity;
- ~~(h)~~(i) a position involving income or funds from gambling deemed to be inappropriate by the Department;
- ~~(i)~~(j) a position that pays a commission as either the entire remuneration or part of the remuneration, except where the commission being paid to the Participant is in addition to an amount which is paid to the Participant in accordance with any applicable Commonwealth, state or territory legislation and any applicable ~~Modern Award or the National Minimum Wage order~~; or
- ~~(j)~~(k) a position that the Department has advised, ~~from time to time~~, is not acceptable.

#### GDV 1 GDV 2

**'Vacancy'** means a ~~any one or more~~:

- (a) vacant positions for:
  - (i) paid Employment with an Employer; or
  - (ii) Unsubsidised Self Employment; or
- (b) Pre-existing Employment,

that ~~are~~ is created or obtained and lodged on the Department's IT Systems by the Provider in accordance with ~~clause 91~~ this Deed, and that ~~is are~~ not Unsuitable.

#### GDV 1

**'Valid Reason'** means a valid and acceptable reason as specified in any Guidelines.

**'Vocational Barrier'** means a lack of appropriate training, skills or qualifications for employment.



**‘Voluntary Work’** means an Activity which meets the criteria specified by the Department for voluntary work in any Guidelines, provides Stream Participants with opportunities to gain personal and workplace skills that will directly improve their Employment prospects and is undertaken in a not-for-profit Activity Host Organisation.

**‘Volunteer’** means a person who is:

- (a) in receipt of Income Support Payments, but:
  - (i) does not have Mutual Obligation Requirements; or
  - (ii) is not a Disability Support Pension Recipient (Compulsory Requirements);
- (b) a full-time student seeking an apprenticeship or traineeship;
- (c) not in receipt of Income Support Payments and is not:
  - (i) undertaking Full-Time Study, unless the purpose for seeking Services from the Provider is to obtain an apprenticeship or traineeship;
  - (ii) Employed for 15 hours or more each week;
  - (iii) an overseas visitor on a working holiday visa or an overseas student studying in Australia; or
  - (iv) prohibited by law from working in Australia; or
- (d) otherwise identified by the Department as being a Volunteer, ~~from time to time~~,

and volunteers to participate in additional activities.

#### GDV 1

**‘Vulnerable Youth’** means a person who:

- (a) is aged 15 to 21 years;
- (b) is not Employed for more than 15 hours per week;
- (c) is not in Full-Time Study;
- (d) is not in receipt of Income Support Payments;
- (e) has at least one Serious Non-vocational Barrier; and
- (f) has a legal right to work in Australia.

**‘Vulnerable Youth (Student)’** means a person who:

- (a) is aged 15 to 21 years;
- (b) is in Full-Time Study;
- (c) presents in crisis;
- (d) has at least one Serious Non-vocational Barrier; and
- (e) has a legal right to work in Australia.

**‘Wage Subsidy’** means a payment under the LTU ~~and Indigenous~~ Wage Subsidy, Youth Wage Subsidy, ~~Parents Wage Subsidy~~, Tasmanian Jobs Programme or Restart Programme in accordance with any Guidelines, and any other wage subsidy as advised by the Department ~~from time to time~~.

#### GDV 1

**‘Wage Subsidy Account’** means funding collectively available within the Employment Fund for Wage Subsidies.

**‘Wage Subsidy Agreement’** means an agreement for the purposes of the Wage Subsidy substantially in a form specified by the Department.

**‘Wage Subsidy Employer’** means an Employer who meets the eligibility requirements for a Wage Subsidy as specified in any Guidelines.

**‘Wage Subsidy Participant’** means a Stream Participant who meets the eligibility requirements for a Wage Subsidy as specified in any Guidelines.

**‘Wage Subsidy Period’** means the payment period for a Wage Subsidy as specified in any Guidelines.

**‘Wage Subsidy Placement’** means an Employment position which meets the eligibility requirements for a Wage Subsidy as specified in any Guidelines.

**‘WHS Act’** means the *Work Health and Safety Act 2011* (Cth) and any corresponding WHS law within the meaning of section 4 of the WHS Act.

**‘WHS Entry Permit Holder’** has the same meaning as that given in the WHS Act.

**‘WHS Laws’** means the WHS Act, WHS Regulations and all relevant state and territory work, health and safety legislation.

**‘WHS Regulations’** means the regulations made under the WHS Act.

**‘Work for the Dole’** means the Commonwealth programme of that name designed to help job seekers gain the skills, experience and confidence that they need to move to work as soon as possible, while at the same time, making a positive contribution to their local community.

**‘Work for the Dole Coordinator’** means a contractor, including relevant Specified Personnel, engaged by the Department to deliver Work for the Dole Coordinator services *in an Employment Region* under the *jobactive Deed 2015-2020 - Work for the Dole Coordinator*.

## GDV 2

**‘Work for the Dole Fees’** means the Fees set out in Table 2B in Annexure B2.

**‘Work for the Dole Phase’** means the SPI Work for the Dole Phase, Stream A Work for the Dole Phase, Stream B Work for the Dole Phase and Stream C Work for the Dole Phase.

**‘Work for the Dole Place’** means a place in Work for the Dole activities of a minimum of 15 hours per week duration and in accordance with any Guidelines, in which a Fully Eligible Participant can participate,.

**‘Working with Children Laws’** means the:

- (a) *Child Protection (Working with Children) Act 2012* (NSW);
- (b) *Working with Children (Risk Management and Screening) Act 2000* (Qld);
- (c) *Working with Children (Criminal Record Checking) Act 2004* (WA);
- (d) *Working with Children Act 2005* (Vic);
- (e) *Children’s Protection Act 1993* (SA);
- (f) *Working with Vulnerable People (Background Checking) Act 2011* (ACT);
- (g) *Care and Protection of Children Act 2007* (NT);
- (h) *Registration to Work with Vulnerable People Act 2013* (Tas); and
- (i) any other legislation that provides for the checking and clearance of people who work with Children.

## GDV 1

**‘Work-like Experiences’** means experiences that involve Fully Eligible Participants in activities that provide them with experience similar to others in a workplace, and which should assist in preparing Fully Eligible Participants to take up employment.

**‘Work Trial’** means a short period of paid employment on a trial or probation basis.

**‘Youth Wage Subsidy’** means the *Wwage Ssubsidy* of that name which provides incentives for the employment of *SPI Fully Eligible* Participants *under 30 years of age* in accordance with any Guidelines.

## GDV 1

# Annexure A2 – Joint Charter of Deed Management



Australian Government  
Department of Employment

## Employment Services Joint Charter of Deed Management

The Department of Employment and providers delivering services under the jobactive Deed 2015–2020, ~~and the~~ jobactive Deed 2015–2020 - Work for the Dole Coordinator, the jobactive Deed (Norfolk Island) 2016-2018, and the Transition to Work Deed 2016-2020, agree to conduct themselves in accordance with this Joint Charter of Deed Management.

This joint charter is observed by the Department, Employment Providers, Work for the Dole Coordinators, Transition to Work Providers, the National Harvest Labour Information Service and providers of the New Enterprise Incentive Scheme and Harvest Labour Services.

### GDV 1 GDV 2

#### A joint approach for stronger employment services

The Employment Services Joint Charter reflects our commitment to work together to ensure that employment services meet the needs of job seekers, employers, communities and the Australian Government.

Together, we are committed to maintaining the reputation and integrity of employment services, strengthening the employment services industry and working together to make sure services are managed and delivered effectively and provide value for money.

#### Our commitments

***What providers can expect from the Department:***

***What the Department can expect from providers:***

Respect and support	Respect
Openness and transparency	Collaboration
Integrity and accountability	
Continuous improvement	

# What providers can expect from the Department

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## 1 Respect and support

The Department will:

- respect providers' role, experience and expertise
- treat each provider with courtesy and consideration
- meet regularly with providers
- adhere to agreed communication protocols with providers
- respond to providers' queries, generally within 10 business days
- work with providers to resolve complaints, disputes or problems, and consider the perspective of all parties—including employers and job seekers—when developing resolutions
- support providers to implement programme changes effectively
- maintain the National Customer Service Line
- maintain the Employer Hotline to facilitate connections between employers and providers.

## 2 Openness and transparency

The Department will:

- be transparent in our business dealings
- maintain honest and open communication
- provide consistent, accurate and timely advice
- maintain feedback mechanisms to support formal and informal feedback from providers
- consult providers wherever possible, generally through industry representatives—including on contract variations
- provide reasonable notice for providers to implement new or amended guidelines.

## 3 Integrity and accountability

The Department will:

- observe the Australian Public Service (APS) Code of Conduct and APS Values
- adhere to the Commonwealth Procurement Rules, including on principles of probity and ethical and fair dealings
- act honestly and in the best interests of the Government, the employment services industry, job seekers and the community
- be accountable for our decisions and actions
- support providers to comply with their deed requirements by:
  - streamlining and simplifying guidelines
  - providing timely feedback from contract monitoring and programme assurance activities
- treat providers' information confidentially (subject to relevant deed provisions)-
- [exercise its rights under the Deed in good faith.](#)

## 4 Continuous improvement

The Department will:

- work with the industry to promote better practice and innovation
- regularly review provider performance and deliver balanced and consistent feedback
- work with providers to help them meet the needs of employers and industry
- work with providers to reduce the administrative burden of managing and complying with deeds
- continually develop its contract management capability to make sure providers receive high quality support.

# What the Department can expect from Providers

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## 1 Respect

Providers will:

- respect the Department's role, experience and expertise
- treat job seekers, the Department, other providers, Work for the Dole host organisations and industry stakeholders with courtesy and consideration
- respond to queries appropriately.

## 2 Collaboration

- develop and maintain effective relationships with the Department, employers, other providers, Work for the Dole host organisations and industry stakeholders
- work with the Department to resolve complaints, disputes or problems, using the following informal dispute resolution process in the first instance (except for matters that are excluded under the relevant deeds):
  1. The provider initially discusses any issues or problems directly with a contract or account manager.
  2. If the dispute, complaint or problem can't be resolved, the provider requests that it be raised with the relevant state manager.
  3. If this process does not resolve the issue, the National Contract Manager will attempt to facilitate a resolution.
  4. Any dispute or problem that cannot be resolved through this informal resolution process will be managed through the formal procedures set out in the relevant deed.

## 3 Integrity and accountability

Providers will:

- maintain high standards of professional conduct
- recognise and act on the Government's employment services policies
- implement programme changes in a timely way
- maintain effective governance and control frameworks to provide assurance of the quality of services and compliance with relevant deeds
- act in accordance with the law and avoid any practice or activity which could bring employment services or the Department into disrepute
- manage feedback fairly, ethically and confidentially (subject to relevant deed provisions)
- make sure staff deliver accurate and consistent advice and information to job seekers, employers, Work for the Dole host organisations and other stakeholders
- actively identify and manage risks.

## 4 Continuous Improvement

Providers will:

- work to increase job outcomes for job seekers
- further develop service strategies that increase job outcomes for Indigenous job seekers
- develop tailored and effective services that meet employers' needs
- regularly review performance and work to address performance management issues
- encourage and foster innovative approaches and better practice
- support efforts to streamline activities without compromising the integrity of employment services
- maintain and strengthen the capability of staff.

# PART B – EMPLOYMENT PROVIDER SERVICES

## CHAPTER B1 – GENERAL EMPLOYMENT PROVIDER SERVICES

### Section B1.1 – Application and allocation of Stream Participants to the Provider

#### GDV 1

#### 72. Employment Provider Services

- 72.1 Subject to this Deed, the Provider must provide Employment Provider Services to all Stream Participants:
- (a) who are transitioned to, Referred to, Directly Register with or transfer to the Provider;
  - (b) in accordance with:
    - (i) this Part B;
    - (ii) the Stream, and the period or phase within each Stream, identified for them in the Department's IT Systems; and
    - (iii) their Job Plan; and
  - (c) for the duration of their Period of Registration, including while they are undertaking their Annual Activity Requirements.

#### 73. Service Guarantees and Service Delivery Plan(s)

- 73.1 The Provider must:
- (a) conduct Employment Provider Services at or above the minimum standards in the Service Guarantees and in accordance with all representations made by the Provider with regards to Employment Provider Services, as specified in the Service Delivery Plan(s) and the Provider's tender response to the request for tender for this Deed;
  - (b) prominently display the Service Guarantees and Service Delivery Plan(s) in its offices and all Sites, and make these available to Stream Participants, potential Stream Participants and Employers; and
  - (c) upload the Service Delivery Plan(s) on the Provider's page of [Australian JobSearch the jobactive Website](#).

#### GDV 1

- 73.2 The Provider must not make changes to the Service Delivery Plan(s) without the prior written agreement of the Department.

#### 74. Engagement with other services in the community

- 74.1 In providing Employment Provider Services, the Provider must work cooperatively, and in accordance with any Guidelines, with other programmes and services provided by the Commonwealth, state or territory governments, relevant local governments, and private and community services and stakeholders.

#### 75. Volunteers

- 75.1 Subject to this Deed, the Provider must provide Services under Chapter B1 to each Volunteer, as if they were a Stream A (General) Participant and do so until they have received a total of six months of Employment Provider Services, including from any other Employment Provider.
- 75.2 Where a Volunteer transfers to the Provider under clause 82, the Provider must only provide Services to the Volunteer for the remainder of their six month Period of Service.

- 75.3 Subject to clause 95.8, the Provider must not provide Services under Chapter B1 to a Volunteer who:
- (a) has already received Services as a Volunteer for a total of six months, including from another Employment Provider; or
  - (b) returns to the Services as a Volunteer at 13 Consecutive Weeks or more after the date of Exit.

**76. Transition in**

- 76.1 If directed by the Department, the Provider must provide Employment Provider Services to each Transitioned Participant in accordance with this Deed as a Stream Participant and subject to:
- (a) clause 76.2;
  - (b) Annexure B1;
  - (c) any Guidelines; and
  - (d) any directions given by the Department.
- 76.2 The Provider must Commence each Transitioned Participant in Employment Provider Services within 6 weeks of their Transition Date.
- 76.3 Where a Transitioned Participant is the subject of a Wage Subsidy or RATTUAI Payment on their Transition Date, the Provider must comply with clause 82.2.

**77. Referrals**

- 77.1 The Provider must only accept Referrals of Stream Participants made through the Department's IT Systems or directly by DHS.
- 77.2 Subject to this Deed, the Department's IT Systems will allow a flow of Referrals to the Provider within a 30 per cent tolerance of the Provider's Business Share within each Employment Region.

**78. Direct Registration of Stream Participants without a Referral**

- 78.1 Subject to clauses 75.3, where a person presents to the Provider without a Referral, the Provider must confirm their eligibility for Direct Registration in accordance with any Guidelines, and if eligibility is confirmed, Directly Register and immediately provide Employment Provider Services to that Stream Participant in accordance with this Deed, including any Guidelines.

**GDV 2**

*Volunteers*

- 78.2 The Provider must immediately refer any Volunteer that it Directly Registers who is not receiving Income Support Payments to DHS if it appears to the Provider that the Volunteer may be eligible to receive Income Support Payments.

*Vulnerable Youth and Vulnerable Youth (Student)*

- 78.3 Where a Vulnerable Youth or Vulnerable Youth (Student) presents to the Provider without a Referral, and in the case of a Vulnerable Youth (Student), no appropriate local youth services are available, the Provider must:
- (a) immediately Directly Register them, conduct an Initial Interview, and provide them with Services under Stream C;
  - (b) if they present in crisis, immediately provide, or refer them to relevant crisis assistance; and
  - (c) within four weeks of the Direct Registration refer them to DHS to:

- (i) determine their eligibility for Income Support Payments, regardless of whether the Provider expects them to be eligible for Income Support Payments; and
- (ii) conduct an Assessment of them.

78.4 If the Assessment referred to in clause 78.3(c)(ii) determines that:

- (a) a Vulnerable Youth or Vulnerable Youth (Student) is eligible for Employment Provider Services under Stream C, the Provider must continue providing Services under Stream C to them as a Fully Eligible Participant for the remainder of their Period of Service;
- (b) a Vulnerable Youth (Student) is not eligible for Employment Provider Services under Stream C, the Provider must immediately Exit the Vulnerable Youth (Student);
- (c) a Vulnerable Youth:
  - (i) is not eligible for Services as a Fully Eligible Participant, the Provider must:
    - (A) immediately provide Services to the Vulnerable Youth as a Volunteer in accordance with clause 75.1; or
    - (B) if clause 75.3 applies, immediately Exit the Vulnerable Youth;
  - (ii) is eligible for Services as a Fully Eligible Participant, the Provider must immediately provide Employment Provider Services to the Vulnerable Youth as a Fully Eligible Participant under the relevant Stream identified in the Assessment; or
  - (iii) should be referred to Disability Employment Services, the Provider must continue to provide Employment Provider Services to the Vulnerable Youth under Stream C until the Vulnerable Youth starts receiving Disability Employment Services.

*Note: If the Assessment referred to in clause 78.3(c)(ii) does not occur within 90 days of a Stream Participant's Commencement, they will be Effectively Exited.*

78.5 Notwithstanding any other clause in this Deed, when a Vulnerable Youth is moved into a Stream other than Stream C in accordance with clauses 78.4(c)(i) or 78.4(c)(ii):

- (a) the Payment Period and Period of Service in relation to that Vulnerable Youth are deemed to continue as if the Vulnerable Youth had Commenced in that Stream; and
- (b) the Provider will not be required to provide that Vulnerable Youth with an Initial Interview for a New Stream, but must still:
  - (i) explain the Employment Provider Services that the Provider will provide;
  - (ii) record the movement of the Vulnerable Youth in the Department's IT Systems in accordance with any Guidelines; and
  - (iii) update the Job Plan, if appropriate.

## **79. Change of Circumstances Reassessment**

79.1 If, at any time, the individual circumstances of a Stream Participant change or they disclose information which indicates that they should be placed into a higher Stream, the Provider must, in accordance with any Guidelines, arrange for a Change of Circumstances Reassessment to be conducted:

- (a) by DHS using a JSCI for Fully Eligible Participants other than Transitioned Participants in Streams A or B, in the first six months of their servicing under jobactive by any Employment Provider, allowing for Suspensions, and Exits where clauses 95.4 and 95.5 apply;
- (b) by the Provider, using a JSCI, for all Stream Participants in Stream A and Stream B, not covered by clause 79.1(a); and



(c) by DHS, using an ESAt/JCA, for Stream Participants in Stream C.

79.2 The Provider must not arrange for a Change of Circumstances Reassessment to be conducted by DHS, or conduct a Change of Circumstances Reassessment itself, unless it has, at the time at which it arranges or conducts any such Assessment:

(a) clear evidence or information from the Stream Participant, in accordance with any Guidelines, which indicates that the Stream Participant should be placed into a higher Stream; and

(b) where the Provider conducts the Change of Circumstances Reassessment itself, has made a Record of this evidence or information on the Department's IT Systems in accordance with any Guidelines.

79.3 If the Provider breaches this clause 79, the Department may, at its absolute discretion, immediately:

(a) take action under clause 52.2; or

(b) terminate this Deed under clause 56.

79.4 If a Change of Circumstances Reassessment indicates that a Fully Eligible Participant should be in a higher Stream, the Provider must immediately commence the Fully Eligible Participant in the relevant Stream and provide Employment Provider Services to the Fully Eligible Participant accordingly.

## **80. Relocation of Stream Participant between Provider's Sites**

80.1 Subject to clauses 123.4 and 123.6, if a Stream Participant moves to a new location and their new location is within a reasonable distance of a Site of the Provider, the Provider must continue to provide Employment Provider Services to them at no additional cost to the Department.

*Note: Subject to clause 88.14, if a Stream Participant moves to a new location in accordance with clause 80.1, the transfer of any Fees or Employment Fund credits is an internal matter for the Provider.*

## **81. Transfer of Stream Participants from the Provider**

81.1 A Stream Participant may, at any time, be transferred from the Provider to another Employment Provider:

(a) by DHS or the Department, where the Stream Participant moves to a new location that is not within a reasonable distance of a Site of the Provider;

(b) by the Department, where the Department is satisfied that:

(i) the Stream Participant will receive services that could better enhance their Employment prospects from the other Employment Provider; or

(ii) the Stream Participant and the Provider are unable to achieve or maintain a reasonable and constructive servicing relationship, as determined by the Department;

(c) if the Department, the Provider, another Employment Provider and the Stream Participant agree to the transfer; or

(d) by the Department, where:

(i) a Stream A Participant's Period of Registration exceeds 24 months; or

(ii) a Stream B Participant or Stream C Participant's Period of Registration exceeds 36 months; and

(iii) they remain unemployed,

unless:

(iv) the Stream Participant achieves an Employment Outcome, in which case the time under clause 81.1(d)(i) and (ii) runs from the date of the achievement of the Outcome; or

- (v) there is no available Employment Provider in the relevant Employment Region for the Stream Participant to transfer to.

81.2 If a Stream Participant is transferred in accordance with clause 81.1, the Provider must, in accordance with any Guidelines:

- (a) immediately provide sufficient assistance and cooperation to any person nominated by the Department to facilitate the transfer;
- (b) comply with the Department's directions in relation to the transfer or destruction of Deed Material and Commonwealth Material in the Provider's possession or control, including that stored in Third Party Systems; and
- (c) subject to clause 81.2(b), maintain all Records relating to the Stream Participant in accordance with clause 37.9.

## **82. Transfer of Stream Participants to the Provider**

82.1 If a Stream Participant is transferred to the Provider for any reason, the Provider must, in accordance with any Guidelines:

- (a) immediately provide sufficient assistance and cooperation to any person nominated by the Department, to enable Employment Provider Services to continue to be provided to the Stream Participant;
- (b) conduct an Initial Interview with the Stream Participant in accordance with clause 85;
- (c) immediately provide Employment Provider Services to the Stream Participant in accordance with this Deed; and
- (d) comply with the Department's directions in relation to the transfer of Material and Stream Participants.

82.2 Where a Stream Participant is the subject of a Wage Subsidy Agreement or an RATTUAJ Agreement on the date of their transfer to the Provider, the Provider must:

- (a) notwithstanding that the Stream Participant has Exited or is not part of the Provider's caseload, use its best endeavours to enter into a Wage Subsidy Agreement or a RATTUAJ Agreement, as relevant, with the Wage Subsidy Employer or the Stream Participant, as relevant, for a period as advised by the Department;
- (b) advise the Department if it is unable to enter into a Wage Subsidy Agreement or RATTUAJ Agreement, as relevant; and
- (c) comply with any direction by the Department in relation to the Stream Participant.

*Notes to clauses 81 and 82*

*Note 1: If a Stream Participant is transferred to or from the Provider:*

- (a) *clause 88.14 describes how adjustments are made to the Employment Fund;*
- (b) *clauses 123.3 and 123.4 describe how adjustments are made to Administration Fees; and*
- (c) *during a 4 Week Period, 12 Week Period or 26 Week Period, clause 125 describes the situation with regards to eligibility to claim an Outcome Payment.*

*Note 2: The Department will adjust the Business Share of the Provider under clause 20.1 after each quarter during the Term of this Deed to account for transfers of Stream Participants to or from the Provider pursuant to clause 81.1(d).*

## Transition to Work Participants

- 82.3 Where the Provider is advised by the relevant Transition to Work Provider that a Transition to Work Participant is exiting the Transition to Work Service and returning to jobactive, the Provider must, in accordance with any Guidelines:
- (a) cooperate, as required, with the Transition to Work Provider to help the Transition to Work Participant to move back into Employment Provider Services;
  - (b) participate in a meeting with the Transition to Work Participant and the Transition to Work Provider to prepare the Transition to Work Participant for their commencement of servicing under jobactive, including, amongst other things, advising the Transition to Work Participant of their Mutual Obligation Requirements (if relevant) and determining appropriate activities for the Transition to Work Participant to participate in during the Work for the Dole Phase, so as to meet their Mutual Obligation Requirements (if relevant); and
  - (c) where relevant, conduct an Initial Interview with the Transition to Work Participant and the Transition to Work Provider in accordance with clause 85 in the Transition to Work Participant's final week of their participation in the Transition to Work Service,

### GDV 1

#### 83. Appointments with Stream Participants

83.1 Unless otherwise agreed with the Department, the Provider must ensure that the Provider's Electronic Diary has, at all times, capacity to receive an Appointment for a Stream Participant within the next two Business Days.

83.2 Where:

- (a) DHS fails to make an Appointment in the Electronic Diary, for a ParentsNext Volunteer that is Referred to the Provider, within five Business Days of the ParentsNext Volunteer's Referral;

~~(a)~~(b) a Stream Participant Directly Registers with the Provider; or

~~(b)~~(c) the Provider or Stream Participant needs to reschedule an Appointment,

the Provider must make an Appointment with the Stream Participant at the next available opportunity.

### GDV 2

83.3 Where a Stream Participant has an Appointment with the Provider, the Provider must, in accordance with this Deed including any Guidelines, ~~meet with the Stream Participant on the date and at the time of the Appointment as recorded in the Provider's Electronic Diary~~ ensure that the Appointment is booked in the Provider's Electronic Diary, and meet with the Stream Participant on the date of the Appointment.

*Note: The Electronic Diary is for the management of Appointments only. Where a Stream Participant is required to attend at the Provider's site to participate in an Activity, this must not be booked in the Electronic Diary. An Activity includes requiring one or more job seekers to attend in a supervised setting over a longer period of time than an Appointment and is for the purposes of learning or undertaking one or more tasks designed to improve their employment prospects. An activity includes, but is not limited to, formal education and training, informal training such as resume building, or on site group or individual job search sessions.*

### GDV 1 GDV 2

## Section B1.2 – Contacts

### GDV 1

#### 84. Contacts

- 84.1 The Provider must provide each Stream Participant (**except a ParentsNext Volunteer**) with the following Contacts in accordance with this Deed including any Guidelines:
- (a) an Initial Interview on the date of the relevant Appointment in the Provider's Electronic Diary, or as subsequently arranged between them and the Provider;
  - (b) for SPI Participants, one Contact each month to discuss Job Searches they have undertaken in the previous month and to identify jobs that they can be referred to; ~~and~~
  - (c) **for Transition to Work Participants, participate in a preparation meeting in accordance with clause 82.3(b);** ~~and~~
  - (d) **Re-engagement Appointments in accordance with any Guidelines; and**
  - (e) any other Contacts as outlined in the Provider's Service Delivery Plan and its tender response to the request for tender for this Deed, and as otherwise required to ensure the Stream Participant satisfies the requirements of their Job Plan.
- 84.2 The Provider must provide each ParentsNext Volunteer with the following Contacts in accordance with this Deed including any Guidelines:
- (a) **an Initial Interview at a time agreed between the ParentsNext Volunteer, their ParentsNext Provider and the Provider; and**
  - (b) **any other Contacts required to ensure that the ParentsNext Volunteer satisfies the requirements of their Job Plan.**
- 84.3 The Provider must ensure that each Contact is appropriately tailored to meet the circumstances of the individual Stream Participant and that the result of the Contact is recorded in the Department's IT Systems in accordance with any Guidelines.
- 84.4 **For each Stream Participant on the Provider's caseload on 30 June 2016, the Provider must, no later 30 September 2016, provide the Stream Participant with details of the current National Minimum Wage, the Fair Work Ombudsman website (including the Pay and Conditions Tool) and contact details for the Fair Work Ombudsman.**

### GDV 1 GDV 2

#### 85. Initial Interviews

- 85.1 The Provider must, during the Initial Interview for each Stream Participant (**except a ParentsNext Volunteer**):
- (a) confirm the Stream Participant's identity;
  - (b) explain the Employment Provider Services that the Provider will provide to them;
  - (c) identify their strengths and any issues they may have relating to finding Employment;
  - (d) for Fully Eligible Participants (Mutual Obligation), explain their rights and obligations under the Social Security Law and the consequences of not meeting their Mutual Obligation Requirements;
  - (e) for Disability Support Pension Recipients (Compulsory Requirements), explain their rights and obligations under the Social Security Law and the consequences of not participating in accordance with their Job Plan;
  - (f) prepare or update a Job Plan for them; ~~and~~

- (g) provide them with details of the current National Minimum Wage, the Fair Work Ombudsman website (including the Pay and Conditions Tool) and contact details for the Fair Work Ombudsman; and
- (h) otherwise comply with any Guidelines.

## **GDV 2**

~~85.2 The Provider must ensure that each Initial Interview is delivered face to face, unless there are Exceptional Circumstances, or the Department agrees otherwise in writing.~~

~~85.3~~ In addition to the requirements set out in clause 85.1, the Provider must:

- (a) at the Initial Interview; or
- (b) in the case of a Stream B (General) Participant and Stream C Participant, at such times as is deemed appropriate by the Provider based on the person's individual needs,

for each Stream Participant (except a ParentsNext Volunteer):

- (c) canvass with them the jobs that Employers have available in the local labour market;
- (d) refer them to suitable Vacancies in accordance with clause 91; and
- (e) provide Self-help Facilities in accordance with clause 86.1.

85.3 The Provider must, during an Initial Interview for a ParentsNext Volunteer:

- (a) explain the Employment Provider Services that the Provider will provide to them;
- (b) agree with the ParentsNext Volunteer and their ParentsNext Provider on the activities that the ParentsNext Volunteer will undertake while they are receiving Employment Provider Services; and
- (c) otherwise comply with any Guidelines.

85.4 The Provider must ensure that each Initial Interview is delivered face to face, unless there are Exceptional Circumstances, or the Department agrees otherwise in writing.

## **GDV 2**

### **Section B1.3 – Self-help Support for Stream Participants**

#### **GDV 1**

#### **86. Self-help Facilities**

86.1 In accordance with Chapter 2, the Provider:

- (a) must make available at each of its Sites, and provide advice on how to use, Self-help Facilities so as to enable each Stream Participant to:
  - (i) access self-help tools made available by the Department or as otherwise identified by the Stream Participant or the Provider; and
  - (ii) undertake active and ongoing job searching;
- (b) must provide to each Stream Participant:
  - (i) access to suitable Vacancies;
  - (ii) advice about the best ways to look for and find work;
  - (iii) advice about local, regional, or national employment opportunities;
  - (iv) assistance, as required, to apply for jobs;
  - (v) access to free Wi-Fi facilities at each Site; and

(vi) information about skill shortage areas; and

(c) where appropriate, assist Stream Participants to prepare a résumé and load the completed résumé onto the Department's IT Systems.

86.2 The Provider must establish and implement controls to ensure the appropriate use of Self-help Facilities by Stream Participants, including with regard to the Commonwealth's Cybersafety Policy.

## Section B1.4 – Job Plans

### GDV 1

#### 87. General requirements for a Job Plan

87.1 The Provider must ensure that, at all times, each Stream Participant has a current Job Plan.

87.2 If, at their Initial Interview:

(a) a Stream Participant does not have a Job Plan; or

(b) in any case, they have transferred to the Provider from another Employment Provider,

the Provider must:

(c) arrange for a Delegate to create, enter into and approve a new Job Plan with the Stream Participant; and

(d) explain the Job Plan to the Stream Participant,

in accordance with any Guidelines.

87.3 When entering into a Job Plan, the Provider must ensure that the relevant Delegate complies with ~~their obligations under~~ the Social Security Law and the rules set out in any Guidelines in relation to entering into a Job Plan.

87.4 Subject to clause 87.2(b), the Provider must ensure that a Delegate reviews, and, if appropriate, updates the terms of each Stream Participant's existing Job Plan, as events occur which result in ~~the need to a change to~~ their Mutual Obligation Requirements or servicing, in accordance with any Guidelines.

Note: the Delegate for a ParentsNext Volunteer is a person engaged by the ParentsNext Volunteer's ParentsNext Provider – see Annexure A1.

87.5 The Provider must:

(a) not enter into or update a Job Plan for a ParentsNext Volunteer; and

(b) where a Job Plan for a ParentsNext Volunteer does not meet the requirements of this clause 87, ensure that the Job Plan is updated by the ParentsNext Volunteer's ParentsNext Provider.

#### *Contents of a Job Plan*

87.6 ~~87.5~~ Subject to clause 87.5, the Provider must ensure that the Job Plan for each Stream Participant:

(a) contains the terms (including any activities) with which the Stream Participant must comply in order to satisfy their Mutual Obligation Requirements (including their Annual Activity Requirement) (if any);

(b) contains the details of any vocational and non-vocational activities that are specifically tailored to address the Stream Participant's individual needs or Partial Capacity to Work (if relevant), and that are designed to help them overcome any Vocational Barriers and Non-Vocational Barriers having regard to the particular Employment Provider Services the Stream Participant is receiving;

(c) is updated to include details of additional voluntary activities, if they:

(i) are subject to an Exemption or fully meeting their Mutual Obligation Requirements (if any); and

(ii) volunteer to participate in additional activities; and

(d) is in a form approved by the Department and specifies all information required by any Guidelines.

87.7 ~~87.6~~ The Provider must provide the Stream Participant with the assistance, and arrange and monitor the activities, specified in the Job Plan.

**GDV 1 GDV 2**

## **Section B1.5 – Employment Fund**

### **GDV 1**

#### **Reader's Guide**

*The Employment Fund is comprised of the General Account and the Wage Subsidy Account.*

- *The General Account is a flexible pool of funds held by the Department which may be accessed by Employment Providers for reimbursement of purchases of goods or services which genuinely assist Stream Participants to build experience and skills to get a job.*
- *The Wage Subsidy Account is comprised of funds held by the Department for ~~all Wage Subsidies~~ ~~the LTU Wage Subsidy, Tasmanian Jobs Programme, Youth Wage Subsidy, and the Restart Programme.~~*

**GDV 1**

## **88. Employment Fund**

*Note: Clauses 88.1 to 88.8 apply to all elements of the Employment Fund.*

- 88.1 Subject to this clause 88, the Provider may seek Reimbursements from the Employment Fund only in relation to Stream Participants and only in accordance with any Guidelines.
- 88.2 Each claim for Reimbursement must be rendered by the Provider to the Department no more than 56 days after the relevant purchase has been made by the Provider or for Wage Subsidies, no more than 56 days after the end of the relevant Wage Subsidy Period.
- 88.3 The Provider may purchase goods and services for Stream Participants in advance in accordance with any Guidelines, and where it claims a Reimbursement in relation to such goods and services, the Provider must, where required by any Guidelines, record the details of each Stream Participant that was assisted by such a purchase in the Department's IT Systems.
- 88.4 If, in the Department's view, the Provider has claimed Reimbursement from the Employment Fund in a manner which is inconsistent with this clause 88, the Department may, in addition to any other action available under this Deed, take the action described in clause 88.7(a).
- 88.5 The Department may advise the Provider of persons other than Stream Participants in relation to which the Employment Fund may be used, and where the Department so advises, this clause 88 will apply to those persons as if they were Stream Participants.
- 88.6 The Department may direct the Provider to deliver specific additional services to support the local labour market, for which an agreed Employment Fund credit or funding will be made available in accordance with the Guidelines, and for which amounts may be quarantined or reserved in accordance with clause 88.7(b).
- 88.7 The Department may, at any time:
- (a) impose limits upon the Provider's access to the Employment Fund; and
  - (b) determine that amounts within the Employment Fund are to be quarantined or reserved for particular purposes and, where such amounts have been so quarantined or reserved, the Provider must not seek Reimbursement for a purpose other than that for which the amounts have been quarantined or reserved.

88.8 The Provider must not represent notional credits allocated to it in the Employment Fund in its financial accounts.

The General Account and the LTU Wage Subsidy

*Note: Clauses 88.9 to 88.16 only apply to the General Account ~~and the LTU Wage Subsidy~~*

**GDV 1**

88.9 Subject to clauses 88.10 to 88.14, the Employment Fund will be credited in accordance with ~~:(a) Table 3 of Annexure B2 for the General Account; and (b) Table 4 of Annexure B2 for the LTU Wage Subsidy.~~

**GDV 1**

88.10 The Provider may only seek Reimbursements from the General Account ~~and LTU Wage Subsidy Account~~ in accordance with the credits available to them as specified in the Department's IT System at the time of the Provider's claim.

**GDV 1**

88.11 The General Account will be credited once on the Stream Participant's Commencement in their initial Stream and again on their Commencement in any higher Stream during their Period of Unemployment.

88.12 The LTU Wage Subsidy Account will only be credited once for each Stream Participant during their Period of Unemployment as they become eligible for the LTU Wage Subsidy, in accordance with any Guidelines. Reserved.

**GDV 1**

88.13 For each Transitioned Participant, the Employment Fund will be credited in accordance with Annexure B1 (and not in accordance with clause 88.9), on the Transitioned Participant's Commencement in accordance with clause 76.2.

88.14 Where a Stream Participant transfers from the Provider:

- (a) in accordance with clauses 81.1(a) to (c), the transfer of any General Account ~~or LTU Wage Subsidy~~ credits will be a matter for the Provider to negotiate with the other Employment Provider;
- (b) at the Department's direction in accordance with clause 81.1(d), ~~:(i) 50 per cent of the General Account credit made available to the Provider in respect of the Stream Participant (as per Table 3 of Annexure B2 for their current Stream) ; and (ii) 50 per cent of any LTU Wage Subsidy credit made available to the Provider in respect of the Stream Participant (as per Table 4 of Annexure B2);~~ will be transferred to or from the Provider in accordance with any Guidelines; and

*Note: The Provider's General Account ~~or LTU Wage Subsidy Account~~ may go into a negative balance as a result of these transfers.*

- (c) in accordance with clauses 101.3(c)(iii) and 101.3(d)(iii), the Department will transfer any remaining Employment Fund credits from the Provider to another Employment Provider taking into account the Stream Participant's Stream and the proportion of the Provider's caseload being transferred.

**GDV 1 GDV 2**

88.15 Subject to clause 88.16, the Provider may transfer amounts credited at one Site to another Site regardless of the Employment Region.

88.16 The Department may, at any time:

- (a) increase or reduce the amounts credited to the Employment Fund; or
- (b) place limits on or restrict the Provider's ability to transfer amounts credited to the Employment Fund between its Sites.



## 89. Wage Subsidies

*Note: This clause applies to the Restart Programme, Tasmanian Jobs Programme, LTU Wage Subsidy and Youth Wage Subsidy. All of these Wage Subsidies form part of the Wage Subsidy Account.*

### GDV 1

- 89.1 The Provider must promote, deal with enquiries, manage and report on Wage Subsidies, in accordance with any Guidelines.
- 89.2 Subject to any contrary provision specified in any Guidelines, the Provider must only pay a Wage Subsidy to a Wage Subsidy Employer with respect to a Wage Subsidy Participant if the Provider has, for each Wage Subsidy Period, first:
- (a) confirmed that:
    - (i) the Stream Participant is a Wage Subsidy Participant; and
    - (ii) the relevant Employment position is a Wage Subsidy Placement;
  - (b) entered into a Wage Subsidy Agreement with the relevant Wage Subsidy Employer;
  - (c) received from the relevant Wage Subsidy Employer, Documentary Evidence of the Wage Subsidy Participant's Employment for each relevant Wage Subsidy Period; and
  - (d) confirmed that the Wage Subsidy Employer is compliant with the Wage Subsidy Agreement,
- and done so in accordance with any Guidelines.

### GDV 1

- 89.3 Subject to any contrary provision specified in any Guidelines, the Provider must ensure that each payment of a Wage Subsidy is:
- (a) paid from the Provider's own funds;
  - (b) paid to the relevant Wage Subsidy Employer only once for each Wage Subsidy Participant;
  - (c) paid for the relevant Wage Subsidy Period and in the instalment amount as specified in any Guidelines; and
  - (d) otherwise paid in accordance with any Guidelines.

### GDV 1

#### *Reimbursement*

- 89.4 Once the Provider has properly paid a Wage Subsidy in accordance with clause 89.2 and 89.3, the Provider may submit a claim for Reimbursement through the Department's IT Systems, but must only do so in accordance with this clause 89 and any Guidelines.
- 89.5 The Department will Reimburse the Provider for each Wage Subsidy that is paid in accordance with this Deed and properly claimed by the Provider under this clause 89.

## Section B1.6 – Employment incentives

### GDV 1

## 90. Relocation Assistance to Take Up a Job (RATTUAJ)

- 90.1 The Provider must only pay a RATTUAJ Payment if the Provider has first, in accordance with any Guidelines:
- (a) correctly confirmed that:
    - (i) the person is a RATTUAJ Participant;

- (ii) the relevant Employment position is a RATTUAJ Placement; and
  - (iii) the proposed address to which the RATTUAJ Participant is relocating is eligible for a RATTUAJ Payment at the amount of the proposed payment;
- (b) received from the relevant RATTUAJ Participant, Documentary Evidence to support their entitlement to a RATTUAJ Payment at the amount of the proposed payment;
  - (c) entered into a RATTUAJ Agreement with the RATTUAJ Participant; and
  - (d) confirmed that the RATTUAJ Participant is compliant with the RATTUAJ Agreement.
- 90.2 The Provider must ensure that each RATTUAJ Payment is paid in full from the Provider's own funds, and otherwise paid in accordance with the requirements specified in any Guidelines.
- 90.3 The Provider must end each RATTUAJ Agreement in the circumstances and in the manner specified in any Guidelines.
- Reimbursement*
- 90.4 Once the Provider has properly paid a RATTUAJ Payment in accordance with this clause 90, the Provider may submit a claim for Reimbursement through the Department's IT Systems for no more than the same amount as that RATTUAJ Payment, but must only do so in accordance with any Guidelines.
- 90.5 The Department will Reimburse the Provider for each RATTUAJ Payment that the Provider makes in accordance with this Deed and properly made claims under clause 90.4.

## **Section B1.7 - Vacancy management**

### **GDV 1**

#### **91. Vacancy management**

- 91.1 The Provider must engage and work with Employers to understand their needs and identify job opportunities.
- 91.2 The Provider must, *in accordance with any Guidelines*, lodge every Vacancy that it creates or obtains ~~under clause 91.1~~ on the Department's IT Systems within one Business Day of creating or obtaining the Vacancy, unless the Department's IT Systems are not operational, in which case the relevant Vacancy must be lodged on the next Business Day that the Department's IT Systems are operational.

*Note: The Provider may lodge more than one similar vacant position with the same Employer as a Vacancy, on the Department's IT Systems.*

- 91.3 The Provider must:
- (a) where a position for paid Employment is sourced by the Provider, ensure that the position is paid at a rate at least equivalent to:
    - (i) the minimum rate prescribed in any Modern Award that covers or applies to the position; or
    - (ii) if no Modern Award covers or applies to the position, the National Minimum Wage, before lodging the position as a Vacancy;
  - (b) not lodge an Unsuitable position as a Vacancy; and
  - (c) ensure that each Vacancy lodged on the Department's IT Systems is complete, up to date, and complies with any conditions of use specified in any Guidelines.

*Note 1: For the avoidance of doubt, the Provider is not required to:*

- (a) comply with clause 91.3(a) in relation to Unsubsidised Self Employment, Pre-existing Employment or any position sourced by a Participant themselves;

- (b) for clause 91.3(a), ensure that the relevant position is paid in accordance with any applicable Enterprise Agreement; or*
- (c) verify that the Employment was paid in accordance with any applicable Enterprise Agreement, Modern Award or the National Minimum Wage at the point of claiming a related Outcome.*

## **GDV 2**

91.4 The Provider must, in accordance with any Guidelines:

- (a) refer suitable Stream Participants to Employers with Vacancies;
- (b) advise Fully Eligible Participants (Mutual Obligation) that they are required to take any suitable job and of the consequences of failing to do so;
- (c) encourage Stream Participants to consider job opportunities outside of their local area; and
- (d) record the Job Seeker Placement Start Date in the Department's IT Systems:
  - (i) within 2856 days of each Stream Participant commencing in:
    - (A) Employment, where the Stream Participant is successful in gaining Employment; or
    - (B) Unsubsidised Self Employment, as relevant; or
  - (ii) for a Stream Participant who satisfies the requirements of clause 125.1(d), within 56 days of the date of the relevant Significant Increase, or as otherwise specified in any Guidelines or advised by the Department.

*Note: The Provider can only claim Outcome Payments in relation to referrals of Stream Participants from its own caseload.*

## **GDV 1**

### **Section B1.8 – Participant Suspension and Exit from Employment Provider Services**

#### **GDV 1**

#### **92. Effect of Suspensions**

92.1 Where a Stream Participant is Suspended, the Stream Participant's Period of Unemployment continues but the Stream Participant's:

- (a) current Period of Service;
- (b) current Period of Registration; and
- (c) Payment Period (if still current);

are halted and recommences when the Suspension ends.

#### **93. Suspensions**

##### *Fully Eligible Participants*

93.1 The Provider agrees that a Fully Eligible Participant is Suspended if:

- (a) DHS notifies the Provider that a Fully Eligible Participant:
  - (i) has an Exemption;
  - (ii) who has part-time Mutual Obligation Requirements, is fully meeting these requirements; or

- (iii) who is aged 55 years or over and has Mutual Obligation Requirements, is meeting those requirements by participating in 30 hours a fortnight of paid work, voluntary work or a combination of these; or
  - (b) the Fully Eligible Participant:
    - (i) has a temporary reduced work capacity of less than 15 hours per week; or
    - (ii) is identified as a PCW Participant who has a current and future work capacity of less than 15 hours per week.
- 93.2 The Provider agrees that a Fully Eligible Participant will remain Suspended until, as relevant:
- (a) DHS notifies the Provider that their Exemption has reached its end date;
  - (b) the Provider identifies, or is notified by DHS, that the Fully Eligible Participant has:
    - (i) ceased to fully meet his or her Mutual Obligation Requirements; or
    - (ii) volunteered to participate in additional activities in accordance with clause 93.4;
  - (c) the period of temporary reduced work capacity specified in the Fully Eligible Participant's ESAt or JCA as recorded in the Department's IT Systems ends; or
  - (d) the Fully Eligible Participant Exits in accordance with clause 95 or 96.
- 93.3 If the Provider identifies, or is notified by DHS, that a Fully Eligible Participant who is Suspended under this clause 93 has ceased to fully meet his or her Mutual Obligation Requirements:
- (a) the Provider must:
    - (i) update the Fully Eligible Participant's Job Plan as appropriate; and
    - (ii) provide Employment Provider Services to the Fully Eligible Participant, in accordance with his or her updated Job Plan and his or her current Stream; and
  - (b) the Fully Eligible Participant's Payment Period, Period of Registration and current Period of Service resume from the date that the Provider or DHS records on the Department's IT Systems that the Fully Eligible Participant has ceased to fully meet his or her Mutual Obligation Requirements.
- 93.4 If the Provider identifies, or is notified by DHS, that a Fully Eligible Participant who is Suspended under clause 93.1 has decided to volunteer to participate in additional activities, the Provider must:
- (a) agree with the Fully Eligible Participant on what voluntary activities he or she will participate in;
  - (b) update the Fully Eligible Participant's Job Plan as appropriate;
  - (c) record on the Department's IT Systems that the Fully Eligible Participant is participating as a Fully Eligible Participant (Voluntary); and
  - (d) provide Employment Provider Services to the Fully Eligible Participant, in accordance with his or her updated Job Plan and in the Fully Eligible Participant's current Stream, for the period of the agreed voluntary activity, taking into account the reason for the Exemption, where applicable.
- 93.5 Where a Fully Eligible Participant who was Suspended under clause 93.1(b) decides to participate as a Fully Eligible Participant (Voluntary) under clause 93.4, and the Provider identifies, or is notified by DHS, that the Fully Eligible Participant (Voluntary) has ceased to fully meet his or her Mutual Obligation Requirements, the Provider must update the Fully Eligible Participant's Job Plan to remove reference to the voluntary activities and to change the Mutual Obligation Requirements activities, if required, and record on the Department's IT Systems that the Fully Eligible Participant is participating as a Fully Eligible Participant (Mutual Obligation), and not as a Fully Eligible Participant (Voluntary).
- 93.6 Where a Fully Eligible Participant (Mutual Obligation):

- (a) has been Suspended during the Work for the Dole Phase for fully meeting their Mutual Obligation Requirements by undertaking Activities to meet their Annual Activity Requirement; and
- (b) then ceases to be Suspended for any reason,

the Provider must resume providing Employment Provider Services to the Fully Eligible Participant (Mutual Obligation):

- (c) at the start of the relevant Case Management Phase; or
- (d) where the Suspension was for less than the time remaining for them in the Work for the Dole Phase, at the point in the relevant Work for the Dole Phase that they would have been had the Suspension not occurred.

#### *Fully Eligible Participants (Voluntary)*

93.7 If the Provider identifies, or is notified by DHS, that a Fully Eligible Participant is a Fully Eligible Participant (Voluntary) and has experienced a situation that affects his or her ability to participate in voluntary activities for a specified period of time:

- (a) the Provider must immediately record on the Department's IT Systems that the Fully Eligible Participant is no longer participating as a Fully Eligible Participant (Voluntary) and the Suspension period resumes; and
- (b) the Fully Eligible Participant is Suspended and will remain Suspended until the Suspension ends or is lifted in accordance with clause 93.2.

#### *Volunteers*

93.8 If the Provider identifies, or is notified by DHS, that a Volunteer has experienced a situation that affects his or her ability to participate in voluntary activities for a specified period of time, the Provider must Suspend the Volunteer, for a period of up to 13 weeks, or for multiple periods up to 13 weeks at a time, as appropriate, by recording the Suspension and the reasons for the Suspension on the Department's IT Systems.

93.9 Following any period of Suspension specified in clause 93.8, a Volunteer must be serviced by the Provider for the remainder of their six month Period of Service in accordance with clause 75.

### **94. Effect of Exits**

94.1 Subject to clauses 95.3 and 82.2, when a Stream Participant is Exited in accordance with this Section B8, the:

- (a) current Period of Service;
- (b) Period of Registration;
- (c) Payment Period (if still current); and
- (d) Period of Unemployment,

for the Stream Participant end.

### **95. Exits**

95.1 A Stream Participant is Exited when:

- (a) an Effective Exit occurs;
- (b) a Provider Exit occurs; or
- (c) any other event, as advised by the Department [from time to time](#) or as specified in any Guidelines, occurs.

## GDV 1

- 95.2 Where an event under clause 95.1 occurs, the Provider may cease providing Services to a Stream Participant unless clauses 95.3 or 82.2 applies.
- 95.3 Where an Exit occurs for a Stream Participant, but the Stream Participant returns to the Services less than 13 Consecutive Weeks after the date of the Exit:
- (a) the Stream Participant's:
    - (i) Period of Service;
    - (ii) Period of Registration (if relevant);
    - (iii) Payment Period (if still current); and
    - (iv) Period of Unemployment,continue from the date of the Stream Participant's return, and
  - (b) the Provider must, as soon as it becomes aware of the Stream Participant's return:
    - (i) resume providing Employment Provider Services to the Stream Participant; and
    - (ii) record the resumption of Employment Provider Services on the Department's IT Systems in accordance with any Guidelines.
- 95.4 Where an Exit occurs for a Fully Eligible Participant and the Fully Eligible Participant subsequently returns to the services at 13 Consecutive Weeks or more after the date of the Exit, the Fully Eligible Participant begins a new:
- (a) Period of Service;
  - (b) Period of Registration;
  - (c) Payment Period; and
  - (d) Period of Unemployment.

### *Fully Eligible Participants (Voluntary)*

- 95.5 If a Fully Eligible Participant (Voluntary):
- (a) ceases to participate in voluntary activities;
  - (b) no longer wishes to participate in voluntary activities; and
  - (c) the Provider has confirmed that the Fully Eligible Participant (Voluntary) is:
    - (i) either fully meeting his or her Mutual Obligation Requirements or is the subject of an Exemption; and
    - (ii) the Fully Eligible Participant (Voluntary) is eligible for a Provider Exit in accordance with any Guidelines,

the Provider may perform a Provider Exit for the Fully Eligible Participant (Voluntary).

### *Volunteer*

- 95.6 If a Volunteer advises the Provider that they do not wish to continue to participate in voluntary activities, the Provider must inform the Volunteer of the six month limit to their eligibility for Services, and if the Volunteer still wishes to cease participating in voluntary activities, the Provider must perform a Provider Exit for the Volunteer.

95.7 Where an Exit occurs for a Volunteer and the Volunteer subsequently seeks to return to the Services at 13 Consecutive Weeks or more after the date of the Exit, the Provider must not provide Services under Chapter B1 to the Volunteer unless the Provider determines that the Volunteer has had a significant change in individual circumstances, in accordance with any Guidelines, since the date of the Exit.

## 96. Other Suspensions and Exits

96.1 Stream Participants may be otherwise Suspended or Exited, as relevant, in accordance with any Guidelines.

## Section B1.9 – New Enterprise Incentive Scheme Services

### GDV 1

## 97. NEIS Services

97.1 Where the Provider and a Stream Participant who has been identified as eligible for NEIS on the Department's IT Systems have agreed that it may be appropriate for the Stream Participant to receive NEIS Services, the Provider must:

- (a) advise the Stream Participant of the matters which they must satisfy before they can receive NEIS Services, as specified in any Guidelines;
- (b) ~~subject to clause 97.2, refer the Stream Participant to a NEIS Provider in the Employment Region in which the Stream Participant proposes to conduct his or her NEIS Business;~~ identify the location in which the Stream Participant proposes to conduct his or her NEIS Business and:
  - (i) where the location is within an Employment Region in which the Provider is a NEIS Provider, the Provider may choose to provide the relevant NEIS Services itself or refer the Stream Participant to another NEIS Provider in the relevant Employment Region; or
  - (ii) where the location is not within an Employment Region in which the Provider is a NEIS Provider, refer the Stream Participant to a NEIS Provider in that location;
- (c) where the Stream Participant is assessed as NEIS Eligible by the relevant NEIS Provider, comply with any record keeping requirements specified in any Guidelines; and
- (d) where the Stream Participant is assessed by the relevant NEIS Provider as:
  - (i) not being NEIS Eligible;
  - (ii) being NEIS Eligible, but not having a NEIS Business Plan that meets the NEIS Business Eligibility Criteria; or
  - (iii) continuously failing to attend NEIS Training and therefore no longer able participate in NEIS Training,and is referred back to the Provider, immediately provide the Stream Participant with alternative Services in accordance with this Deed.

~~97.2 Where the Provider is a NEIS Provider in the Employment Region in which the Stream Participant proposes to conduct his or her NEIS Business, the Provider may choose to provide the relevant NEIS Services itself or refer the Stream Participant to another NEIS Provider in the relevant Employment Region in accordance with clause 97.1(b).~~

### GDV 2

*Note: A NEIS Provider must deliver NEIS Services in accordance with Part C of this Deed.*

## Section B1.10 – Performance management

### GDV 1

## **98. Quality Assurance Framework conformance**

### *Certificate of Quality Assurance Framework conformance*

98.1 The Provider must, in accordance with this clause 98:

- (a) obtain a Quality Assurance Framework Certificate no later than:
  - (i) 12 months from the Deed Commencement Date; or
  - (ii) any other date Notified by the Department; and
- (b) maintain the currency of the Quality Assurance Framework Certificate for the duration of the Service Period and any Extended Service Period(s).

### **GDV 1**

### *Quality Assurance Framework Audits*

98.2 The Provider must undertake Quality Assurance Framework Audits, in accordance with this clause 98 and any Guidelines, during the Term of this Deed.

### *Quality Auditors*

98.3 For the purposes of this clause 98, the Provider must:

- (a) contract one or more Quality Auditors in accordance with any Guidelines; and
- (b) ensure that in any relevant contract, it requires Quality Auditors to provide all information and assistance to the Department, as requested by the Department, in relation to Quality Assurance Framework Audits.

98.4 The Department may provide any Quality Auditor with information to assist the Quality Auditor with a QAF Audit, and any information so provided, will also be provided to the Provider.

98.5 Notwithstanding that a Quality Auditor is paid by the Provider, the Quality Auditor is deemed to be a Department Employee for the purposes of clause 40, and the Provider must give the Quality Auditor all required access and assistance, for the purpose of conducting QAF Audits, in accordance with clause 40.

### *Quality Assurance Framework Audit Plan for Quality Principles Audits*

98.6 The Provider must in accordance with any Guidelines, prepare and submit to the Department a Quality Assurance Framework Audit Plan no later than 20 Business Days, or such other period as agreed with the Department, prior to the conduct of each Quality Principles Audit.

### *Quality Reports*

98.7 The Provider must, in accordance with any Guidelines, submit:

- (a) a Certification Report, if the Provider does not already have a Quality Assurance Framework Certificate; and
- (b) a Quality Standards Report,

on or before nine months from the Deed Commencement Date, and on any other date Notified by the Department; and

- (c) any other Quality Reports and information specified in the any Guidelines or requested by the Department, within any timeframe specified by the Department.

98.8 If the Department determines that it is not satisfied with the quality and detail of any Quality Report or any information provided by the Provider under clause 98.7, the Department may:

- (a) require the Provider to:



- (i) correct any defect with the relevant Quality Report or information; and
  - (ii) resubmit the Quality Report or information to the Department,
- as directed by the Department, and the Provider must comply with this requirement;
- (b) require the Provider to undertake a further Quality Assurance Framework Audit, as directed by the Department, including a direction to use a different Quality Auditor to that used in the original Quality Assurance Framework Audit, and the Provider must comply with this requirement; and/or
  - (c) immediately suspend the Provider's Quality Assurance Framework Certificate.

*Outcomes of Quality Assurance Framework Audits*

98.9 The Department will consider the relevant Quality Report and any information provided by the Provider and may, at its absolute discretion:

- (a) issue the Provider with a Quality Assurance Framework Certificate, with or without conditions;
- (b) renew the Provider's Quality Assurance Framework Certificate, with or without conditions; or
- (c) refuse to issue or renew the Provider's Quality Assurance Framework Certificate; and
- (d) in relation to a Major Non-conformance, suspend the Provider's Quality Assurance Framework Certificate for any period.

98.10 Unless otherwise agreed by the Department in writing, the Provider must:

- (a) submit a Corrective Action Plan to the Department within 20 Business Days of receipt of a Non-conformance Report; and
- (b) correct all Non-conformances identified in a Non-conformance Report in accordance with any Guidelines, or as otherwise directed by the Department.

98.11 If:

- (a) the Provider fails to comply with this clause 98; or
- (b) the Department suspends the Provider's Quality Assurance Framework Certificate,

the Department may immediately:

- (c) take action under clause 52.2; or
- (d) terminate this Deed under clause 56,

by providing Notice to the Provider.

**99. Performance Indicators**

*Employment Provider Services KPIs*

99.1 ~~For the purposes of clause 4.1(c), t~~The Employment Provider Services KPIs are as follows:

- (a) KPI 1: The time the Provider takes to assist relevant Stream Participants, as specified in any Guidelines, into Employment, and commence them in an Activity in the Work for the Dole Phase.
  - (i) KPI 1 measurement: the Department's assessment of the Provider's performance is based on:
    - (A) the average time taken from Commencement of the relevant Stream Participants to the achievement of Employment Outcomes in Employment, where the Provider is entitled to, and has claimed, an Outcome Payment for a 26 Week Period; and
    - (B) the time taken for the relevant Stream Participants to commence in an Activity in the Work for the Dole Phase in accordance with Section B3.2.

- (b) KPI 2: The proportions of relevant Stream Participants, as specified in any Guidelines, for whom Employment Outcomes are achieved, and that meet their Annual Activity Requirement in accordance with this Deed.
  - (i) KPI 2 measurement: The Department's assessment of the Provider's performance is based on:
    - (A) the proportions of Outcome Payments claimed for the relevant Stream Participants in accordance with clause 125; and
    - (B) the proportions of the relevant Stream Participants that meet their Annual Activity Requirement in accordance with Section B3.2.
- (c) KPI 3: The Department's assessment of quality and assurance including:
  - (i) certification against the Quality Assurance Framework;
  - (ii) a Compliance Indicator; and
  - (iii) the Department's assessment of service delivery against the Service Guarantees and the Provider's Service Delivery Plan(s).

## GDV 2

### *Other factors in performance assessment*

- 99.2 When assessing the Provider's performance, the Department may also take into account other factors including but not limited to:
- (a) the Provider's performance in assisting Aboriginal and Torres Strait Islander peoples, including in meeting its Indigenous Outcomes Targets;
  - (b) the Provider's performance in building linkages with Employers to understand and meet the skills needs of the local labour market;
  - (c) the Provider's use of the Employment Fund;
  - (d) collaboration with other Employment Providers, [Transition to Work Providers](#), [ParentsNext Providers](#), [NEIS Providers](#), [HLS Providers](#), [Disability Employment Services providers](#) and Work for the Dole Coordinators;
  - (e) the extent to which the Provider:
    - (i) monitors compliance of Fully Eligible Participants with their Mutual Obligation Requirements and other requirements in their Job Plans; and
    - (ii) implements the compliance framework specified in Chapter B3 as necessary to ensure that Fully Eligible Participants comply;
  - (f) usage and delivery of initiatives and programmes that may be announced by the Government over the Term of this Deed;
  - (g) the Provider's compliance with this Deed and any representation made by the Provider in its tender response to the request for tender for this Deed; and
  - (h) any other information available to the Department, including Provider feedback, feedback from Stream Participants, Employers, Work for the Dole Coordinators, intelligence from the Department's Employment Services Tip off Line, DHS, the Provider's Star Ratings and Compliance Indicator.

## GDV 1 GDV 2

### **100. Provider Star Ratings and Compliance Indicator**

- 100.1 The Department may:

- (a) calculate Star Ratings and/or a Compliance Indicator for the Provider for the purposes of assessing the Provider's performance of Employment Provider Services and comparing the Provider's performance against other Employment Providers; and
- (b) at its absolute discretion, publish the Provider's Star Ratings and/or Compliance Indicator.

**101. Action about performance**

101.1 Without limiting the Department's rights under this Deed or the law, if, at any time, the Department considers that the performance of the Provider at the Employment Region or Site level is less than satisfactory (including as assessed against the Employment Provider Services Key Performance Indicators and the outcomes of any Programme Assurance Activities), the Department may, at its absolute discretion,

- (a) reduce the Provider's Business Share; or
- (b) require the Provider to close relevant Sites,

and the Provider must comply with any direction by the Department in relation to such action.

101.2 If, at any time, the Department considers the performance of the Provider at the Employment Region level warrants it, the Department may, with the agreement of the Provider, increase the Provider's Business Share for a period of time specified by the Department.

*Business reallocation following performance assessments*

101.3 In addition to any other rights of the Department under this Deed, if at the completion of a performance assessment or review under clause 28, the Provider's:

- (a) Star Rating for an Employment Region or for a Site is 2-Stars or below; or
- (b) performance in the Employment Region or at the Site is otherwise not to the Department's satisfaction, including after taking the Compliance Indicator into consideration,

the Department may, at its absolute discretion, and without limitation of any of the Department's rights under this Deed or the law:

- (c) for the Employment Region:
  - (i) by Notice, reduce the Provider's Business Share in that Employment Region;
  - (ii) reduce the number of Referrals to the Provider in that Employment Region, commensurate with the reduction in Business Share; and
  - (iii) transfer Stream Participants on the Provider's caseload to another Employment Provider; and
- (d) for the Site:
  - (i) Notify the Provider that the Provider must discontinue providing the Services at the Site;
  - (ii) cease all Referrals to that Site from the date of the Notice; and
  - (iii) transfer Stream Participants from that Site, including to another Employment Provider, and if the Department takes the action specified in clause 101.3(d)(i), the Provider must immediately discontinue providing the Services at the Site in accordance with the relevant Notice and provide the Department with the assistance and cooperation in clauses 57.5 and 57.6 to ensure that Participants affected by the discontinuation of the Provider's Services at that Site are transferred to other Employment Providers or another Site of the Provider as directed by the Department.

101.4 References in this clause 101 to decreasing the Provider's Business Share in an Employment Region, include decreasing the Business Share in the Employment Region to zero.

- 101.5 If, in accordance with this clause 101, the Department decreases the Provider’s Business Share in an Employment Region to zero, the Department may Notify the Provider that it must discontinue providing the Services in the Employment Region from the date specified by the Department, and the Provider must:
- (a) discontinue providing the Services in the Employment Region in accordance with the Notice; and
  - (b) provide the Department with the assistance and cooperation in clauses 57.5 and 57.6 to ensure that Fully Eligible Participants affected by the discontinuation of the Provider’s Services in that Employment Region are transferred to other Employment Providers as specified by the Department.
- 101.6 For the avoidance of doubt, any decrease in Business Share under this clause 101 is not a reduction of scope or termination for which compensation is payable.
- 101.7 If the Department takes any action under this clause 101:
- (a) where relevant, this Deed is deemed to be varied accordingly; and
  - (b) the Provider must perform all its obligations under this Deed as varied.
- 101.8 This clause 101 operates without prejudice to any other right which the Commonwealth has or which may accrue to the Commonwealth under this Deed or the law.
- Indigenous Outcomes Targets*
- 101.9 The Provider must achieve its Indigenous Outcomes Targets, and, if it fails to do so, the Department may immediately take action under clause 52.2.

## CHAPTER B2 – SPECIFIC EMPLOYMENT PROVIDER SERVICES

### Reader’s guide

Employment Provider Services are comprised of Services under three Streams – Streams A, B and C.

A Stream Participant who is subject to ~~the Stronger Participation Incentives (‘SPI’) for Job Seekers under 30 measure~~ the **SPI Measure** can receive Employment Provider Services under either Stream A or Stream B (depending on their Assessment). Services for this group are different from Services for other Participants in these Streams. Accordingly, Stream Participants in Stream A are identified in this Deed as Stream A (SPI) Participants and Stream A (General) Participants, while those in Stream B are identified as Stream B (SPI) Participants and Stream B (General) Participants. The Services provided to Stream A (SPI) Participants and Stream B (SPI) Participants (together ‘SPI Participants’) are similar. Accordingly, Services for these two groups are dealt with together under Section B2.1.

The timing of the Services phases for Stream B (General) Participants and Stream C Participants are identical. Accordingly, Services for these two groups are dealt with together under Section B2.3.

The Services provided to Stream A (General) Participants are different from all of the above, so Services for this group are dealt with separately under Section B2.2. Volunteers receive Services as Stream A (General) Participants for a maximum of six months and then are automatically exited from the Services.

### **GDV 2**

### **Section B122.1 – Stronger Participation Incentives Participants**

#### **GDV 1**

### Reader's guide

Following their Initial Interview, ~~identified Fully Eligible Participants (with Mutual Obligation Requirements who are aged under 30 years) ("SPI Participants")~~ will enter a Case Management Phase for six months. They then generally move into the SPI Work for the Dole Phase for six months, and then back into the SPI Case Management Phase and so on until they ~~reach 30 years of age or are otherwise~~ no longer an SPI Participant.

The Provider must provide additional services to ~~SPI Participants~~ to help them can gain work related skills and find a job. This includes appointments with SPI Participants each month to discuss the Job Searches that they have undertaken in the previous month and referral of SPI Participants to jobs that the Provider has identified, as specified in clause 84.1(b). These appointments will also allow the early identification of any failures by SPI Participants to meet their Mutual Obligation Requirements. Where the Provider reports non-compliance to the Department of Human Services, penalties may be imposed.

SPI Participants will be expected to undertake Work for the Dole activities for 25 hours per week for 26 weeks after they have been in employment services for six months.

### GDV 2

## 102. SPI Participants

102.1 Subject to clause 105 and in addition to Services specified:

- (a) under Chapter B1, including clause 84.1(b) in relation to Appointments;
- (b) in the Service Delivery Plan; and
- (c) in the Provider's tender response to the request for tender for this Deed,

the Provider must for each Stream A (SPI) Participant and Stream B (SPI) Participant:

- (d) provide Services after their initial SPI Case Management Phase taking into account their ~~availability of eligibility for the~~ Youth Wage Subsidy and a RATTUAI Payment as provided for under clauses 89 and 90;
- (e) during each SPI Work for the Dole Phase, provide Activities for 25 hours per week; and
- (f) monitor in accordance with clause 114 whether they have met their Mutual Obligation Requirements, and manage any failure to do so in accordance with clause 115.

### GDV 2

## Section B132.2 – Stream A (General) Participants

### GDV 1

### Reader's guide

Following their Initial Interview, Stream A (General) Participants generally enter a Self Service and Job Activity Phase for six months. They then generally move into the Stream A Work for the Dole Phase for six months, then into a Stream A Case Management Phase for six months and then back into the Stream A Work for the Dole Phase for six months. They then continue on this alternating six monthly pattern until they move into another Stream or Exit.

## 103. Stream A (General) Participants

103.1 In addition to Services specified under Chapter B1, in the Service Delivery Plan and in the Provider's tender response to the request for tender for this Deed, the Provider must for each Stream A (General) Participant:

- (a) during each Stream A Work for the Dole Phase, provide Activities:
  - (i) for Stream Participants aged less than 30 years, of 25 hours per week; and
  - (ii) for Stream Participants aged 30 years and older, of 15 hours per week; or
  - (iii) as otherwise specified in any Guidelines or directed by the Department;
- (b) if they are a Fully Eligible Participant (Mutual Obligation), monitor, in accordance with clause 114.1(a), if they have met their Mutual Obligation Requirements, and manage any failure to do so in accordance with clause 115; and
- (c) if they are a Disability Support Pension Recipient (Compulsory Requirements), monitor, in accordance with clause 114.1(b), if they have met their compulsory participation requirements, and manage any failure to do so in accordance with clause 116.

## **Section B142.3 – Stream B (General) Participants and Stream C Participants**

### **GDV 1**

#### **Reader's guide**

The Services for Stream B (General) Participants and Stream C Participants alternate between Case Management Phases and Work for the Dole Phases. The Case Management Phases and the Work for the Dole Phases for Stream B (General) Participants and Stream C Participants are different to those for SPI Participants and Stream A (General) Participants.

Following their Initial Interview, Stream B (General) Participants and Stream C Participants generally enter the relevant Case Management Phase for 12 months (unless the Provider moves them earlier in accordance with clause 104.2). They then generally alternate between six months in the relevant Work for the Dole Phase and six months in the relevant Case Management Phase until they move into another Stream (if in Stream B), or Exit.

### **104. Stream B (General) Participants and Stream C Participants**

104.1 Subject to clause 105, and in addition to Services specified:

- (a) under Chapter B1;
- (b) in the Service Delivery Plan; and
- (c) in the Provider's tender response to the request for tender for this Deed,
- (d) the Provider must for each Stream B (General) Participant and Stream C Participant:
- (e) during each Stream B Case Management Phase and Stream C Case Management Phase, as relevant, provide activities to increase their job competitiveness, including any required non-vocational Interventions; and
- (f) during each Stream B Work for the Dole Phase and Stream C Work for the Dole Phase, as relevant,
- (g) provide Activities:
  - (i) for Stream Participants aged less than 30 years, of 25 hours per week; and
  - (ii) for Stream Participants aged 30 years and older, of 15 hours per week; or
  - (iii) as otherwise specified in any Guidelines or directed by the Department;
- (h) if they are a Fully Eligible Participant (Mutual Obligation), monitor, in accordance with clause 114.1(a), if they have met their Mutual Obligation Requirements, and manage any failure to do so in accordance with clause 115; and

- (i) if they are a Disability Support Pension Recipient (Compulsory Requirements), monitor, in accordance with clause 114.1(b), if they have met their compulsory participation requirements, and manage any failure to do so in accordance with clause 116.

104.2 If, after six months of their Period of Service and before 12 months of their Period of Service, the Provider determines that a Stream B (General) Participant or Stream C Participant is not fully participating in, or benefitting from, any Intervention that the Provider deems necessary to make them job ready, the Provider may immediately commence them in the Stream B Work for the Dole Phase or the Stream C Work for the Dole Phase, as relevant.

### **105. Early School Leavers**

105.1 For Early School Leavers, the Provider must provide Activities for up to 25 hours per week in accordance with any Guidelines, and manage any failure to meet their Mutual Obligation Requirement in accordance with Section B3.4, while they are an Early School Leaver, regardless of the phase or period.

#### *Records for Early School Leavers*

105.2 If a person who has been assessed as being an Early School Leaver advises the Provider that they have attained a Year 12 or equivalent qualification, the Provider must:

- (a) request the person to provide evidence of that qualification to the Provider;
- (b) retain Records of this request and a copy of any evidence provided by the person, in accordance with clause 37; and
- (c) if requested by the Department, provide a copy of the Record to the Department or DHS, in accordance with any Guidelines.

## **CHAPTER B3 – MUTUAL OBLIGATION REQUIREMENTS AND ACTIVITIES**

### **Section B153.1 – Mutual Obligation Requirements**

#### **GDV 1**

### **106. Mutual Obligation Requirements**

106.1 The Provider must, in accordance with any Guidelines:

- (a) ensure that each Fully Eligible Participant (Mutual Obligation) fully understands the specific requirements of their Mutual Obligation Requirements, including in relation to attending Appointments, fulfilling their Annual Activity Requirement and undertaking Job Searches;
- (b) use its best endeavours to ensure that each Fully Eligible Participant (Mutual Obligation) meets their Mutual Obligation Requirements, including by actively monitoring their compliance; and
- (c) record each Fully Eligible Participant's (Mutual Obligation) compliance with their Mutual Obligation Requirements in the Department's IT Systems.

*Note: Services in relation to Appointments are specified at clause 83. Services in relation to Annual Activity Requirement and Job Searches are specified immediately below.*

### **Section B163.2 – Activities**

#### **GDV 1**

#### **Reader's Guide**

Subject to certain conditions, this section requires the Provider to provide Activities for Stream Participants in any phase of their Stream, as specified in their Job Plan and which are designed to help them improve their employment

prospects.

All Fully Eligible Participants (Mutual Obligation) aged up to 60 must undertake an approved activity for six consecutive months each year while they remain unemployed, subject to exclusions as specified in any Guidelines. This activity requirement is called the Annual Activity Requirement. Work for the Dole activities are the principal, but not the only, approved activity that can be used in order to satisfy this annual requirement. This section deals with the Provider's responsibilities in relation to the sourcing and provision of the range of approved activities which can be used to satisfy the Annual Activity Requirement for Fully Eligible Participants (Mutual Obligation) in the Work for the Dole Phase.

## **107. Activities**

107.1 Except for NEIS Prospective Participants, the Provider must ensure that:

- (a) each Fully Eligible Participant (Mutual Obligation) who commences in the Work for the Dole Phase; and
- (b) subject to clause 107.3 and any Guidelines:
  - (i) each Fully Eligible Participant (Mutual Obligation) who commences in the Case Management Phase; and
  - (ii) each Stream Participant, other than a Fully Eligible Participant (Mutual Obligation), who commences in any phase within a Stream,

participates immediately in Activities which:

- (c) for Fully Eligible Participants (Mutual Obligation), allow them to meet their Annual Activity Requirement; and
- (d) for all Stream Participants, are in accordance with their Job Plan and take into account their circumstances and work capacity.

*Note 1: Annual Activity Requirements vary according to age and work capacity and are as specified in any Guidelines or as otherwise advised by the Department.*

*Note 2: NEIS Prospective Participants do not have an Annual Activity Requirement or Job Search Requirements while they participate in NEIS.*

*Note 3: Volunteers do not have an Annual Activity Requirement.*

### **GDV 1**

107.2 Subject to this Deed including any Guidelines, the Provider must provide, Broker, Purchase or arrange Activities for the purposes of clause 107.1.

107.3 In complying with clauses 107.1 and 107.2, the Provider must give priority to Fully Eligible Participants (Mutual Obligation) over other Stream Participants.

107.4 For the purposes of clauses 107.1 to 107.3, the Provider may:

- (a) provide the Activities itself;
- (b) Broker or Purchase the Activities with, or from, an Activity Host Organisation; or
- (c) arrange Activities for Stream Participants in accordance with any Guidelines.

107.5 Where the Provider:

- (a) Brokers an Activity, it must do so under an Activity Host Organisation Agreement and such an agreement is not a Subcontract; and
- (b) Purchases an Activity, it must, as relevant to the particular arrangement, do so under:



- (i) a Subcontract and comply with clause 48; or
- (ii) an Activity Host Organisation Agreement; or
- (c) arranges Activities for Stream Participants, it does not need to do so under a formal agreement, except for Work for the Dole activities, [Unpaid Work Experience Placements National Work Experience Programme Placements](#) and any other Activities as specified in any Guidelines.

#### GDV 1

- 107.6 Any Activity Host Organisation or other Subcontractor that provides Services directly in relation to an Activity under a Subcontract with the Provider is deemed to be an approved Subcontractor for the purposes of clause 48.1(a) in relation to those Services.
- 107.7 The Department may, at any time and at its absolute discretion, give a written direction to the Provider in relation to an Activity, a proposed Activity or a type of Activity, including a direction that:
- (a) an Activity may not be undertaken, or continue, as an Activity;
  - (b) an Activity be varied;
  - (c) an Activity be managed directly by the Provider, rather than a Subcontractor or an Activity Host Organisation who is not a Subcontractor;
  - (d) the Provider must provide, Broker, Purchase or arrange an Activity for Stream Participants; or
  - (e) the Provider must not provide, Broker, Purchase or arrange an Activity or type of Activity for Stream Participants.
- 107.8 If the Department gives a direction to the Provider in relation to an Activity, a proposed Activity or a type of Activity, the Provider must:
- (a) immediately take any action required by the direction; and
  - (b) continue to perform the Services in accordance with the direction.
- 107.9 If the Provider becomes aware that an Activity Host Organisation has used an Activity to displace paid workers or to reduce the amount of paid work available to its workers, the Provider must:
- (a) immediately advise the Department of the same, if the Department is not already aware; and
  - (b) renegotiate, terminate or not renew any Activity Host Organisation Agreement or Subcontract with the Activity Host Organisation as directed by the Department and in accordance with any Guidelines.
- 107.10 The Provider must, in accordance with any Guidelines, ensure that all Activities provide Work-like Experiences that will develop or enhance each Stream Participant's abilities in one or more of the following areas:
- (a) taking directions from a supervisor;
  - (b) working independently;
  - (c) communicating effectively;
  - (d) motivation and dependability; and
  - (e) where relevant, working as part of a team.

#### *Recording information about Activities in the Department's IT Systems*

- 107.11 For Fully Eligible Participants with an Annual Activity Requirement, the Provider must, in accordance with any Guidelines, record details of the following in the Department's IT Systems:
- (a) relevant Activities, including referrals to and placements in Activities and Work for the Dole Places;

- (b) required hours of participation for each Fully Eligible Participant participating in Work for the Dole activities to meet their Annual Activity Requirement;
- (c) the number of hours completed by each Fully Eligible Participant in Work for the Dole activities or other Activities to meet their Annual Activity Requirement; and
- (d) any other information as specified in any Guidelines.

## 108. Work for the Dole

### *Categories of Work for the Dole activities*

108.1 Unless otherwise agreed by the Department in writing, the Provider must not provide, Purchase, Broker or arrange Work for the Dole activities if they, in whole or in part, and as specified in any Guidelines:

- (a) involve working exclusively on private property, unless they are:
  - (i) a ~~Community Action Group Activity~~ Community Support Project; or
  - (ii) ~~a Project of National Significance;~~ or otherwise specified in any Guidelines;
  - ~~(iii) otherwise specified in any Guidelines;~~
- (b) subject to clause 108.1(a), require Fully Eligible Participants to enter private homes or grounds;
- (c) compete with established businesses;
- (d) are in child care or preschools;
- (e) involve personal care of people, of an intimate nature, including dressing, showering, feeding or toileting, or professional services;
- (f) fulfil a function that is part of a commercial contract or enterprise;
- (g) fulfil a function which would normally be undertaken by the Provider under this Deed, or any other contract or arrangement between the Provider and the Department;
- (h) are undertaken for a for-profit organisation or on a for-profit basis, unless they are:
  - (i) a ~~Community Action Group Activity~~ Community Support Project; or
  - (ii) ~~a Project of National Significance;~~ or otherwise specified in any Guidelines;
  - ~~(iii) otherwise specified in any Guidelines;~~
- (i) result in a benefit or gain to the Provider, or would fund any operations, activities or infrastructure of the Provider ~~which would otherwise have been acquired or in place had the Activity not commenced;~~
- (j) involve work which would have been undertaken by a paid worker if the Work for the Dole activity had not taken place; or
- (k) are otherwise prohibited under any Guidelines or by any advice provided by the Department.

### **GDV 1**

### *Stream Participants who can participate in Work for the Dole activities*

108.2 The Provider must only provide, Broker, Purchase or arrange Work for the Dole activities for Fully Eligible Participants and do so in accordance with any Guidelines.

108.3 The Provider must, in accordance with any Guidelines, place in Work for the Dole activities all:

- (a) Fully Eligible Participants (Mutual Obligation) aged 18 to 49, except:
  - (i) where they have arranged to meet their Annual Activity Requirement through either another type of Activity that is able to commence at the time they become subject to their Annual Activity

Requirement, or they have already commenced participation at that time in another type of Activity; or

- (ii) to the extent that they are meeting their Annual Activity Requirement through a combination of Activities not including Work for the Dole activities;
- (b) Fully Eligible Participants (Mutual Obligation) aged 18 to 49 to the extent that they are meeting their Annual Activity Requirement through a combination of Activities including through Work for the Dole activities and another type of Activity; and
- (c) subject to clause 108.4, other Fully Eligible Participants who choose to participate in Work for the Dole activities.

*Note: An example of the cohort under clause 108.3(c) is Fully Eligible Participants aged 50 to 59 who have Mutual Obligation Requirements but who cannot be compelled to do Work for the Dole activities to meet their Annual Activity Requirement.*

108.4 The Provider must not place a Fully Eligible Participant into Work for the Dole activities if the Fully Eligible Participant is aged less than 18 years.

108.5 Subject to this Deed, the Provider may, in accordance with any Guidelines:

- (a) claim and fill Work for the Dole Places which have been identified and secured by a Work for the Dole Coordinator, and advertised as available on the Department's IT Systems; or
- (b) itself identify, secure and fill Work for the Dole Places; and
- (c) in either case, claim a Work for the Dole Fee for each Work for the Dole Place, but only in accordance with clause 124.

#### *Advertised Work for the Dole Places*

108.6 The Provider may claim a Work for the Dole Place, which is advertised on the Department's IT Systems and which commences in the future, up to 10 Business Days prior to the start date of the relevant Work for the Dole activity.

108.7 If the Provider claims a Work for the Dole Place referred to in clause 108.6, the Provider must in accordance with any Guidelines:

- (a) ~~identify and assign a~~ immediately record the relevant Participant's Job Seeker ID to the Work for the Dole Place; and
- (b) commence ~~a Fully Eligible the relevant~~ Participant in that place within ~~five ten~~ Business Days of the start date of the relevant Work for the Dole Place.

**GDV 1 GDV 2**

108.8 If the Provider claims a Work for the Dole Place, which is advertised on the Department's IT Systems and which is available to commence immediately, the Provider must in accordance with any Guidelines:

- (a) ~~identify and assign a~~ immediately record the relevant Participant's Job Seeker ID ~~to~~ against the Work for the Dole Place ~~on the Department's IT Systems~~; and
- (b) commence ~~the Fully Eligible the relevant~~ Participant in the Work for the Dole Place within ~~five ten~~ Business Days of the Provider claiming it.

**GDV 1 GDV 2**

- 108.9 If the Provider fails to comply with clauses 108.7(b) or 108.8(b), the Department may advertise the Work for the Dole Place as available to other Employment Providers on the Department's IT Systems without Notice to the Provider, unless the relevant Activity Host Organisation requests a change to the start date of the relevant Work for the Dole activity beyond the timeframes referred to in clauses 108.7(b) or 108.8(b), and the Department agrees, with the Provider or the relevant Work for the Dole Coordinator, to the relevant extension of time.
- 108.10 Notwithstanding clauses 108.6 to 108.8, the Department may, at its absolute discretion and for any reason, by providing Notice to the Provider:
- (a) remove from the Provider any Work for the Dole Place that has been previously advertised on the Department's IT Systems and claimed by the Provider, provided that a Fully Eligible Participant has not yet commenced in that place, and where such Notice is received by the Provider, it must not act to fill the relevant place; and
  - (b) allocate to the Provider any Work for the Dole Place that has been previously advertised on the Department's IT Systems and claimed by another Employment Provider, and where such Notice is received by the Provider, it must act to fill the relevant place.

*Work for the Dole Places secured by the Provider*

- 108.11 The Provider may identify and secure potential Work for the Dole Places itself, but in doing so it should give priority to securing such places in Individual Hosted Activities that are of six continuous months duration over any other type and length of Work for the Dole Places.
- 108.12 If the Provider identifies and secures a potential Work for the Dole Place itself, it must, in accordance with any Guidelines and prior to the commencement of a Fully Eligible Participant in the Work for the Dole Place:
- (a) perform a risk assessment in accordance with clause 110.2;
  - (b) determine if there is any reason why it would not be appropriate for the potential Work for the Dole Place to be filled, including with regard to clause 108.1 and any relevant work, health and safety issues; and
  - (c) if the Provider is satisfied that there is no such reason:
    - (i) comply with clause 110.5; and
    - (ii) fill the Work for the Dole Place with an appropriate Fully Eligible Participant, taking into consideration any relevant circumstances and work restrictions of the Fully Eligible Participant and the characteristics of the Work for the Dole Place.

*Note: Where the Provider identifies and secures a potential Work for the Dole Place itself, it is not required to advertise the Work for the Dole Place to other Employment Providers but may do so if it chooses.*

*Commencement of Fully Eligible Participants in Work for the Dole Places*

- 108.13 Subject to any Guidelines, the Provider must, prior to the commencement of a Fully Eligible Participant in any Work for the Dole Place:
- (a) negotiate and execute an Activity Host Organisation Agreement with each Activity Host Organisation that hosts the Work for the Dole Place;
  - (b) comply with clause 110.3, if relevant; and
  - (c) ensure that the Work for the Dole Place is appropriate for the Fully Eligible Participant being considered for placement, taking into consideration any relevant circumstances and work restrictions.

*Replacement of Fully Eligible Participants in Work for the Dole Places*

- 108.14 Where the Provider has commenced a Fully Eligible Participant in an Individual Hosted Activity, and the Fully Eligible Participant subsequently leaves the relevant Work for the Dole Place, the Provider must, if the Activity Host Organisation wishes to continue the relevant Work for the Dole activity, replace the Fully Eligible Participant in that place and do so in a timely manner.
- 108.15 Where the Provider has commenced a Fully Eligible Participant in a Group Based Activity and the Fully Eligible Participant subsequently leaves the relevant Work for the Dole Place, and the Activity Host Organisation wishes to continue the relevant Work for the Dole activity:
- (a) the Provider should replace that Fully Eligible Participant in that place within five business days; and
  - (b) if the Provider does not do so, and the relevant Work for the Dole Place was previously advertised on the Department's IT Systems, the Department will re-advertise the Work for the Dole Place as available to other Employment Providers on the Department's IT Systems.

*Note: Timeliness in replacing Fully Eligible Participants in Work for the Dole Places and utilisation of Work for the Dole Places will be monitored.*

#### **GDV 1**

##### *Training*

- 108.16 The Provider must ensure that each Fully Eligible Participant participating in Work for the Dole activities receives the training required for the specific activity, including as specified in any relevant risk assessment, or as otherwise specified in any Guidelines.

#### **GDV 2**

##### *Collaboration*

- 108.17 The Provider must develop good working relationships with the Work for the Dole Coordinator(s) and Activity Host Organisations in its Employment Region(s) so as to ensure the successful implementation of Work for the Dole Places and delivery of Work for the Dole.
- 108.18 For the purposes of clause 108.17, the Provider must work with the Work for the Dole Coordinator(s) and Activity Host Organisations in the Provider's Employment Region(s) to:
- (a) plan ahead so that, where relevant, a suitable Work for the Dole Place, with regards to timing, location and any special requirements, is available before each Fully Eligible Participant's Annual Activity Requirements are due for completion;
  - (b) help develop, identify and secure Work for the Dole Places that are suitable for a wide variety of Fully Eligible Participants (i.e. with different characteristics and needs);
  - (c) help meet the needs of Activity Host Organisations;
  - (d) identify best practice in the delivery of Work for the Dole; and
  - (e) facilitate the Work for the Dole Coordinators role in:
    - (i) monitoring the number, nature and delivery of Work for the Dole Places to ensure that Work for the Dole objectives are met; and
    - (ii) managing the distribution of Work for the Dole Places across each Employment Region.
- 108.19 The Department may, at any time and at its absolute discretion, give a direction to the Provider in relation to a Work for the Dole Place, including a direction that a Work for the Dole Place is:
- (a) to be reallocated to another Employment Provider;
  - (b) not to be used; or
  - (c) to be used, or used differently, within a specific timeframe,

and if the Provider receives such a direction, the Provider must:

- (d) immediately take any action required by the direction; and
- (e) continue to perform the Services in accordance with the direction.

108.20 The Department may, at any time, provide to Work for the Dole Coordinators in the Provider's Employment Region(s) any information recorded on the Department's IT Systems regarding the number and details of Fully Eligible Participants serviced by the Provider who are eligible for Work for the Dole.

*Insurance for Work for the Dole activities exclusively on private property*

108.21 Subject to clause 108.19, where Work for the Dole activities involve work exclusively on private property and are:

- (a) a ~~Community Action Group Activity or a Project of National Significance~~ Community Support Project; or
- (b) any other activity specified in any Guidelines,

the Provider must ensure that, for the duration of the activities, there is public liability insurance, written on an occurrence basis, with a limit of indemnity of at least \$10 million in respect of any one occurrence, which covers the liability of the lessor or owner of the land on which the activities take place, including to Fully Eligible Participants.

#### GDV 1

108.22 Where the Provider cannot ensure that there is public liability insurance in accordance with clause 108.21, the Provider must not provide, Broker or Purchase the activities without the Department's prior written approval.

*Note: The Department has purchased personal accident insurance, and public and products liability insurance that covers Stream Participants who are undertaking particular approved Activities, in employment assistance programmes. The Provider should refer to the Insurance Readers Guide and insurance policies on the Provider Portal for further details.*

*The Department has also purchased public and products liability insurance for Activity Host Organisations, owners of private property, ~~or~~ land lease holders and farms who are receiving assistance on their property from ~~Stream Participants~~ job seekers undertaking Activities Work for the Dole – Community Support Projects. This insurance covers liability where a claim is denied under the Activity Host Organisation, owner or lease holder or farm's own public liability insurance policy because that policy excludes particular claims arising in relation to Work for the Dole – Community Support Projects. A copy of this policy is available on the Provider Portal. The amount and form of these insurances is at the Department's absolute discretion.*

#### GDV 2

*Transport*

108.23 If required under an Activity Host Organisation Agreement to provide transport for Fully Eligible Participants, the Provider must do so in accordance with any Guidelines.

### 109. Work Experience Programme Placements

#### GDV 1

109.1 Subject to clause 109.2, ~~t~~The Provider may provide Purchase, Broker or arrange ~~up to four weeks of an Unpaid Work Experience Placement~~ National Work Experience Programme Placements for:

- (a) eligible Fully Eligible Participants (Mutual Obligation), as part of meeting their Annual Activity Requirements ~~or at any other time~~; and
- (b) other eligible Stream Participants, if specified ~~under in~~ their Job Plan,

but only:

- (c) if ~~each the Unpaid Work Experience Placement~~ National Work Experience Programme Placement does not, in whole or in part, involve work which would have been undertaken by a paid worker if the ~~Unpaid Work Experience Placement~~ National Work Experience Programme Placement had not taken place; ~~and~~
  - (d) if the Provider is satisfied that, for each National Work Experience Programme Placement, there is a likelihood that the relevant Stream Participant will obtain paid employment with the relevant Activity Host Organisation following the National Work Experience Programme Placement, and the Provider has made an assessment of the likely length of that employment; and
- ~~(d)~~(e) in accordance with any Guidelines.

#### GDV 1

109.2 The Provider must ensure that each National Work Experience Programme Placement does not exceed a maximum of four weeks duration with a maximum of 25 hours participation per week.

*Note: where the Provider has assessed, for the purpose of clause 109.1(d), that the likely length of a subsequent paid employment opportunity is for less than six months the placement should be for less than the maximum of four weeks (e.g. less than two weeks).*

#### GDV 1

109.3 ~~109.2~~ Where the Provider places an eligible Stream Participant into ~~an Unpaid Work Experience Placement a~~ National Work Experience Programme Placement, the Provider must, prior to the Stream Participant starting that ~~Unpaid Work Experience Placement~~ National Work Experience Programme Placement, ensure that:

- (a) the Stream Participant; and
- (b) the Activity Host Organisation,

have signed an agreement as specified by the Department in any Guidelines.

#### GDV 1

### 110. Work health and safety

110.1 ~~Prior to At~~ the commencement of Work for the Dole activities, Voluntary Work or ~~an Unpaid Work Experience Placement a~~ National Work Experience Programme Placement, and throughout these Activities, the Provider must, in accordance with any Guidelines, satisfy itself that there is a safe system of work in place, including that the relevant Activity Host Organisation is complying with work health and safety requirements relevant to the jurisdiction in which the Activity occurs.

#### GDV 1

110.2 The Provider must, in accordance with any Guidelines:

- (a) undertake a risk assessment:
    - (i) for all Voluntary Work and ~~Unpaid Work Experience Placements~~ National Work Experience Programme Placements; and
    - (ii) for Work for the Dole activities, but only if the Provider itself identifies and secures the relevant potential Work for the Dole Place; and
    - (iii) in any case, for each individual Stream Participant, with regard to their potential participation in any Work for the Dole activities, Voluntary Work or ~~Unpaid Work Experience Placement~~ National Work Experience Programme Placements,
- ~~and~~ prior to the commencement of:
- (iv) any such Activities; and

- (v) each Stream Participant in such Activities; ~~and~~
- (b) retain Records of each risk assessment referred to in clause 110.2(a) and any action taken in accordance with the risk assessment, and provide the relevant Records to the Department upon request; ~~and~~
- (c) ensure that each Activity Host Organisation is obliged to immediately advise the Provider of any proposed or actual changes to the tasks being undertaken by a Participant involved in a Work for the Dole activity, Voluntary Work or a National Work Experience Programme Placement or the circumstances in which those tasks are being undertaken.

#### GDV 1 GDV 2

110.3 If the Provider is the Lead Provider in relation to a Work for the Dole Place, it must be in accordance with any Guidelines:

- (a) when negotiating the relevant Activity Host Organisation Agreement, confirm with the relevant Activity Host Organisation whether:
  - (i) any required actions, identified in the relevant risk assessment, have been undertaken; and
  - (ii) there have been any significant changes in relation to the relevant Work for the Dole Place, including work, health and safety issues, since the date of the relevant risk assessment;
- (b) if:
  - (i) any required actions, identified in the relevant risk assessment, have not been undertaken, ensure that all such actions are undertaken; and
  - (ii) there have been changes as specified at clause 110.3(a)(ii), review and revise the relevant risk assessment and take all appropriate action, or ensure that all appropriate action is taken, to address any such changes,

before commencing any Fully Eligible Participant in the Work for the Dole Place, and at all relevant times thereafter; and
- (c) if the Provider is advised by the relevant Activity Host Organisation during the course of the Work for the Dole Place that there have been significant changes in relation to the relevant Work for the Dole Place, immediately review and revise the relevant risk assessment and take all appropriate action, or ensure that all appropriate action is taken, to address any such changes.

110.4 If the Provider does not itself employ a Competent Person relevant to meeting the obligations at clauses 110.1, 110.2 and 110.3, it must engage a relevant Competent Person, as required, for this purpose.

110.5 Prior to the commencement of a Stream Participant in Work for the Dole activities, Voluntary Work or ~~an Unpaid Work Experience Placement~~ a National Work Experience Programme Placement, and at all times during each Activity, the Provider must, in accordance with any Guidelines:

- (a) examine the relevant risk assessment to ensure that the Work for the Dole activities, Voluntary Work or ~~Unpaid Work Experience Placement~~ National Work Experience Programme Placements is appropriate for the Stream Participant being considered for placement, with regard to their health and safety, taking into consideration any relevant circumstances and work restrictions;
- (b) for Voluntary Work and ~~Unpaid Work Experience Placements~~ National Work Experience Programme Placements, ensure that any required actions, identified in the relevant risk assessment, have been undertaken;



- (c) identify any training, including work health and safety training, that will be required to ensure that the Stream Participant can participate in the activities safely, and ensure that training of sufficient length and quality is provided to all Stream Participants by the Activity Host Organisation at the commencement and for the duration of the Activities;
- (d) ensure that appropriate facilities (such as toilets and access to drinking water) will be available to all Stream Participants for the duration of the Activities;
- (e) identify if any specific equipment, clothing or materials are required for Stream Participants to participate safely in the relevant activities, and ensure that such materials will be provided to Stream Participants;
- (f) ensure that the Stream Participant being considered for placement in the Activity has been advised of the process for reporting any work health and safety issues regarding the Activities; and
- (g) purchase or fund additional insurance for the Work for the Dole activities, Voluntary Work or Unpaid Work Experience Placement, if required.

## GDV 1

### *Incidents*

- 110.6 Whether an Activity is conducted by the Provider, a Subcontractor or an Activity Host Organisation who is not a Subcontractor, the Provider must Notify the Department as soon as possible, and within 24 hours, of any incident involving the Activity, including:
- (a) any accident, injury or death occurring during, or as a result of, the Activity, including in relation to a Stream Participant or a member of the public;
  - (b) any incident which relates to a work, health and safety issue; and
  - (c) any incident that may negatively impact upon the Department or bring the Services into disrepute.
- 110.7 Where an incident referred to in clause 110.6 is an accident, or involves injury or death, the Provider must also, as soon as possible, and within 24 hours:
- (a) Notify the Department's insurance broker as specified in any Guidelines;
  - (b) submit an incident report to the Department's insurance broker (in the form required by the Department's insurance broker as specified in any Guidelines) giving full details of the accident, injury or death; and
  - (c) provide a copy of the incident report to the Account Manager.
- 110.8 The Provider must comply with any instructions issued by the Department or the Department's insurance broker, and any Guidelines, in relation to insurance purchased by the Department for Stream Participants.

## **111. Supervision**

*Note: Supervisors may be engaged/employed by the Provider to supervise Activities, or may be engaged/employed by Activity Host Organisations to supervise Activities that they provide.*

- 111.1 The Provider must, in accordance with any Guidelines, ensure that:
- (a) it provides adequate and appropriate Supervision for all Work for the Dole activities, Voluntary Work and ~~Unpaid Work Experience Placements~~ [National Work Experience Programme Placements](#) so as to ensure that relevant Stream Participants are undertaking appropriate tasks and operating in a healthy and safe environment; and

- (b) where Work for the Dole activities, Voluntary Work and ~~Unpaid Work Experience Placements National Work Experience Programme Placements~~ involve people who are elderly, disabled or otherwise vulnerable or Children (excluding other Participants) ~~from vulnerable cohorts~~, the Supervision provided is continuous over the entire duration of the Activity.

**GDV 1**

- 111.2 The Provider must ensure that relevant checks are conducted on all Stream Participants and all relevant Personnel and Supervisors in accordance with clause 78 whenever an Activity involves close proximity with people who are elderly, disabled or otherwise vulnerable or Children (excluding other Participants) ~~from vulnerable cohorts~~.

**GDV 1**

- 111.3 The Provider must ensure that all relevant Personnel and Supervisors for Work for the Dole activities, Voluntary Work and ~~Unpaid Work Experience Placements National Work Experience Programme Placements~~:
- (a) are fit and proper persons to be involved in the Activities;
  - (b) have a high level of skill/knowledge, training and/or experience in:
    - (i) the part of each Activity in which they are engaged; and
    - (ii) working with, training and supervising persons in such activities; and
  - (c) have had checks as specified in clause 8.1 and have met any additional statutory requirements (including under state and territory law), prior to being given responsibility for the Supervision of Stream Participants.

**GDV 1**

- 111.4 The Department may give Notice, on reasonable grounds related to the performance of Work for the Dole activities, Voluntary Work and ~~Unpaid Work Experience Placements National Work Experience Programme Placements~~, requiring the Provider to remove a Supervisor from work on the Activities.

**GDV 1**

- 111.5 Where the Department gives Notice under clause 111.4, the Provider must, at its own cost, promptly arrange for the removal of such a Supervisor from work on the Activities and their replacement with one or more Supervisors acceptable to the Department.
- 111.6 The Provider must ensure that each Supervisor, whether engaged by the Provider or engaged by an Activity Host Organisation, is required to notify the Provider of the non-attendance at all relevant Activities, or any other non-compliance with the Activities, of a Stream Participant as soon as practicable, but no later than at the end of the relevant working week.
- 111.7 All Supervisors who:
- (a) are contracted by the Provider to provide Supervision for Work for the Dole activities, Unpaid Work Experience Placements or Voluntary Activities that the Provider provides itself; and
  - (b) are not employees of the Provider,
- are deemed to be approved Subcontractors for the purposes of clause 48.1(a).

**112. Other matters**

- 112.1 The Provider must:

- (a) ensure that each Stream Participant and Activity Host Organisation, and any Supervisor engaged by the Provider, are aware that the Activity Host Organisation, the Provider or the Department may terminate an Activity at any time; and
  - (b) reserve a right of termination in any relevant agreement to take account of these rights of termination and, where appropriate, make use of that right in the event of a termination of an Activity; and
  - (c) ensure that each Stream Participant is aware of the process to lodge a complaint or voice safety concerns about an Activity.
- 112.2 The Provider must ensure that, to the extent allowed by law and unless otherwise expressly agreed by the parties, there is no intention or understanding on the part of an Activity Host Organisation or a Stream Participant that any Activity itself will create legal relations between the Stream Participant and:
- (a) the Department;
  - (b) the Provider; or
  - (c) the Activity Host Organisation.

### **Section B173.3 – Job Search Requirements**

#### **GDV 1**

#### **113. Job Search Requirements**

113.1 The Provider must ensure that a Delegate:

- (a) specifies the Job Search Requirement for each Fully Eligible Participant (Mutual Obligation) in their Job Plan; and
- (b) ensures that the Job Search Requirement is appropriately recorded in the Fully Eligible Participant's (Mutual Obligation) Job Plan at all times during their Period of Service.

113.2 The Provider must ensure that each Fully Eligible Participant (Mutual Obligation) is aware at all times:

- (a) of their current Job Search Requirement;
- (b) that they must record and provide details of their Job Searches directly to the Provider and the frequency of such provision, and do so as specified in any Guidelines; and
- (c) how they can record their Job Searches for the purposes of clause 113.2(b).

113.3 Each month of the Term of this Deed, the Provider must:

- (a) actively monitor and determine whether each Fully Eligible Participant (Mutual Obligation) has appropriately met their Job Search Requirement during each Job Search Period;
- (b) to the extent that a Fully Eligible Participant (Mutual Obligation) does not use [Australian JobSearch the jobactive Website](#) to record their Job Searches, obtain from the Fully Eligible Participant (Mutual Obligation) all Records required to document each Job Search in accordance with any Guidelines, retain those Records in accordance with this Deed and provide them to the Department on request; and
- (c) use its best endeavours to ensure that each Fully Eligible Participant (Mutual Obligation) meets their Job Search Requirement.

#### **GDV 1**

### **Section B183.4 – Non-compliance monitoring and action**

#### **GDV 1**

## 114. Monitoring

114.1 The Provider must:

- (a) regularly and actively monitor the compliance of Fully Eligible Participants (Mutual Obligation) with their Mutual Obligation Requirements, including their attendance at Appointments, entering into a current Job Plan, undertaking of Job Searches, fulfilling of their Annual Activity Requirement and any other compulsory activity included in their Job Plan and as notified to them;
- (b) monitor the participation of Disability Support Pension Recipients (Compulsory Requirements), including their attendance at Appointments, entering into a current Job Plan and participation in Activities, as specified in any Guidelines; ~~and~~
- (c) where the Provider determines that:
  - (i) a Fully Eligible Participant (Mutual Obligation) has failed to comply with their Mutual Obligation Requirements; ~~or~~
  - (ii) a Disability Support Pension Recipient (Compulsory Requirements) has not attended an Appointment, entered into a current Job Plan or appropriately participated in any Activities, as specified in any Guidelines,

promptly take action in accordance with this Deed, including this Section B3.4 and any Guidelines.

### *Monitoring and reporting for ParentsNext Volunteers*

114.2 The Provider must, in accordance with any Guidelines:

- (a) monitor the participation of ParentsNext Volunteers in Activities;
- (b) where the Provider determines that a ParentsNext Volunteer has failed to attend, or participate appropriately in, an Activity, notify their ParentsNext Provider as soon as practicable; and
- (c) regularly report to the ParentsNext Provider for each ParentsNext Volunteer on the participation of that ParentsNext Volunteer in the Activities.

### **GDV 2**

## 115. Non-compliance action for Mutual Obligation Requirements

*Non-compliance in relation to Appointments, compulsory activities included in a Job Plan and job interviews with prospective Employers*

115.1 Where the Provider becomes aware that any Fully Eligible Participant (Mutual Obligation) has ~~not~~ failed to comply with one or more of their Mutual Obligation Requirements by failing to:

- (a) attended ~~ed~~ an Appointment (including a Re-engagement Appointment); or
- (b) ~~, or has failed to~~ attend, or participate appropriately in:
  - (i) a compulsory activity included in their Job Plan; or
  - (ii) a job interview with a prospective Employer,

the Provider must in accordance with any Guidelines, on the same Business Day on which the Provider becomes aware of the ~~event~~ failure to comply, ~~and in accordance with any Guidelines:~~

- (c) confirm that no prior contact has been made by the Fully Eligible Participant (Mutual Obligation) with the Provider that evidences that the Fully Eligible Participant (Mutual Obligation) had a Valid Reason for ~~not complying~~ the failure to comply;

- (d) if the Provider assesses that there is no Valid Reason evident for the failure to comply ~~there is no such Valid Reason evident~~, as soon as possible on the same Business Day as that assessment, attempt to contact the Fully Eligible Participant (Mutual Obligation) to assess if they had a Reasonable Excuse for ~~not complying~~ the failure to comply; and
- (e) record this in the Department's IT Systems.

*Note 1: The principal difference between a Valid Reason and a Reasonable Excuse is that Valid Reason is operative prior to the ~~event~~ failure to comply (i.e. if a Fully Eligible Participant (Mutual Obligation) contacts the Provider to say they cannot meet their Mutual Obligation Requirements before failing to do so), whereas Reasonable Excuse is operative after the ~~event~~ failure to comply (i.e. when a Fully Eligible Participant (Mutual Obligation) has failed to meet their Mutual Obligation Requirements and has not advised that they cannot meet the requirements prior to the ~~event~~ failure to comply occurring) – see the relevant definitions.*

*Note 2: Instances of non-compliance with Mutual Obligation Requirements are detailed in Guidelines.*

## GDV 2

115.2 If, on the same Business Day on which the Provider becomes aware of the failure to comply referred to in clause 115.1, the Provider assesses that the relevant Fully Eligible Participant (Mutual Obligation) had a Valid Reason or a Reasonable Excuse for ~~not complying~~ the failure to comply referred to in clause 115.1, the Provider must, in accordance with any Guidelines:

- (a) record the ~~determination~~ reason in Department's IT Systems; and
- (b) use its best endeavours to ensure that the Fully Eligible Participant (Mutual Obligation) complies with their Mutual Obligation Requirements at the next available opportunity.

## GDV 2

115.3 If, on the day on which the Provider becomes aware of the failure to comply referred to in clause 115.1, the Provider:

- (a) has, ~~on the same Business Day~~, made contact with the Fully Eligible Participant (Mutual Obligation), and assesses that the Fully Eligible Participant (Mutual Obligation) does not have a Valid Reason or Reasonable Excuse for ~~not complying~~ the failure to comply; or
- (b) has not been able to make contact with the Fully Eligible Participant (Mutual Obligation) ~~on the same Business Day on which the Provider becomes aware of the event~~,

the Provider must, in accordance with any Guidelines, comply with clauses 115.4 to 115.14 as relevant.

## GDV 2

### *Appointments*

115.4 In relation to a Fully Eligible Participant's (Mutual Obligation) failure to attend ~~non-attendance at an Appointment (including a Re-engagement Appointment) by a Fully Eligible Participant (Mutual Obligation)~~, the Provider must, on the same Business Day of becoming aware of the ~~event~~ failure to attend, determine whether any action should be taken under the job seeker compliance framework in relation to the ~~event~~ failure to attend in accordance with any Guidelines.

## GDV 2

115.5 If the Provider determines that the action as specified in clause 115.4 should be taken, the Provider must document any information relevant to the ~~event~~ failure to attend referred to in that clause in the Department's IT Systems; and

- (a) if clause 115.3(a) applies:

- (i) submit a Non-Attendance Report or Provider Appointment Report, as relevant, to DHS via the Departments IT Systems on the same Business Day as the Appointment was scheduled to occur; and
  - (ii) unless otherwise specified in any Guidelines, in consultation with the Fully Eligible Participant (Mutual Obligation), book a Re-engagement Appointment for them to occur within the next two Business Days and advise them of the Appointment; and
- (b) if clause 115.3(b) applies:
- (i) submit a Non-Attendance Report to DHS via the Department's IT Systems on the same Business Day that the Appointment was scheduled to occur;
  - (ii) on making contact with the Fully Eligible Participant (Mutual Obligation), assess whether they had a Reasonable Excuse for ~~not complying~~ the failure to attend referred to in clause 115.4;
  - (iii) if the Provider assesses that the Fully Eligible Participant (Mutual Obligation) did not have a Reasonable Excuse, ~~determine whether any further action should be taken under the job seeker compliance framework in relation to the event~~ the failure to attend; and for the failure to attend referred to in clause 115.4
  - ~~(iv) if the Provider determines~~ assesses that such action should be taken:
    - (A) document any information relevant to the ~~event~~ the failure to attend referred to in clause 115.4 in the Department's IT Systems and submit a Provider Appointment Report to DHS via the Department's IT Systems on the same Business Day as the Provider assesses that the Fully Eligible Participant (Mutual Obligation) did not have a Reasonable Excuse; and
    - (B) unless otherwise specified in any Guidelines, in consultation with the Fully Eligible Participant (Mutual Obligation), book a Re-engagement Appointment for them to occur within the next two Business Days after the Provider assesses that the Fully Eligible Participant (Mutual Obligation) did not have a Reasonable Excuse, and advise them of the Appointment; ~~or.~~

115.6 ~~(v)~~ If the Provider determines that ~~such~~ the action as specified in clause 115.4 should not be taken, unless otherwise specified in any Guidelines, in consultation with the Fully Eligible Participant (Mutual Obligation), book a Re-engagement Appointment for the Fully Eligible Participant (Mutual Obligation) to occur within the next two Business Days after the assessment that such action should not be taken, and advise them of the Appointment.

#### GDV 2

115.7 ~~115.6~~ Where the Provider has, in accordance with this Section B3.4, reported ~~non-compliance of a Fully Eligible Participant (Mutual Obligation)~~ any failure to comply referred to in clause 115.1 relating to ~~the an~~ Appointments (including a Re-engagement Appointments) to DHS, the Provider must ensure that the relevant Fully Eligible Participant (Mutual Obligation) has, in accordance with any Guidelines, an adequate opportunity to book another Appointment with the Provider.

*Failure to attend, or participate appropriately in, compulsory activities included in a Job Plan or ~~at~~ a job interview with a prospective Employer*

#### GDV 2

115.8 ~~115.7~~ In relation to a Fully Eligible Participant's (Mutual Obligation) failure to attend, or participate appropriately in, a compulsory activity included in their Job Plan or a job interview with a prospective Employer, the Provider must, on the same Business Day of becoming aware of the ~~event~~ failure, determine whether any action should be taken under the job seeker compliance framework in relation to the ~~event~~ failure in accordance with any Guidelines.

## GDV 2

115.9 ~~115.8~~ If the Provider determines that action as specified in clause ~~115.7~~ 115.8 should be taken, the Provider must on the same Business Day of becoming aware of the ~~eventfailure~~ referred to in that clause, document any information relevant to the ~~eventfailure~~ in the Department's IT Systems and, regardless of whether clause 115.3(a) or clause 115.3(b) applies, report the ~~failurenon-compliance~~ to DHS via the Department's IT Systems.

## GDV 2

115.10 ~~115.9~~ If the Provider determines that action referred to in clause ~~115.7~~ 115.8 should not be taken, the Provider must, in accordance with any Guidelines:

- (a) record the determination; and
- (b) use its best endeavours to ensure that the Fully Eligible Participant (Mutual Obligation) complies with their Mutual Obligation Requirements at the next available opportunity.

## GDV 2

### *Non-compliance with Job Search Requirements*

115.11 ~~115.10~~ The Provider must, in accordance with any Guidelines:

- (a) within ten Business Days of the end of each Job Search Period, determine whether each Fully Eligible Participant (Mutual Obligation) has ~~appropriately met~~complied with their Job Search Requirement for that Job Search Period; and
- (b) if the Provider determines that ~~the relevant Job Search Requirement has been appropriately meta~~ Fully Eligible Participant (Mutual Obligation) has complied with their Job Search Requirement for the ~~relevant Job Search Period~~, the Provider must continue to monitor the Fully Eligible Participant's (Mutual Obligation) compliance with their Job Search Requirement in accordance with clause 113.3, and use its best endeavours to ensure that the Fully Eligible Participant (Mutual Obligation) ~~meets~~complies with their Job Search Requirement;
- (c) if the Provider determines that ~~the relevant Job Search Requirement has not been appropriately meta~~ Fully Eligible Participant (Mutual Obligation) has failed to comply with their Job Search Requirement for the ~~relevant Job Search Period~~, it must, on the same Business Day as that assessment, determine whether any action should be taken under the job seeker compliance framework in relation to the ~~eventfailure to comply~~; and
- (d) if the Provider determines that such action:
  - (i) should be taken, on the same Business Day as that assessment;:
    - (A) ~~(i)~~ document that the Fully Eligible Participant (Mutual Obligation) has ~~not satisfactorily met~~failed to comply with their Job Search Requirement and submit any information relevant to the ~~eventfailure to comply with~~ in the Department's IT Systems; and
    - (B) ~~(ii)~~ report ~~the non-compliance~~ that the Fully Eligible Participant (Mutual Obligation) has failed to comply with their Job Search Requirement to DHS via the Department's IT Systems; and

~~(e) if the Provider determines that such action~~

- (ii) should not be taken, on the same Business Day; as that assessment:
  - (A) ~~(i)~~ record its determination in the Department's IT Systems;
  - (B) ~~(ii)~~ continue to monitor the Fully Eligible Participant's (Mutual Obligation) compliance with their Job Search Requirement in accordance with clause 113.3; and

- (C) ~~(iii)~~ use its best endeavours to ensure that the Fully Eligible Participant (Mutual Obligation) ~~meets~~complies with their Job Search Requirement.

## GDV 2

### *Non-compliance with all other Mutual Obligation Requirements*

- 115.12 ~~115.11~~ Where the Provider becomes aware~~determines~~ that any Fully Eligible Participant (Mutual Obligation) has ~~not met~~failed to comply with one or more of their ~~relevant~~ Mutual Obligation Requirements, other than their Job Search Requirement and those requirements specified in clause 115.1, the Provider must:
- (a) on the same Business Day on which the Provider becomes aware of the ~~event~~failure to comply, and in accordance with any Guidelines, attempt to contact the Fully Eligible Participant (Mutual Obligation) to assess if they have a Reasonable Excuse for ~~not complying~~the failure to comply; and
  - (b) record the attempt(s) in the Department's IT Systems.

## GDV 2

- 115.13 ~~115.12~~ Where the Provider has, on the same Business Day on which the Provider becomes aware of the failure to comply referred to in clause 115.12, made contact with the Fully Eligible Participant (Mutual Obligation) and assessed that the Fully Eligible Participant (Mutual Obligation) does not have a Reasonable Excuse for ~~not complying~~the failure to comply, it must, in accordance with any Guidelines:
- (a) determine whether any action should be taken under the job seeker compliance framework in relation to the ~~event~~the failure to comply; and
  - (b) if the Provider determines that such action should be taken, on the same Business Day of becoming aware of the ~~event~~failure to comply, document any information relevant to the ~~event~~ failure to comply in the Department's IT Systems and report the ~~non-compliance~~failure to comply to DHS via the Department's IT Systems.

## GDV 2

- 115.14 ~~115.13~~ Where the Provider has not been able to make contact with the Fully Eligible Participant (Mutual Obligation) on the same Business Day on which the Provider becomes aware of the ~~event~~failure to comply referred to in clause 115.12, it must:
- (a) determine whether any action should be taken under the job seeker compliance framework in relation to the ~~event~~failure to comply; and
  - (b) if the Provider determines that such action should be taken, on the same Business Day of becoming aware of the ~~event~~failure to comply, document any information relevant to the ~~event~~failure to comply in the Department's IT Systems and report the ~~non-compliance~~failure to comply to DHS via the Department's IT Systems.

## GDV 2

### **116. Non-compliance action for Disability Support Pension Recipients (Compulsory Requirements)**

- 116.1 Where the Provider becomes aware that any Disability Support Pension Recipient (Compulsory Requirements) has ~~not~~failed to comply with one or more of their Mutual Obligation Requirements by failing to:
- (a) ~~attended~~ an Appointment;;
  - (b) ~~entered~~ into a current Job Plan; or
  - (c) appropriately participated~~d~~ in any Activities as specified in any Guidelines,



the Provider must attempt to contact the Disability Support Pension Recipient (Compulsory Requirements) on the same Business Day that they become aware of the ~~non-compliance failure to comply~~.

## GDV 2

116.2 If the Provider has been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within ten Business Days of becoming aware of the ~~non-compliance failure to comply~~ referred to in clause 116.1 and in accordance with any Guidelines:

- (a) determine whether the ~~non-compliance failure to comply~~ should be reported to DHS;
- (b) if the Provider determines that the ~~non-compliance failure to comply~~ should be reported to DHS, document any information relevant to the ~~event failure to comply~~ in the Department's IT Systems and report the ~~non-compliance failure to comply~~ to DHS via the Department's IT Systems; and
- (c) if the Provider ~~determines~~assesses that the failure to comply should not be reported to DHS, use its best endeavours to ensure that the Disability Support Pension Recipient (Compulsory Requirements) complies with their Compulsory Requirements at the next available opportunity.

## GDV 2

116.3 If the Provider has not been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within ten Business Days of becoming aware of the ~~non-compliance failure to comply~~ referred to in clause 116.1:

- (a) determine whether any action should be taken under ~~the job seeker compliance framework~~arrangments in relation to the ~~non-compliance failure to comply~~ as specified in any Guidelines; and
- (b) if the Provider determines that such action should be taken, document any information relevant to the ~~event failure to comply~~ in the Department's IT Systems and report the ~~non-compliance failure to comply~~ to DHS via the Department's IT Systems.

## GDV 2

### 117. Comprehensive Compliance Assessment

117.1 The Provider may request that a Comprehensive Compliance Assessment be undertaken by DHS on the Department's IT Systems, but must only do so in accordance with Guidelines.

### 118. Compliance Activities

118.1 Where directed by DHS to do so, the Provider must, in accordance with any Guidelines:

- (a) immediately arrange for a Fully Eligible Participant (Mutual Obligation) to participate in Compliance Activities, as directed by DHS;
- (b) ensure that a Delegate updates the Fully Eligible Participant's (Mutual Obligation) Job Plan accordingly;
- (c) closely monitor the Fully Eligible Participant's (Mutual Obligation) participation in the Compliance Activities; and
- (d) notify DHS via the Department's IT system if the Fully Eligible Participant (Mutual Obligation) does not attend the Compliance Activities as required.

### 119. Delegate obligations

119.1 In relation to each Fully Eligible Participant (Mutual Obligation) and Disability Support Pension Recipient (Compulsory Requirements), the Provider must ensure that Delegates:

- (a) are aware of, fully understand, and receive training on, the powers and functions that have been delegated to them under the Social Security Law including in relation to:
  - (i) preparation, approval and variation of Job Plans; and
  - (ii) for Fully Eligible Participants (Mutual Obligation):
    - (A) specifying Mutual Obligation Requirements in Job Plans; and
    - (B) following the issuance of a Non-Attendance Report or a Provider Appointment Report under clause 115, notifying them of the relevant impact on their Income Support Payments;
- (b) have, prior to taking action under the job seeker compliance framework in relation to any Fully Eligible Participant (Mutual Obligation), successfully completed job seeker compliance framework training via the online Learning Centre;
- (c) for the purposes of clause (B), confirm, at least once every six months following the Commencement of the relevant Fully Eligible Participant (Mutual Obligation), that all relevant contact details are accurately reflected in the Department's IT Systems, including the Fully Eligible Participant's (Mutual Obligation) phone number(s), email address and postal address; and
- (d) comply with the Social Security Law.

## **120. Recording Attendance**

120.1 The Provider must, as relevant and in accordance with any Guidelines:

- (a) record all attendance for Appointments (including Re-engagement Appointments) in the Provider's Electronic Diary by close of business on the day that the Appointment is scheduled to occur; and
- (b) ensure that Records of attendance for activities specified in a Fully Eligible Participant's Job Plan are kept in accordance with this Deed including any Guidelines and provided to the Department on request.

## **121. Issuing and recording Notification**

121.1 Where:

- (a) a Fully Eligible Participant (Mutual Obligation) or Disability Support Pension Recipient (Compulsory Requirements) must meet a certain requirement to remain eligible for Income Support Payments; and
- (b) the full details of the requirement (for example, the time, date and location that the requirement is to be undertaken) are not specified in their Job Plan; and
- (c) they have not otherwise been notified of the full details of that requirement,

the Provider must, in accordance with any Guidelines:

- (d) notify them of the full details of that requirement; and
- (e) where the Department's IT Systems are not used to generate the notice provided to the Fully Eligible Participant (Mutual Obligation) or Disability Support Pension Recipient (Compulsory Requirements) under clause 121.1(d), document the details of the relevant notice in the Department's IT Systems, retain Records of the notice and provide those Records to the Department on request.

*Note: A Fully Eligible Participant's (Mutual Obligation) Job Search Requirement in their Job Plan is considered to be sufficient notice of their Job Search Requirement.*

## **CHAPTER B4 – PAYMENTS**

## Section B4.1 – Payments

### GDV 1

#### 122. Advance Payments

122.1 The Department may:

- (a) at its absolute discretion, ~~from time to time~~, Notify the Provider that the Provider may claim a Payment in advance and the amount that may be claimed; and
- (b) specify in the Notice any other requirements with which the Provider must comply in order to be eligible for an advance payment.

#### GDV 1

122.2 Subject to this Deed, if, after receiving a Notice from the Department under clause 122.1, the Provider claims a Payment in advance, then provided that the Provider has complied with any requirements in the Notice, the Department will pay the Provider the amount of the advance payment as specified in the Notice.

#### *Offsetting of advance Payments*

122.3 On and from the date on which the Department makes a Payment in advance under this clause 122, the Department will, in such amounts and at such times as it determines, offset the Payment against all entitlements to Payments of the Provider under this Deed until the total of the offset entitlements equals the total amount of all Payments made in advance.

122.4 If on the Completion Date the total amount of all Payments made in advance have not been offset under clause 122.3, the difference between:

- (a) the total amount of Payments made in advance; and
- (b) the total amount of the offset entitlements to Payments,

is an overpayment for the purposes of clause 19.

#### 123. Administration Fees

123.1 Subject to this Deed, including this clause 123, the Department will pay the Provider an Administration Fee:

- (a) for each Stream Participant;
- (b) once on Commencement and thereafter at the start of each Administration Fee Period; and
- (c) in accordance with:
  - (i) column 1 [Fee] of Table 2A at Annexure B2, where the Services are provided in a Non-regional Location; and
  - (ii) column 2 [Fee with regional loading] of Table 2A at Annexure B2, where the Services are provided in a Regional Location.

123.2 The Provider must comply with any Guidelines in relation to the payment of Administration Fees.

*Note: The Department has implemented a process of automated payment of Administration Fees which does not require the submission of claims by the Provider.*

123.3 Where a Stream Participant who is on the caseload of another Employment Provider transfers to the Provider for any reason, the Department will pay the Provider a pro-rata amount of the Administration Fees payable for the Stream Participant for the Administration Fee Period in which the date of the transfer occurs, calculated by the Department based on:

- (a) the period of time from the date of the transfer to the end of the Administration Fee Period in which the date of the transfer occurs; and

(b) the relevant rate of payment under Table 2A at Annexure B2.

123.4 Where a Stream Participant on the Provider's caseload moves or will move at a known point in time:

(a) to a Non-regional Location from a Regional Location; or

(b) from a Non-regional Location to a Regional Location,

and the Administration Fee for the Administration Fee Period in which the move occurs or will occur:

(c) has not yet been paid, the Department will pay the Provider in accordance with the relevant rate under Table 2A at Annexure B2 from the date of the move; or

(d) has been paid to the Provider, the Department will adjust the payment of Administration Fee payable and, if the Stream Participant has moved from a Regional Location to a Non-regional Location, **may, at its absolute discretion, will** recover a pro-rata amount of Administration Fees from the Provider as a debt in accordance with clause 21, calculated by the Department based on the difference in the rate between column 1 and column 2 of Table 2A at Annexure B2.

#### **GDV 1**

123.5 Where a Stream Participant transfers, or will transfer at a known point in time, from the Provider to another Employment Provider for any reason and the Administration Fee for the Administration Fee Period in which the transfer occurs or will occur:

(a) has not yet been paid, the Department will only pay the Provider a pro-rata amount of the Administration Fee, calculated by the Department based on the period of time from the commencement of the relevant Administration Fee Period to the date of the transfer; or

(b) has been paid to the Provider, the Department **may, at its absolute discretion, will** recover a pro-rata amount of Administration Fees from the Provider as a debt in accordance with clause 21, calculated by the Department based on the period of time from the commencement of the relevant Administration Fee Period to the date of the transfer.

#### **GDV 1**

123.6 The Department will pay Administration Fees for the last Administration Period under this Deed on a pro-rata basis, calculated by the Department based on the period of time from the commencement of the last Administration Period for each Stream Participant to the Completion Date.

123.7 Where an SPI Participant ceases, or will cease at a known point in time, to be ~~subject to the Stronger Participation Incentives for Job Seekers under 30 measure an SPI Participant~~, and the Administration Fee for the Administration Fee Period in which this event occurs or will occur:

(a) has not been paid, the Department will only pay the Provider a pro-rata amount of the Administration Fees, calculated by the Department based on the period of time from the commencement of the relevant Administration Fee Period to the date of the event; or

(b) has been paid to the Provider, the Department **may, at its absolute discretion, will** recover a pro-rata amount of Administration Fees from the Provider as a debt in accordance with clause 21, calculated by the Department based on the period of time from the date of the event to the end of the relevant Administration Fee Period.

#### **GDV 1 GDV 2**

### **124. Work for the Dole Fees**

124.1 Subject to this clause 124, the Department will pay the Provider the applicable Work for the Dole Fee as set out in Table 2B of Annexure B2:

- (a) in respect of each Work for the Dole Place in an Individual Hosted Activity, when the first Fully Eligible Participant commences in that Work for the Dole Place; and
- (b) in respect of each Work for the Dole Place in a Group Based Activity, in accordance with clause 124.7,

provided that:

- (c) the Work for the Dole Place starts after the relevant Fully Eligible Participant's Commencement; and
- (d) the Provider has complied with Section B3.2 and any requirements for claiming the payment as specified in any Guidelines.

124.2 The Provider is not entitled to payment of an additional Work for the Dole Fee where, under clauses 108.13 and 108.14 or otherwise, a Provider replaces a Fully Eligible Participant who leaves a Work for the Dole Place with another Fully Eligible Participant.

124.3 If a Work for the Dole Place is for less than six months, the Department will pay the Provider a pro-rata amount of the Work for the Dole Fee payable under this clause 124, calculated on the basis of:

- (a) the duration of the Work for the Dole Place and the amounts set out for a six month Work for the Dole Place in Table 2B of Annexure B2; and
- (b) the date of the commencement of the first Fully Eligible Participant in that Work for the Dole Place.

124.4 Subject to clause 124.9, the Provider may only use Work for the Dole Fees:

- (a) to cover the costs of a Fully Eligible Participant in a Work for the Dole Place;
- (b) to offset the costs of Activity Host Organisation hosting a Work for the Dole Place;
- (c) to pay Group Based Activity Overhead Costs; and/or
- (d) otherwise in accordance with any Guidelines.

124.5 Where the Provider sources a Work for the Dole Place itself, it must, in accordance with any Guidelines:

- (a) negotiate with the relevant Activity Host Organisation as to the proportion of the Work for the Dole Fee that will be passed on to the Activity Host Organisation for one or more of the purposes specified in clause 124.4; and
- (b) pass on the agreed proportion of the Work for the Dole Fees to the Activity Host Organisation, and keep appropriate Records of such expenditure.

124.6 Where the Provider claims a Work for the Dole Place that has been sourced by a Work for the Dole Coordinator, the Provider must pass on funds to the Activity Host Organisation for one or more of the purposes specified in clause 124.4 in the amount, and within the timeframe, as agreed between the Activity Host Organisation and the Work for the Dole Coordinator.

*Note: the Provider cannot renegotiate the cost of a Work for the Dole Place that has already been agreed between the Activity Host Organisation and the Work for the Dole Coordinator unless otherwise specified in any Guidelines.*

*Work for the Dole Fees for Group Based Activities*

124.7 Where a Provider has been identified as the Lead Provider for a Group Based Activity, the Provider may claim a Work for the Dole Fee in respect of each Work for the Dole Place in the Group Based Activity, either by way of:

- (a) payment in advance in accordance with clauses 124.9 to 124.13; or
- (b) payment by Reimbursement in accordance with clauses 124.14 to 124.15.

124.8 Where the Provider is identified as the Lead Provider for a Group Based Activity, it must:

- (a) negotiate the relevant Group Based Activity Budget for one or more of the purposes specified in clause 124.4 with:
  - (i) the Activity Host Organisation; and
  - (ii) if the Work for the Dole Place has been sourced by a Work for the Dole Coordinator, also with the Work for the Dole Coordinator;
- (b) negotiate the relevant Activity Host Organisation Agreement with the Activity Host Organisation;
- (c) unless the Activity Host Organisation otherwise agrees, be the primary point of contact for the Activity Host Organisation;
- (d) subject to clauses 124.5 and 124.6, discuss and agree with the other Employment Providers:
  - (i) the proportion of the Work for the Dole Fees to be passed on to those Employment Providers for one or more of the purposes specified in clause 124.4; and
  - (ii) the timeframe in which the Lead Provider will pass on that agreed proportion of the Work for the Dole Fees to those Employment Providers;
- (e) provide the agreed proportion of the Work for the Dole Fees to the other Employment Providers within the agreed timeframe; and
- (f) take any other action as specified in any Guidelines

*Payment in advance to the Lead Provider*

124.9 Subject to clause 124.10 and any Guidelines, if:

- (a) a Group Based Activity has been identified and approved in the Department's IT Systems; and
- (b) the Provider has:
  - (i) been identified as the Lead Provider for the Group Based Activity;
  - (ii) created a Group Based Activity Budget on the Department's IT Systems for that Group Based Activity in accordance with any Guidelines; and
  - (iii) entered the total cost of the Group Based Activity on the Department's IT Systems in accordance with any Guidelines,

the Provider may claim up to 80% of the Work for the Dole Fees (up to a maximum of \$80,000) in respect of the Work for the Dole Places in that Group Based Activity and do so up to 28 calendar days in advance of the start date of the Group Based Activity.

124.10 In addition to any other applicable requirements in any Guidelines, if the Provider makes a claim pursuant to clause 124.9, it must, in the following order:

- (a) acquit the total of all Work for the Dole Fees for the Work for the Dole Places in the Group Based Activity, in accordance with clause 124.11; and
- (b) return to the Department any part of the Work for the Dole Fees not spent in accordance with the Group Based Activity Budget within 10 Business Days of submission of acquittal Report in accordance with clause 124.11.

124.11 For the purposes of clause 124.10(a), the Provider must submit an acquittal Report:

- (a) within 56 calendar days of completion, or cessation, of the relevant Group Based Activity;
- (b) which includes a statement from a properly authorised representative of the Provider showing the actual expenditure of Work for the Dole Fees against the Group Based Activity Budget, and clearly identifying any unexpended Work for the Dole Fees; and

(c) which is to the complete satisfaction of the Department.

124.12 Subject to:

- (a) acceptance of the acquittal Report referred to in clause 124.11 by the Department; and
- (b) the acquittal Report not identifying any unexpended Work for the Dole Fees;

the Provider may claim the balance of the Work for the Dole Fees claimed under clause 124.9 in respect of a Work for the Dole Place in the relevant Group Based Activity.

124.13 If, at any time during the Term of this Deed, the Department determines, at its absolute discretion, that an amount of Work for the Dole Fees paid in advance for a Work for the Dole Place in a Group Based Activity:

- (a) has not been acquitted in accordance with this Deed; or
- (b) is unexpended after the completion of a Group Based Activity,

the Department may, at its absolute discretion, recover some or all of the relevant amount of the Work for the Dole Fees from the Provider as a debt in accordance with clause 21. ~~the relevant amount of the Work for the Dole Fees becomes a debt owed to the Department in accordance with clause 21.~~

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##### *Payment by Reimbursement to the Lead Provider*

124.14 Subject to this Deed, including this clause 124, if the Provider has been identified as the Lead Provider for a Group Based Activity, it may claim a Work for the Dole Fee, in respect of each Work for the Dole Place in that Group Based Activity, as a Reimbursement for expenditure for one or more of the purposes specified in clause 124.4.

124.15 Each claim for Reimbursement made under clause 124.14 must be rendered by the Provider to the Department no later than 56 calendar days after the completion of the relevant Group Based Activity.

##### *Work for the Dole Fees for Individual Hosted Activities - multiple Work for the Dole Places*

124.16 Where there are multiple Work for the Dole Places in an Individual Hosted Activity, and the Provider has been identified as the Lead Provider in relation to that Individual Hosted Activity, the Provider must:

- (a) negotiate the relevant Activity Host Organisation Agreement with the Activity Host Organisation;
- (b) unless the Activity Host Organisation otherwise agrees, be the primary point of contact for the Activity Host Organisation;
- (c) discuss and agree with any other Employment Provider that has claimed a Work for the Dole Place in that Individual Hosted Activity as to how and when the proportion of the Work for the Dole Fees to be provided to the Activity Host Organisation as specified in the relevant Activity Host Organisation Agreement will be provided to the Lead Provider to pass on to the Activity Host Organisation;
- (d) provide the agreed proportion of the Work for the Dole Fees to the Activity Host Organisation within the agreed timeframe; and
- (e) take any other action as specified in any Guidelines.

124.17 Where there are multiple Work for the Dole Places in an Individual Hosted Activity, and the Provider has not been identified as the Lead Provider in relation to that Individual Hosted Activity, the Provider must, in accordance with any Guidelines:

- (a) discuss and agree with the relevant Lead Provider as to how and when the proportion of the Work for the Dole Fees to be provided to the Activity Host Organisation as specified in the relevant Activity Host Organisation Agreement will be provided to the Lead Provider to pass on to the Activity Host Organisation; and

- (b) provide those funds to the Lead Provider within the agreed timeframe.

*Assets purchased with Work for the Dole Fees*

- 124.18 Subject to any contrary written direction by the Department, the Provider owns any Asset acquired using Work for the Dole Fees.
- 124.19 The Provider must, after acquiring an Asset:
- (a) use the Asset only for the purposes of Group Based Activities and in accordance with this Deed; and
  - (b) retain that Asset, and where appropriate in order to reduce the cost of subsequent Group Based Activities, or where directed to do so by the Department, continue to use that Asset in other Group Based Activities.
- 124.20 Throughout the Term of this Deed, the Provider must:
- (a) not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 124, without the Department's prior written approval;
  - (b) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
  - (c) maintain all Assets in good working order;
  - (d) maintain all appropriate insurances for all Assets to their full replacement cost;
  - (e) if required by law, maintain registration and licensing of all Assets;
  - (f) be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets;
  - (g) maintain, during the Term of this Deed, an assets register which records for each Asset, the date of its creation or acquisition, its purchase price, as relevant, its description and its location; and
  - (h) when requested by the Department, provide copies of its assets register to the Department.
- 124.21 The Provider must develop an assets disposal plan for the continued use or Disposal of each Asset listed in the assets register required under clause 124.20(g), and comply with any Guidelines in relation to assets disposal plans.
- 124.22 At the Completion Date, the Provider must Dispose of each Asset in accordance with the assets disposal plan required under clause 124.21 with the effect that neither the Provider, nor a Related Entity, obtains any material or commercial benefit from the Disposal or subsequent use of that Asset.
- 124.23 Unless the Department agrees otherwise in writing, if any Asset is lost, damaged or destroyed, the Provider must promptly reinstate the Asset at its cost, including from the proceeds of the relevant insurance, and this clause 124 continues to apply to the reinstated Asset.
- 124.24 The Department may at any time appoint an auditor (to be paid for by the Department) to conduct an audit of any of the following:
- (a) the Provider's use of Work for the Dole Fees;
  - (b) one or more Group Based Activities; or
  - (c) the Provider's assets register [clause 124.20(g)] and assets disposal plan [clause 124.21],
- and the Provider must assist the auditor to conduct the audit, including by providing access and assistance in accordance with clause 40.

## **125. Outcome Payments**

- 125.1 Subject to this Deed, the Department will pay the Provider the Outcome Payments in Table 1A or Table 1B of Annexure B2, as applicable, where [a Stream Participant, who was on the Provider's caseload on the date that they began the relevant Job Seeker Placement:](#)



- (a) ~~has satisfied an~~ for Education Outcomes; ~~or~~
- (i) in the case of a Qualifying Education Course, a Stream Participant who was on the Provider's caseload on the date that they began the Qualifying Education Course; and
  - (ii) in the case of a Qualifying Training Course, a Stream Participant who is on the Provider's caseload,
- has satisfied the relevant requirement for an Education Outcome;
- (b) ~~in the case of an~~ for Employment Outcome~~s~~, excluding a Partial Outcome under paragraph (f) of the definition of Partial Outcome, a Stream Participant who was on the Provider's caseload on the date that they began the relevant Job Seeker Placement, ~~(i)~~ has satisfied:
- ~~(A)~~ (i) a 4 Week Period for ~~the an~~ Employment Outcome;
  - ~~(B)~~ (ii) a 12 Week Period for ~~the an~~ Employment Outcome; and
  - ~~(C)~~ (iii) a 26 Week Period for ~~the an~~ Employment Outcome,
- respectively;
- (c) for an Employment Outcome which satisfies paragraph (f) of the definition of Partial Outcome, a Stream Participant who was on the Provider's caseload on the date of their NEIS Commencement, has satisfied:
- (i) a 4 Week Period for an Employment Outcome; and
  - (ii) a 12 Week Period for an Employment Outcome,
- respectively;
- (d) for Full Outcomes, a Stream Participant (except a Transitioned Participant or a Stream Participant that has been transferred to the Provider for any reason):
- (i) participates in Pre-existing Employment; and
  - (ii) a Significant Increase occurs in the Pre-existing Employment during the Stream Participant's Period of Registration;
- (e) subject to clause 125.1(f), for:
- (i) Employment Outcomes, the Employment Outcome Start Date occurs; and
  - (ii) Education Outcomes based on a Qualifying Education Course, the Education Outcome Start Date occurs,
- on or after Commencement with the Provider;
- ~~(ii)~~ (f) ~~the for~~ Employment Outcomes, ~~Start Date for~~ the Employment Outcome Start Date, and for Education Outcomes, the Education Outcome Start Date, occurs on or after:
- ~~(A)~~ Commencement with the Provider;
  - ~~(B)~~ (i) subject to ~~clause paragraph~~ (ii), for Stream A Participants, completion of no less than three continuous months in Stream A; and
  - ~~(C)~~ (ii) for Stream A Participants who are Transitioned Participants, completion of no less than three continuous months in employment services, including employment services received prior to 1 July 2015; ~~and~~
- provided that:
- (g) where the relevant Outcome Period ended on or before 4 May 2016, for any Outcome identified on the Department's IT Systems as available to claim on and from 27 June 2016, the Provider has

rendered a Tax Invoice for the relevant Outcome Payment to the Department within 56 days of the end of the relevant Outcome Period and the Department accepts the Tax Invoice;

~~(i) for Employment Outcomes, the end of the relevant 4 Week Period, 12 Week Period or 26 Week Period; and~~

~~(ii) for Education Outcomes, as relevant:~~

~~(A) the end of six months in a Qualifying Education Course;~~

~~(B) subject to clause 125.1(g)(ii)(C), the completion date of a Qualifying Training Course; and~~

~~(C) where the Qualifying Training Course is for fewer than 12 weeks in duration, and the course leads directly to Employment that is related to the course within eight weeks of completion of the course, and the Stream Participant achieves a 4 Week Period Employment Outcome, the completion date of the 4 Week Period Employment Outcome,~~

~~and the Department accepts the Tax Invoice; and~~

~~(iii) (h) where the relevant Outcome Period ended on or after 5 May 2016 or any date otherwise specified by the Department, the Provider has rendered a Tax Invoice for the relevant Outcome Payment to the Department within 12 months of the Completion Date and the Department accepts the Tax Invoice;~~

(i) data and/or Documentary Evidence is entered into the Department's IT Systems (either by DHS or, where relevant, by the Provider or a NEIS Provider) confirming:

(i) for Employment Outcomes, the Employment Outcome Start Date and the satisfaction of the requirements of an Employment Outcome; and

(ii) for Education Outcomes, the Education Outcome Start Date and the satisfaction of the requirements of an Education Outcome.

#### GDV 1 GDV 2

125.2 For the avoidance of doubt and subject to clauses 125.1 and 125.3, where a Stream Participant on the Provider's caseload is placed in a Vacancy by an Employment Provider other than the Provider, the Provider may claim and the Department will pay the applicable Outcome Payment, provided that all requirements of clause 125.1 are met.

#### *Pay Slip Verified Outcome Payments*

125.3 Where the Provider considers that:

(a) all requirements for payment of an Outcome Payment for an Employment Outcome under clause 125.1(b) have been met; but

(b) the data in the Department's IT Systems provided to the Department by DHS does not correctly record or reflect the details of that Employment Outcome,

the Provider may claim a Pay Slip Verified Outcome Payment from the Department if:

(c) the Employment Outcome Start Date for the Employment Outcome is entered on the Department's IT Systems in accordance with any Guidelines;

(d) where the relevant Outcome Period ended on or before 4 May 2016, the Provider has rendered a Tax Invoice for the Pay Slip Verified Outcome Payment to the Department within 56 days of the end of the relevant ~~4 Week Period, 12 Week Period or 26 Week Period~~ Outcome Period and the Department accepts the Tax Invoice; and

- (e) where the relevant Outcome Period ended on or after 5 May 2016 or any date otherwise specified by the Department, the Provider has rendered a Tax Invoice for the Pay Slip Verified Outcome Payment to the Department within 12 months of the Completion Date and the Department accepts the Tax Invoice; and
- (f) the Provider:
  - (i) holds and submits any Documentary Evidence as specified under clauses 15.4(a) and 16.2(a); and
  - (ii) complies with any procedural requirements specified in any Guidelines,
 at the time it makes the claim.

## GDV 2

### *Placement in a Vacancy by another Employment Provider*

125.4 For the avoidance of doubt and subject to clauses 125.1 and 125.3, where a Stream Participant:

- (a) is placed in a Vacancy by an Employment Provider other than the Provider, but the relevant Stream Participant was Commenced with the Provider; and
- (b) all requirements of clause 125.1 are met,

the Provider may claim and the Department will pay the applicable Outcome Payment.

### *Limits on Outcome Payments*

125.5 The Department will not pay the Provider, and the Provider must not claim, an Outcome Payment under clauses 125.1 or 125.3:

- (a) on a pro rata basis ~~in relation to an Employment Outcome or an Education Outcome;~~
- (b) in relation to a Non-Payable Outcome;
- (c) for a 26 Week Period for a Partial Outcome;
- (d) for a Full Outcome which satisfies paragraph ~~125.5~~(a) of the definition of Full Outcome ~~and for a Partial Outcome which satisfies paragraph (a) of the definition of Partial Outcome,~~ where:
  - (i) the Stream Participant is placed into Employment; and
  - (ii) the Stream Participant is in receipt of Newstart Allowance or Youth Allowance and they cease to receive the relevant Income Support Payment due to reasons other than participating in that Employment, including as specified in any Guidelines;
- (e) in relation to a Full Outcome Conversion, unless all the requirements of the definition of Full Outcome Conversion are satisfied; ~~or~~
- (f) ~~except as otherwise provided for in any Guidelines, if the Outcome Period for the Outcome overlaps with the Outcome Period for another Outcome that has already been claimed in relation to the same Stream Participant by any Employment Provider, including the Provider; and~~
- (g) where the relevant Employment Outcome Start Date or Education Outcome Start Date occurs after the Completion Date; and
- (h) in any other circumstances specified in any Guidelines.

## GDV 2

125.6 The Provider must not claim, and the Department will not pay, more than a maximum of four Outcome Payments for a 4 Week Period for an Employment Outcome for any single Stream Participant over any one 12 month period.

125.7 The Provider acknowledges that if a Stream Participant moves from a Complementary Service into an employment, education or training related activity that satisfies the requirements for an Employment Outcome or an Education Outcome, the Provider may only claim, and the Department will only pay, an amount equal to the difference between:

- (a) the Outcome Payment payable under this Deed in relation to the employment, education or training related activity; and
- (b) the fee, if any, paid by the Commonwealth to the provider of the Complementary Service.

#### **GDV 1**

### **126. Mid-term Fee increase**

126.1 The amounts of Fees specified in:

- (a) Tables 1A and 1B at Annexure B2 (with respect to Outcome Payments) will increase by 7.8% from 1 January 2018 for all Employment Outcomes and Education Outcomes lodged on or after 1 January 2018; and
- (b) Table 2A at Annexure B2 (with respect to Administration Fees), will increase by 7.8% from the start of the next Administration Fee Period following 1 January 2018.

*Note: the Department will advise the Provider of the precise payment amounts prior to 1 January 2018.*

## Annexure B1 – Transition in

Note: Table 1 below sets out how most Stream Participants in Streams 1 to 4 under the Employment Services Deed 2012-2015 (the JSA Deed) transition to Streams A to C under this Deed. The first column sets out the Stream that a Stream Participant was in under the JSA Deed. The second column sets out the phase, time in service, activities and status of a Stream Participant under JSA. The third column sets out the Stream (and phase in that Stream) into which a Stream Participant under JSA will be placed by the Department's IT Systems under jobactive, except where the Stream Participant is Exited by the Department's IT Systems. The fourth column sets out credits in the Employment Fund allocated for each such Transitioned Participant on their Commencement in accordance with clause 88.13. For example, a Fully Eligible Participant in Stream 1 (0-6 months' time in service) under JSA will be allocated by the Department's IT Systems, as at 1 July 2015, to the Self Service and Job Activity Phase under jobactive. On their Commencement, a \$50 credit will be allocated to the Provider in the Employment Fund in relation to them.

**Table 1: Transition of Stream Participants from Job Services Australia into jobactive<sup>1</sup>**

Stream	Phase, time in service, activities and status in JSA <sup>2</sup>	Stream, phase and status in jobactive	Employment Fund General Account transition credit
<b>Stream 1 (Limited)</b>		Exited, unless: <ul style="list-style-type: none"> <li>otherwise determined by the Department's IT Systems; or</li> <li>they are eligible to participate as a Volunteer and expressly opt to do so, in which case they will be serviced as if they were in Stream A for a maximum of six months.<sup>3</sup></li> </ul>	50, where the person opts to participate as a Volunteer prior to 26 June 2015
<b>Stream 1-4</b>	Volunteer (Non-activity Tested)	Exited, unless: <ul style="list-style-type: none"> <li>otherwise determined by the Department's IT Systems; or</li> <li>they are eligible to participate as a Volunteer and expressly opt to do so, in which case they will be serviced as if they were in Stream A for a maximum of six months.<sup>4</sup></li> </ul>	50, where the person opts to participate as a Volunteer prior to 26 June 2015
<b>Stream 1</b>	Stream Services 0-6 months (Stream Participants subject to the SPI measure)	Stream A – SPI Case Management Phase	50
	Stream Services 0-6 months	Stream A – Self Service and Job Activity Phase	50
	Stream Services 6-12 months	Stream A Work for the Dole Phase	50
	Work Experience Phase – in activity	Stream A Case Management Phase	50

<sup>1</sup> Table 1 does not apply to Stream Participants who are Pre-release Prisoners, Early School Leavers, or subject to a Structural Adjustment Package. As a general rule, Pre-release Prisoners will transition to Self Service and Job Activity Phase if they are in Stream A or the Case Management Phase if they are in Streams B or C, and Early School Leavers and Stream Participants who are subject to a Structural Adjustment Package will transition (at a minimum) to Stream B. The specific Stream and phase in that Stream that these Stream Participants will transition to, will be determined by the Department's IT Systems.

<sup>2</sup> Unless specifically stated, the phase in JSA refers to all Stream Participants in that phase, regardless of age.

<sup>3</sup> Disability Support Pension claimants who are subject to a program of support may apply to participate in full Services under Stream A, Stream B or C after 1 July 2015 if they are not transitioned to these Streams.

<sup>4</sup> As above.

	Work Experience Phase – not in activity	Stream A Work for the Dole Phase	50
	Compulsory Activity Phase	Stream A Work for the Dole Phase	50
<b>Stream 2</b>	Stream Services 0-6 months with a low to moderate JSCI score (Stream Participants subject to the SPI measure)	Stream A – SPI Case Management Phase	50
	Stream Services 0-6 months with moderate to high JSCI score (Stream Participants subject to the SPI measure)	Stream B – SPI Case Management Phase	300
	Stream Services 0-6 months with a low to moderate JSCI score	Stream A – Self Service and Job Activity Phase	50
	Stream Services 0-6 months with a moderate to high JSCI score	Stream B Case Management Phase	300
	Stream Services 6-12 months with a low to moderate JSCI score	Stream A Work for the Dole Phase	50
	Stream Services 6-12 months with a moderate to high JSCI score (except Stream Participants aged under 30)	Stream B Case Management Phase - 6 months of servicing after which time enter the Stream B Work for the Dole Phase	300
	Stream Services 6-12 months with a moderate to high JSCI score (Stream Participants aged under 30)	Stream B Work for the Dole Phase	150
	Work Experience Phase – in activity with a low to moderate JSCI score	Stream A Case Management Phase	50
	Work Experience Phase – in activity with a moderate to high JSCI score	Stream B Case Management Phase	300
	Work Experience Phase – not in activity with a low to moderate JSCI score	Stream A Work for the Dole Phase	50
	Work Experience Phase – not in activity with a moderate to high JSCI score	Stream B Work for the Dole Phase	150
	Compulsory Activity Phase with a low to moderate JSCI score	Stream A Work for the Dole Phase	50
	Compulsory Activity Phase with a moderate to high JSCI score	Stream B Work for the Dole Phase	150
<b>Stream 3</b>	Stream Services 0-6 months	Stream B Case Management Phase	300
	Stream Services 6-12 months	Stream B Case Management Phase - 6 months of servicing after which time enter the Stream B Work for the Dole Phase	300
	Work Experience Phase – in activity	Stream B Case Management Phase	300
	Work Experience Phase – not in activity	Stream B Work for the Dole Phase	150
	Compulsory Activity Phase	Stream B Work for the Dole Phase	150
<b>Stream 4</b>	Stream Services 0-6 months	Stream C Case Management Phase	550

	Stream Services 6-18 months	Stream C Case Management Phase - 6 months of servicing after which time enter the Stream C Work for the Dole Phase	550
	Work Experience Phase – in activity	Stream C Case Management Phase	550
	Work Experience Phase – not in activity	Stream C Work for the Dole Phase	275
	Compulsory Activity Phase	Stream C Work for the Dole Phase	275

**Table 2: ~~LTU Wage Subsidy transition Credits~~**

<del>Stream</del>	<del>LTU Wage Subsidy transition credits (paid once only)</del>	<del>When credited</del>
<del>Stream 1-4 (excluding Stream 1 Limited)</del>	<del>\$990</del>	<del>When the Transitioned Participant is Commenced and the Department's IT Systems show that an LTU Wage Subsidy credit should be allocated in accordance with any Guidelines.</del>

**GDV 1**

# Annexure B2 – Payments and Employment Fund credits

## OUTCOME PAYMENTS

Table 1A – Outcome Payments for Stream Participants in Non-regional Locations

	Period of Unemployment (less than 24 months inclusive)		Period of Unemployment (24-59 months inclusive)		Period of Unemployment (60 months inclusive plus)	
	Partial Outcome	Full Outcome	Partial Outcome	Full Outcome	Partial Outcome	Full Outcome
<b>Employment Outcomes</b>						
<b>Stream A and Volunteers</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>
4 Week	\$160	\$400	\$200	\$500	\$240	\$600
12 Week	\$200	\$500	\$400	\$1,000	\$500	\$1,250
26 Week	\$0	\$650	\$0	\$1,250	\$0	\$1,550
<b>Total</b>	<b>\$360</b>	<b>\$1,550</b>	<b>\$600</b>	<b>\$2,750</b>	<b>\$740</b>	<b>\$3,400</b>
<b>Stream B</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>
4 Week	\$300	\$750	\$400	\$1,000	\$500	\$1,250
12 Week	\$600	\$1,500	\$800	\$2,000	\$1,000	\$2,500
26 Week	\$0	\$1,900	\$0	\$2,500	\$0	\$3,150
<b>Total</b>	<b>\$900</b>	<b>\$4,150</b>	<b>\$1,200</b>	<b>\$5,500</b>	<b>\$1,500</b>	<b>\$6,900</b>
<b>Stream C</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>
4 Week	\$400	\$1,000	\$600	\$1,500	\$800	\$2,000
12 Week	\$800	\$2,000	\$1,200	\$3,000	\$1,600	\$4,000
26 Week	\$0	\$2,500	\$0	\$3,750	\$0	\$5,000
<b>Total</b>	<b>\$1,200</b>	<b>\$5,500</b>	<b>\$1,800</b>	<b>\$8,250</b>	<b>\$2,400</b>	<b>\$11,000</b>
<b>Education Outcomes</b>	<b>\$1000</b>					



**Table 1B – Outcome Payments for Stream Participants in Regional Locations**

	Period of Unemployment (less than 24 months inclusive)		Period of Unemployment (24-59 months inclusive)		Period of Unemployment (60 months inclusive plus)	
	Partial Outcome	Full Outcome	Partial Outcome	Full Outcome	Partial Outcome	Full Outcome
<b>Employment Outcomes</b>						
<b>Stream A and Volunteers</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>
4 Week	\$200	\$500	\$250	\$625	\$300	\$750
12 Week	\$250	\$625	\$500	\$1,250	\$625	\$1,563
26 Week	\$0	\$813	\$0	\$1,563	\$0	\$1,938
<b>Total</b>	<b>\$450</b>	<b>\$1,938</b>	<b>\$750</b>	<b>\$3,438</b>	<b>\$925</b>	<b>\$4,251</b>
<b>Stream B</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>
4 Week	\$375	\$938	\$500	\$1,250	\$625	\$1,563
12 Week	\$750	\$1,875	\$1000	\$2,500	\$1,250	\$3,125
26 Week	\$0	\$2,375	\$0	\$3,125	\$0	\$3,938
<b>Total</b>	<b>\$1,125</b>	<b>\$5,188</b>	<b>\$1,500</b>	<b>\$6,875</b>	<b>\$1,875</b>	<b>\$8,626</b>
<b>Stream C</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>	<b>Partial Outcome</b>	<b>Full Outcome</b>
4 Week	\$500	\$1,250	\$750	\$1,875	\$1000	\$2,500
12 Week	\$1000	\$2,500	\$1,500	\$3,750	\$2,000	\$5,000
26 Week	\$0	\$3,125	\$0	\$4,688	\$0	\$6,250
<b>Total</b>	<b>\$1,500</b>	<b>\$6,875</b>	<b>\$2,250</b>	<b>\$10,313</b>	<b>\$3,000</b>	<b>\$13,750</b>
<b>Education Outcomes</b>	<b>\$1250</b>					

Note 1: Employment Providers providing Services to Stream Participants who live in Regional Locations are entitled to claim an Outcome Payment with a regional loading as set out in Table 1B.

Note 2: The amount of the Outcome Payment payable to the Provider is determined by:

- (a) the Stream Participant's Period of Unemployment;
- (b) the Stream that the Stream Participant was in on the Job Seeker Placement Start Date; and
- (c) whether the Stream Participant has satisfied the requirements for a Full Outcome or a Partial Outcome.

Note 3: In accordance with clause 126.1(a), the amounts of the Outcome Payments in Tables 1A and 1B will increase by 7.8% from 1 January 2018 for all Employment Outcomes and Education Outcomes lodged on or after 1 January 2018.

## ADMINISTRATION FEES AND WORK FOR THE DOLE FEES

**Table 2A – Administration Fees**

	(1) Fee	(2) Fee with regional loading
SPI Participants	\$350	\$438
All other Stream Participants	\$250	\$313

*Note 1: In accordance with clause 75, Volunteers will receive a maximum of six months of Employment Provider Services including from any other Employment Provider and the Provider will **only** be entitled to an Administration Fee in respect of its servicing of any Volunteer during that six months of service.*

### GDV 2

*Note 2: In accordance with clause 123.1(c)(ii), the Provider is entitled to an Administration Fee with a regional loading for providing Services to Stream Participants in Regional Locations.*

*Note 3: In accordance with clause 126.1(b)), the amounts of the Administration Fees in Table 2A will increase by 7.8% from the start of the next Administration Fee Period following 1 January 2018.*

**Table 2B – Work for the Dole Fees**

Place	Fee
Six month Work for the Dole Place in an Individual Hosted Activity	\$1000
Six month Work for the Dole Place in Group Based Activity	Up to \$3500

*Note 1: Where a Work for the Dole Place is for less than six months in duration or the date on which the relevant Fully Eligible Participant commences in the place is after the start date of the relevant Work for the Dole activity, the applicable Work for the Dole Fee will be pro-rated in accordance with clause 124.3.*

**EMPLOYMENT FUND**

**Table 3 - General Account credits**

<b>Stream</b>	<b>General Account credit (paid once only)</b>	<b>When credited</b>
Stream A	\$300	After 13 weeks of Period of Service, except for Volunteers (who attract the credit on Commencement in the Stream)
Stream B	\$850	On Commencement in the Stream
Stream C	\$1200	On Commencement in the Stream

*Note: In addition to Table 3, where a Stream Participant is identified as subject to a Structural Adjustment Package, the Employment Fund will be credited in accordance with any Guidelines.*

~~Table 4 – LTU Wage Subsidy credit~~

<del>Stream</del>	<del>LTU Wage Subsidy credit (paid once only)</del>	<del>When credited</del>
<del>Streams A to C</del>	<del>\$990</del>	<del>When the Department's IT Systems show that an LTU Wage Subsidy credit should be allocated in accordance with any Guidelines.</del>

**GDV 1**

## EMPLOYMENT REGIONS and REGIONAL LOADING

*Table 4 of this Annexure B2 is merely indicative of the locations that do and do not attract a regional loading, and to the extent of any inconsistency between this table and the Department's IT Systems with respect to relevant locations, the Department's IT Systems prevails.*

**Table 4—Employment Regions and Regional loading**

Employment Region	No Regional loading	Regional loading
<b>New South Wales</b>		
Capital Region	✓	
Central West		✓
Far West Orana (includes Broken Hill)		✓
Hunter	✓	
Illawarra South Coast	✓	South from Kiama
Mid North Coast		✓
Murray Riverina		✓
New England and North West		✓
North Coast (excludes Norfolk Island)		✓
Sydney East Metro	✓	
Sydney Greater West	✓	
Sydney North and West	✓	
Sydney South West	✓	
<b>Victoria</b>		
Ballarat		✓
Barwon	✓	
Bendigo		✓
Gippsland		✓
Goulburn/Murray		✓
Inner Metropolitan Melbourne	✓	
North Eastern Melbourne	✓	
North Western Melbourne	✓	
South Coast of Victoria		✓
South Eastern Melbourne and Peninsula	✓	
Western Melbourne	✓	
Wimmera Mallee		✓

Employment Region	No Regional loading	Regional loading
<b>Queensland</b>		
Brisbane South East	✓	
Cairns		✓
Darling Downs		✓
Fitzroy		✓
Gold Coast	✓	
Mackay		✓
Somerset	✓	
Townsville (includes Mt Isa)		✓
Wide Bay and Sunshine Coast		✓
Wivenhoe	✓	
<b>South Australia</b>		
Adelaide North	✓	
Adelaide South	✓	Kangaroo Island
Mid North SA		✓
Murray and South East		✓
North West Country SA		✓
<b>Western Australia</b>		
Broome		✓
Esperance		✓
Geraldton		✓
Great Southern—Wheatbelt		✓
Kalgoorlie		✓
Perth—North	✓	
Perth—South	✓	
South West WA		✓
<b>Tasmania</b>		
Hobart and Southern Tasmania		✓
North and North Western Tasmania		✓
<b>Northern Territory</b>		
Darwin (includes Alice Springs)	✓	Alice Springs

# Annexure B3 – Service Guarantees



Australian Government  
Department of Employment

## Employment Services Guarantee

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*This Employment Services Guarantee reflects the Australian Government’s expectations of employment providers. It sets out the minimum level of service each job seeker can expect to receive, as well as the requirements they need to meet while looking for employment.*

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The Australian Government provides a range of services to help people looking for work. The Government delivers jobactive through a national network of providers, and people who need assistance to find work can access a range of help that’s based on their individual needs. The main objective of jobactive is to promote stronger workforce participation and help more job seekers move from welfare to work.

### What you can expect from your provider

Your provider will:

- work with you to develop your Job Plan. This sets out the services you will receive and the minimum requirements you need to meet while you are on activity tested income support
- identify your strengths and any challenges you face to increase your job readiness
- refer you to suitable jobs
- match you to a suitable Work for the Dole placement (where appropriate)
- reassess your needs if your circumstances change
- help you with wage subsidies or relocation assistance (where appropriate)
- keep in contact with you and your employer once you have started a job
- provide the services that are set out in their Service Delivery Plan
- treat you fairly and with respect in a culturally sensitive way.

### What is expected of you

There are some things you need to do, including:

- do everything you have agreed to do in your Job Plan
- accept any suitable job
- make every effort to get and keep a job

- do the required number of job searches in your Job Plan
- meet your annual activity requirements—such as taking part in Work for the Dole—as outlined in your Job Plan
- contact your provider as soon as possible if you are unable to attend an appointment or do an activity
- notify your provider of any changes in your circumstances.

If you fail to do any of the above it could affect your income support payments.

### Your personal information is confidential

Your personal information is protected by law, including the Privacy Act 1988. Your provider will only tell employers things about you that relate to job opportunities or, with your permission, your employment with them.

Your provider may also share information with other government agencies if they need to, to make sure you are getting the right level of support. These agencies may contact your employer to check that the information they have is correct.

You can ask to get access to any information your provider holds about you, and have it corrected if needed.

## **Compliments, suggestions or complaints**

Your views about the service you receive are important. The Department of Employment and your provider value any feedback you may have.

If you don't think you are receiving the right help and would like to make a complaint, please talk to your provider first. Your provider will offer a feedback process which is fair and will try to resolve your concerns.

If you feel you can't talk to your provider, or you are still not happy, you can contact the Department of Employment's National Customer Service Line on 1800 805 260 (free call from land lines) or email [nationalcustomerserviceline@employment.gov.au](mailto:nationalcustomerserviceline@employment.gov.au).

If you have suggestions to improve the service that you are getting or would like to make a compliment about the help you have received, please let your provider know or call the National Customer Service Line.

If you have any concerns about your income support payments, you should contact the Department of Human Services. Contact details for the Department of Human Services can be found at [www.humanservices.gov.au](http://www.humanservices.gov.au).



# Employment Services Guarantee

## For Volunteers

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*This Employment Services Guarantee reflects the Australian Government's expectations of employment providers. It sets out the minimum level of service each job seeker can expect to receive.*

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The Australian Government provides a range of services to help people looking for work. The Government delivers jobactive through a national network of providers, and people who need assistance to find work can access a range of help that's based on their individual needs. The main objective of jobactive is to promote stronger workforce participation and help more job seekers move from welfare to work.

### What you can expect from your provider

Your provider will:

- help you build your résumé
- provide advice on job opportunities in your area
- help you understand the skills local employers need
- refer you to jobs
- provide the services that are set out in their Service Delivery Plan
- treat you fairly and with respect
- provide services in a culturally sensitive way.

As a volunteer job seeker you will get up to six months of assistance, and you need to actively participate in order to stay registered. You should make sure you let your provider know if your circumstances change, as it may mean you are eligible for more assistance.

### Your personal information is confidential

Your personal information is protected by law, including the Privacy Act 1988. Your provider will only tell employers things about you that relate to job opportunities or, with your permission, your employment with them.

Your provider may also share information with other government agencies if they need to, to make sure you are getting the right level of support. These agencies may contact your employer to check that the information they have is correct.

You can ask to get access to any information your provider holds about you, and have it corrected if needed.

### Compliments, suggestions or complaints

Your views about the service you receive are important. The Department of Employment and your provider value any feedback you may have.

If you don't think you are receiving the right help and would like to make a complaint, please talk to your provider first. Your provider will offer a feedback process which is fair and will try to resolve your concerns.

If you feel you can't talk to your provider, or you are still not happy, you can contact the Department of Employment's National Customer Service Line on 1800 805 260 (free call from land lines) or email [nationalcustomerserviceline@employment.gov.au](mailto:nationalcustomerserviceline@employment.gov.au).

If you have suggestions to improve the service you are getting or would like to make a compliment about the help you have received, please let your provider know or call the National Customer Service Line.

If you have any concerns about your income support payments, you should contact the Department of Human Services. Contact details for the Department of Human Services can be found at [www.humanservices.gov.au](http://www.humanservices.gov.au).



# PART C - NEW ENTERPRISE INCENTIVE SCHEME SERVICES

## CHAPTER C1 – NEIS SERVICES

### 127. General

- 127.1 The NEIS Provider must deliver NEIS Services in accordance with Part C of this Deed including any Guidelines, and the Provider's tender response to the request for tender for this Deed.
- 127.2 The NEIS Provider must, unless otherwise agreed to by the Department in writing, only deliver NEIS Services to NEIS Prospective Participants, ~~and NEIS Participants and NEIS Transitioned Participants:~~
- (a) whose proposed business, for which they will receive NEIS Assistance, is to be conducted from a business address within an Employment Region set out in item 7.1 of Schedule 1; and
  - (b) if the NEIS Provider has sufficient NEIS Places available in the relevant Financial Year.
- 127.3 If the conditions under clause 127.2(a) or (b) are not met, the Provider must refer the relevant NEIS Prospective Participant, ~~or NEIS Participant or NEIS Transitioned Participants~~ back to their ~~Other Provider~~ ~~Employment Provider or DES Provider, as relevant.~~

#### *Assessing eligibility for NEIS Services*

- 127.4 The NEIS Provider must, in accordance with any Guidelines, assess whether any Stream Participant or DES Participant referred to it by an ~~Other Provider~~ ~~Employment Provider or a DES Provider, as relevant,~~ is NEIS Eligible.
- 127.5 Where the NEIS Provider assesses that a Stream Participant or DES Participant is NEIS Eligible, and the NEIS Provider otherwise considers that the Stream Participant or DES Participant should undertake NEIS Training, the NEIS Provider must, in accordance with any Guidelines:
- (a) advise the referring ~~Other Provider~~ ~~Employment Provider or DES Provider:~~
    - (i) of the NEIS Provider's abovementioned assessment;
    - (ii) that the NEIS Provider will start delivering NEIS Services to the Stream Participant or DES Participant as a NEIS Prospective Participant and the relevant start date; and
    - (iii) to update the Stream Participant's or DES Participant's Job Plan accordingly; and
  - (b) start delivering NEIS Services to the Stream Participant or DES Participant, as a NEIS Prospective Participant in accordance with clause 128.
- 127.6 Where the NEIS Provider assesses a Stream Participant or DES Participant as not being NEIS Eligible, the NEIS Provider must, in accordance with any Guidelines, advise the referring ~~Other Provider~~ ~~Employment Provider or DES Provider~~ of this assessment, and refer the Stream Participant or DES Participant back to their ~~Other Provider~~ ~~Employment Provider or DES Provider, as relevant.~~

### GDV 2

### 128. NEIS Services for NEIS Prospective Participants

#### *NEIS Training*

- 128.1 The NEIS Provider must arrange for each NEIS Prospective Participant to undertake NEIS Training and do so in accordance with any Guidelines.

#### *NEIS Business Plans*

- 128.2 The NEIS Provider must arrange and provide business advice and counselling to each NEIS Prospective Participant to assist the NEIS Prospective Participant to develop a NEIS Business Plan that satisfies the NEIS Business Eligibility Criteria.
- 128.3 The NEIS Provider must, in accordance with any Guidelines, assess each NEIS Prospective Participant's NEIS Business Plan against the NEIS Business Eligibility Criteria, and approve or reject each NEIS Business Plan.
- 128.4 Where the NEIS Provider has concerns about whether to approve or reject a NEIS Business Plan, the NEIS Provider may seek advice from the Department.
- 128.5 Where the NEIS Provider decides to reject a NEIS Business Plan in accordance with clause 128.3, unless otherwise set out in any Guidelines, the Provider must, within ten Business Days of the decision and in accordance with any Guidelines, advise the NEIS Prospective Participant in writing:
- (a) of the decision and the reasons for the decision; and
  - (b) of his or her right to have the decision reviewed by the Department.
- 128.6 Subject to clause 127.2, where the NEIS Provider decides to approve the NEIS Prospective Participant's NEIS Business Plan, the Provider must:
- (a) advise the NEIS Prospective Participant in writing of the approval within five Business Days of the decision;
  - (b) explain to the NEIS Prospective Participant their obligations while receiving NEIS Assistance and any NEIS Services the NEIS Provider will provide;
  - (c) advise the NEIS Prospective Participant to carefully read and understand all the terms of his or her NEIS Participant Agreement;
  - (d) ensure that the NEIS Prospective Participant signs the NEIS Participant Agreement;
  - (e) forward the signed NEIS Participant Agreement to the Department for the Department's signature;
  - (f) advise the referring ~~Other Provider~~~~Employment Provider or DES Provider~~ prior to the NEIS Prospective Participant's NEIS Commencement, that the NEIS Prospective Participant's Job Plan should be updated, to reflect the NEIS Prospective Participant's NEIS Commencement, when this occurs; and
  - (g) commence providing relevant NEIS Services to them as a NEIS Participant from the date of their NEIS Commencement.

## GDV 2

### 129. NEIS Services for NEIS Participants

#### *Duration*

- 129.1 Unless otherwise directed by the Department, the NEIS Provider must provide relevant NEIS Services to each NEIS Participant for the full period of the NEIS Assistance provided under their NEIS Participant Agreement, notwithstanding the expiration of this Deed.

#### *Advising DHS*

- 129.2 The NEIS Provider must advise DHS and the referring ~~Other Provider~~~~Employment Provider or DES Provider~~, ~~as relevant~~, in writing, within five Business Days of each NEIS Commencement, that the relevant NEIS Participant has commenced NEIS Assistance and whether the NEIS Participant is receiving NEIS Allowance.

## GDV 2

#### *NEIS Business Mentoring*

- 129.3 The NEIS Provider must, in accordance with any Guidelines, and the Provider's tender response to the request for tender for this Deed provide NEIS Business Mentoring for each NEIS Participant:
- (a) to assist them in establishing and running a viable NEIS Business; and

- (b) which includes at least five face to face visits by the NEIS Provider during the period of his or her NEIS Participant Agreement, in the manner and at the times and locations set out in any Guidelines.

129.4 Where a NEIS Participant refuses to accept or otherwise participate in NEIS Business Mentoring, the NEIS Provider must advise the Department in writing within five Business Days of the occurrence.

129.5 The NEIS Provider must provide the Department with NEIS Business Mentoring Reports, as required by the Department, and as specified in any Guidelines.

*Contacting the NEIS Participant*

129.6 The NEIS Provider must:

- (a) contact each NEIS Participant at least monthly during the period of his or her NEIS Participant Agreement;
- (b) in the event of a failure to contact a NEIS Participant, Notify the Department of the event through the Department's IT Systems within five Business Days; and
- (c) at each monthly contact:
  - (i) check if the NEIS Participant is operating his or her NEIS Business in accordance with the NEIS Business Plan, including that the NEIS Participant is maintaining current and appropriate insurance for his or her NEIS Business;
  - (ii) offer and provide any business advice and counselling to assist the NEIS Participant in operating his or her NEIS Business; and
  - (iii) collect NEIS Financial Information and NEIS Income Statements, where relevant, for the purposes of satisfying clause 129.7.

*Collection of NEIS Financial Information and NEIS Participant's Income Statements*

129.7 Subject to clause 129.8, the NEIS Provider must, within ten Business Days after the completion of each Financial Quarter of business operation for the duration of each NEIS Participant Agreement, collect from NEIS Participants:

- (a) NEIS Financial Information relating to each NEIS Business; and
- (b) a NEIS Income Statement from each NEIS Participant,

and in the case of the information collected in accordance with clause 129.7(b), determine whether any NEIS Participants have failed the NEIS External Income Test.

129.8 Where a NEIS Business has only been operating for four weeks or less in a Financial Quarter, the NEIS Provider does not need to collect NEIS Financial Information or a NEIS Income Statement for that Financial Quarter.

129.9 The NEIS Provider must advise the Department in writing within five Business Days:

- (a) of any failure by a NEIS Participant to submit his or her NEIS Financial Information or a NEIS Income Statement in accordance with his or her NEIS Participant Agreement, or as otherwise required; and
- (b) when the NEIS Provider becomes aware that a NEIS Participant's gross NEIS External Income has exceeded the threshold set out in the NEIS External Income Test.

129.10 The NEIS Provider must, within 20 Business Days after the completion of the second and third Financial Quarters of the operation of each NEIS Business, use the NEIS Financial Information provided by the relevant NEIS Participant to complete and submit to the Department a written assessment for the NEIS Business stating whether the NEIS Business:

- (a) is Commercially Viable; and
- (b) has cash flow which is 25 per cent or more below the forecast of cash flow per Financial Quarter set out in its respective NEIS Business Plan.

### *Change in a NEIS Participant's circumstances*

129.11 Notwithstanding clause 129.7, the NEIS Provider must Notify the Department through the Department's IT Systems within five Business Days of the NEIS Provider becoming aware:

- (a) that a NEIS Business appears not to be Commercially Viable; or
- (b) of any change in a NEIS Participant's circumstances, including the expiry of business insurance, that may affect:
  - (i) the Commercial Viability or safe operation of a NEIS Business; or
  - (ii) a NEIS Participant's entitlement to NEIS Assistance.

129.12 Where the NEIS Provider advises the Department in writing of a change in circumstances under clause 129.11(b), the NEIS Provider must, where applicable, and in accordance with any Guidelines, recommend to the Department the suspension, recommencement or termination of one or more of:

- (a) the NEIS Participant Agreement;
- (b) the payment of NEIS Allowance; or
- (c) the payment of NEIS Rental Assistance.

### *Confidentiality*

129.13 The NEIS Provider must treat the following as confidential commercial information:

- (a) NEIS Business Plans and related Material;
- (b) any information given to the NEIS Provider by NEIS Participants relating to their NEIS Business; and
- (c) any information collected in connection with the NEIS External Income Test,

and must not disclose such information to any third party unless expressly allowed under this Deed.

129.14 The NEIS Provider must ensure that:

- (a) any Subcontract it enters into for the provision of NEIS Services contains a requirement to maintain the confidentiality of the information as set out at clause 129.13; and
- (b) before entering into any such Subcontract, the NEIS Provider executes a deed of confidentiality between itself and the Subcontractor, that requires the Subcontractor to maintain the confidentiality of the information set out in clause 129.13.

## **130. NEIS Fees**

130.1 Subject to clause 130.2 and 130.3, the Department will pay the NEIS Provider the NEIS Fee as follows:

- (a) 80 percent of the NEIS Fee following achievement of each NEIS Commencement, **provided that the NEIS Commencement is achieved no later than the Completion Date**; and
- (b) 20 per cent of the NEIS Fee following achievement of a NEIS Post-Programme Outcome, **including where the NEIS Post-Programme Outcome is achieved after the Completion Date**.

130.2 Where the relevant NEIS Commencement or NEIS Post-Programme Outcome is achieved on or before 4 May 2016, the NEIS Provider may claim that part of the NEIS Fee from the Department:

- (a) on or after (but no more than 56 days after) the day on which the requirements in clause 130.1 relating to each part of the NEIS Fee are satisfied; and
- (b) by submitting a claim to the Department on the Department's IT Systems in accordance with any Guidelines.

130.3 ~~The Department will not pay the NEIS Provider any NEIS Fee under clause 130.1 in respect of a NEIS Transitioned Prospective Participant or a NEIS Transitioned Participant.~~ Where the relevant NEIS Commencement or NEIS Post-Programme Outcome is achieved on or after 5 May 2016 or any date otherwise specified by the Department, the Department will pay the NEIS Provider that part of the NEIS Fee under clause 130.1 within 10 Business Days of the achievement of the NEIS Commencement or NEIS Post-Programme Outcome.

~~*Note: Fees payable for NEIS Transitioned Prospective Participants are specified in clause 133.6. Note: The Department has implemented a process of automated payment of NEIS Fees which does not require the submission of claims by the Provider.*~~

#### *Recovery*

130.4 Where a NEIS Participant is overpaid NEIS Allowance or NEIS Rental Assistance as a result of the NEIS Provider's failure to provide NEIS Services in accordance with the Deed, including any Guidelines, the NEIS Provider must, if required by the Department, pay to the Department an amount equal to the amount of the overpayment that is attributable to the NEIS Provider's failure. This amount will become a debt due to the Commonwealth for the purposes of clause 21 if and when the Commonwealth Notifies the NEIS Provider that it elects to recover the amount as a debt under clause 21.

#### **GDV 2**

### **131. NEIS Key Performance Indicators**

#### *NEIS Key Performance Indicators*

131.1 For the purposes of clause 4.1(c), the NEIS Key Performance Indicators are as follows:

(a) NEIS KPI 1: Efficiency

(i) NEIS KPI 1 measurement: the Department's assessment of the NEIS Provider's performance is based on:

(A) the number of NEIS Places utilised within the Employment Region(s) specified at item 7.1 of Schedule 1; and

(B) the number, or rate, of NEIS Participants that exit NEIS Services prior to completion of NEIS Assistance, and the reasons for the exit(s);

(b) NEIS KPI 2: Effectiveness

(i) NEIS KPI 2 measurement: the Department's assessment of the NEIS Provider's performance is based on the number of NEIS Post-Programme Outcomes achieved; and

(c) NEIS KPI 3: Quality and assurance

(i) NEIS KPI 3 measurement: the Department's assessment of the NEIS Provider's performance is based on:

(A) the NEIS Provider's delivery of the NEIS Services in accordance with this Deed;

(B) the number of validated Complaints recorded via the Department's National Customer Service Line and the Department's Employment Services Tip Off Line and the number of validated Complaints resulting in ministerial correspondence and any Ombudsman Complaints for the relevant Performance Period; and

(C) input received from NEIS Participants following any post programme monitoring exercises undertaken by the Department.

### **132. Action about performance**

- 132.1 Without limiting the Department's rights under this Deed or the law, if, at any time, the Department considers that the performance of the NEIS Provider at the Employment Region level is less than satisfactory (including as assessed against the NEIS KPIs), the Department may, at its absolute discretion, reduce the Provider's NEIS Places.
- 132.2 If, at any time, the Department considers the performance of the NEIS Provider at the Employment Region level warrants it, the Department may, with the agreement of the NEIS Provider, increase the NEIS Provider's NEIS Places for a period of time specified by the Department.

#### *Reductions in NEIS Places*

- 132.3 References in this clause 132 to decreasing the Provider's NEIS Places in an Employment Region, include reducing the NEIS Places in the Employment Region to zero.
- 132.4 If, in accordance with this clause 132, the Department decreases the NEIS Provider's NEIS Places in an Employment Region to zero, the Department may Notify the NEIS Provider that the NEIS Provider must discontinue providing the NEIS Services in the Employment Region from the date specified by the Department.
- 132.5 If the Department Notifies the NEIS Provider to discontinue providing NEIS Services in accordance with clause 132.4, the NEIS Provider must discontinue providing the NEIS Services in the Employment Region in accordance with the Notice and provide the Department with the assistance and cooperation in clauses 57.5 and 57.6 to ensure that NEIS Participants affected by the discontinuation of the NEIS Provider's NEIS Services in that Employment Region are transferred to other NEIS Providers as specified by the Department.
- 132.6 For the avoidance of doubt, any decrease of NEIS Places under this clause 132 is not a reduction of scope or termination for which compensation is payable.

#### *Variation*

- 132.7 If the Department takes any action under this clause 132:
- (a) where relevant, this Deed will be deemed to be varied accordingly; and
  - (b) the Provider is not relieved of any of its obligations under this Deed as varied.
- 132.8 This clause 132 operates without prejudice to any other right which the Commonwealth has or which may accrue to the Commonwealth under this Deed or the law.

### **133. Transfers of NEIS Prospective Participants and NEIS Participants to or from the NEIS Provider**

- 133.1 A NEIS Prospective Participant or NEIS Participant may, at any time, be transferred from the NEIS Provider to another NEIS Provider:
- (a) by the Department, where the NEIS Prospective Participant or NEIS Participant moves to a new location that is not within a reasonable distance of a Site of the NEIS Provider;
  - (b) by the Department, where the Department is satisfied that:
    - (i) the NEIS Prospective Participant or NEIS Participant will receive services that could better enhance their prospects of achieving Unsubsidised Self-Employment from the other NEIS Provider; or
    - (ii) the NEIS Prospective Participant or NEIS Participant and the NEIS Provider are unable to achieve or maintain a reasonable and constructive servicing relationship, as determined by the Department;
  - (c) if the Department, the NEIS Provider, another NEIS Provider and the NEIS Prospective Participant or NEIS Participant agree to the transfer.

- 133.2 If a NEIS Prospective Participant or NEIS Participant is transferred to the NEIS Provider for any reason, the Provider must, in accordance with any Guidelines immediately provide NEIS Services to the NEIS Prospective Participant or NEIS Participant in accordance with this Deed.
- 133.3 Where a NEIS Prospective Participant or a NEIS Participant is transferred between NEIS Providers, both NEIS Providers must:
- (a) immediately provide sufficient assistance and cooperation to any person nominated by the Department to facilitate the transfer and enable NEIS Services to continue; and
  - (b) comply with the Department's directions in relation to the transfer or destruction of Deed Material and Commonwealth Material in the NEIS Provider's possession or control, including that stored in Third Party Systems.

*Note: Where a NEIS Prospective Participant or NEIS Participant is transferred between NEIS Providers in accordance with clauses 133.1 or 133.2, it will be up to both NEIS Providers to determine between themselves any apportionment of NEIS Fee(s) that have been previously paid by the Department in relation to the relevant NEIS Prospective Participant or NEIS Participant.*

#### *NEIS Transition Services*

- ~~133.4 The Department may direct the NEIS Provider to provide NEIS Transition Services to a NEIS Transitioned Participant and/or a NEIS Transitioned Prospective Participant.~~
- ~~133.5 If directed by the Department to deliver NEIS Transition Services to a NEIS Transitioned Participant in accordance with clause 133.4, the NEIS Provider must do so and arrange for the relevant NEIS Transition Services Participant Agreement to be varied by both signatories to the agreement so that the NEIS Provider is listed as the 'NEIS Provider' under the agreement.~~
- ~~133.6 If directed by the Department to deliver NEIS Transition Services to a NEIS Transitioned Prospective Participant in accordance with clause 133.4, the NEIS Provider must do so and the Department will pay the NEIS Provider the following amounts:~~
- ~~(a) \$1,025 where the NEIS Provider arranged for the NEIS Transitioned Prospective Participant to undertake NEIS Training and the NEIS Transitioned Prospective Participant commences in NEIS Assistance;~~
  - ~~(b) \$2,050 on the awarding to the NEIS Transitioned Prospective Participant of the relevant certificate NEIS Training on or after 1 July 2015; and/or~~  
~~\$1,480 on commencement of the NEIS Transitioned Prospective Participant in NEIS Assistance,~~
- ~~provided that:~~
- ~~(c) the amounts specified at clauses 133.6(a) to (c) of this Deed and the corresponding amount under clause 72.13 or clause 86.3 of the Employment Services Deed 2012-2015 have not previously been claimed in respect of the NEIS Transitioned Prospective Participant; and/or~~
  - ~~(d) the NEIS Provider claims each of those amounts on or after (but no more than 56 days after) the day on which the requirements relating to each of those amounts is satisfied, and by submitting a claim to the Department on the Department's IT Systems in accordance with any Guidelines.~~

#### **GDV 2**

# PART D - HARVEST LABOUR SERVICES

## CHAPTER D1 – HARVEST LABOUR SERVICES

### 134. Harvest Labour Services

134.1 The Provider must provide Harvest Labour Services in accordance with this Part D of this Deed, any Guidelines, and the Provider's tender response to the request for tender for this Deed.

#### *Harvest Placement Services*

134.2 The Provider must provide a Harvest Placement service in the Harvest Areas during the Harvest Periods, by supplying the labour necessary to meet the Harvest Work requirements of Harvest Employers by:

- (a) obtaining Harvest Vacancies from Harvest Employers;
- (b) subject to clause 134.5, referring Harvest Workers to Harvest Vacancies from Harvest Employers; and
- (c) within 28 days of the achievement of a Harvest Placement, recording that Harvest Placement on the Department's IT Systems,

and where any Guidelines specify rules that the Provider must follow in providing the Harvest Placement service, the Provider must comply with those rules.

134.3 Where, in the Department's opinion, the start or finish date for a Harvest Period should be changed due to reasons beyond the Provider's control, the Department may, at its absolute discretion, by Notice, vary each of those dates.

134.4 The Provider must, in accordance with any Guidelines, Directly Register Harvest Workers:

- (a) who present to it and are not currently registered in the Department's IT Systems; and
- (b) do so prior to referring that Harvest Worker to a Harvest Vacancy.

134.5 The Provider must only refer Harvest Workers:

- (a) who are suitable for a Harvest Employer's requirements; and
- (b) to Harvest Employers who have a safe system of work implemented.

#### *Other Harvest Labour Services*

134.6 The Provider must provide the following other Harvest Labour Services during the Term of this Deed:

- (a) maintaining a presence in the Harvest Areas so as to provide ongoing liaison with Harvest Employers and timely delivery of the Harvest Labour Services;
- (b) liaising with Harvest Employers for the purpose of determining how to assist Harvest Employers with their Harvest Work requirements throughout the Harvest Periods;
- (c) occupying and maintaining at each Site, suitable premises for the delivery of the Harvest Labour Services; promoting and marketing Harvest Placement services provided under this Deed within, and outside the Harvest Area;
- (d) subject to clause 134.7, mobilising Harvest Workers from locations outside the Harvest Area for the purpose of ensuring that there is a sufficient and timely supply of Harvest Workers available to meet the Harvest Work requirements of Harvest Employers when Harvest Work commences;
- (e) providing information to Harvest Workers about:
  - (i) accommodation in, transport to and quarantine information about Harvest Areas; and
  - (ii) the conditions of employment for Harvest Workers;



- (f) providing information to Harvest Employers on any labour shortages, and liaising with Harvest Employers for the purpose of developing strategies to overcome labour shortages;
- (g) providing accurate and timely information to the National Harvest Labour Information Service and the Harvest Trail Website, as requested by the provider of the National Harvest Labour Information Service;
- (h) monitoring the practices of private labour hire contractors operating in the Harvest Areas and providing timely reports of any potentially illegal practices (including the use by labour hire contractors of people other than Harvest Workers) to the Fair Work Ombudsman and/or the Department of Immigration and Border Protection (as applicable); and
- (i) any other harvest related services, as directed by the Department, including through any Guidelines.

134.7 The Provider must not mobilise into the Harvest Area more Harvest Workers than are reasonably necessary to meet the labour requirements of Harvest Employers.

*Reports*

134.8 In accordance with clause 24, the Provider must provide the Department with the following Reports on the progress of the Harvest Labour Services:

- (a) quarterly Reports within 15 Business Days of the following dates for each year of the Term of this Deed:
  - (i) 31 March;
  - (ii) 30 September; and
  - (iii) 31 December; and
- (b) annual Reports within 15 Business Days of 30 June for each year of the Term of this Deed.

134.9 Quarterly and annual Reports provided to the Department in accordance with clause 134.8 must be prepared in accordance with and include any information set out in any Guidelines.

**135. Harvest Labour Services - Fees**

*Harvest Placement Fees*

135.1 Subject to this Deed, including clauses 135.2 to 135.4, the ~~Provider may claim, and the~~ Department will pay, a Harvest Placement Fee of \$49.50 ~~to the Provider~~ for every Harvest Placement completed by the Provider during a Harvest Period, ~~provided thta:~~

- (a) ~~where the Harvest Placement ended on or before 4 May 2016, the Provider claims the Harvest Placement Fee no more than 56 days after the day of the achievement of a~~ the Harvest Placement; ~~and~~
- (b) ~~where the Harvest Placement ended on or after 5 May 2016 or any date otherwise specified by the Department, the Provider claims the Harvest Placement Fee within 12 months from the Completion Date; and~~
- (c) ~~provided that each~~ the Harvest Placement is recorded on the Department's IT Systems.

135.2 Subject to clause 135.3, the Provider may claim no more than one Harvest Placement Fee for a Harvest Worker who is placed:

- (a) with the same Harvest Employer;
- (b) in the same Harvest Area; and
- (c) during the same Harvest Period.

135.3 If a Harvest Period is for 52 weeks, the Provider may claim up to two Harvest Placement Fees for a Harvest Worker who is placed more than once with the same Harvest Employer in the same Harvest Area and in the same Harvest Period, provided that the two Harvest Placements for which Harvest Placement Fees are claimed are at least 26 weeks apart.

135.4 The Provider must not claim more than two Harvest Placement Fees in any seven day period for a Harvest Worker who is placed with different Harvest Employers

*Harvest Service Fees*

135.5 Subject to this Deed, the Provider may claim a total of \$215,600 in Harvest Service Fees each Financial Year:

(a) payable in four equal instalments of \$53,900 with:

- (i) the first instalment claimable on the Deed Commencement Date; and
- (ii) the second and subsequent instalments claimable on the first day of each Financial Quarter following Deed Commencement Date;

(b) provided that:

- (i) with the exception of the instalment referred to in clause 135.5(a)(i), the Department has received either a quarterly Report or an annual Report (as relevant) from the Provider to the Department's satisfaction, pursuant to clause 134.9;
- (ii) the Provider has rendered a Tax Invoice for the Harvest Service Fee to the Department;
- (iii) the Department accepts the Tax Invoice; and
- (iv) the Provider holds Documentary Evidence as specified under clause 15.4(a).

# PART E – NATIONAL HARVEST LABOUR INFORMATION SERVICE

## CHAPTER E1 – NATIONAL HARVEST LABOUR INFORMATION SERVICE

### 136. National Harvest Labour Information Service

136.1 The Provider must provide the National Harvest Labour Information Service for the Term of this Deed in accordance with this clause 136, any Guidelines, and the Provider's tender response to the request for tender for this Deed.

#### *National Harvest Labour Information Service*

136.2 The Provider must provide the National Harvest Labour Information Service, which consists of:

- (a) the Harvest Trail Website;
- (b) the National Harvest Telephone Information Service; and
- (c) the National Harvest Guide.

#### *Harvest Trail Website*

136.3 The Provider must:

- (a) gather Australia-wide Harvest Information from the Relevant Harvest Bodies;
- (b) actively identify any likely Harvest Work labour shortages; and
- (c) promptly advise the Department of any such shortages.

136.4 The information gathered in accordance with clause 136.3 must, in accordance with any Guidelines, be collated and placed on the Harvest Trail Website within one week of the details becoming available.

136.5 The Provider must submit to the Department, a list of web addresses for websites to be used as links on the Harvest Trail Website which are up to date, relevant, and contain no advertising material that will bring the Services into disrepute. Any updates to this list must be submitted to the Department as they become available.

136.6 The Provider must ensure that:

- (a) information provided by Relevant Harvest Bodies is placed on the Harvest Trail Website as soon as possible, and, in any case, within 12 hours of receipt, after the Provider receives the information; and
- (b) where information is no longer current, the relevant information is removed within 24 hours of the Provider becoming aware that the information is no longer current.

136.7 The Provider must market and promote the Harvest Trail Website to the Relevant Harvest Bodies.

#### *National Harvest Telephone Information Service*

136.8 The Provider must provide a National Harvest Telephone Information Service line that:

- (a) has the number 1800 062 332;
- (b) is extensively publicised to Relevant Harvest Bodies;
- (c) operates at least between the hours of 8:00 am and 8:00 pm on each Business Day in each Australian state and territory for the Term of this Deed;
- (d) operates for extended hours when unforeseen circumstances arise or where required by the Department;
- (e) is staffed by fully trained operators;

- (f) provides specific information related to Harvest, Harvest Work and related matters;
- (g) ensures that if an operator is unable to answer a question during the initial call, the enquirer is telephoned back with the requested information as soon as practicable;
- (h) refers callers to other appropriate bodies, where required; and
- (i) has at least 6 telephone lines.

*National Harvest Guide*

136.9 The Provider must:

- (a) subject to this clause 136.9, produce and publish a comprehensive National Harvest Guide, in accordance with any Guidelines, in the following formats compatible for publication:
  - (i) as a downloadable PDF file or other eBook format approved in advance by the Department;
  - (ii) on the Harvest Trail Website; and
  - (iii) in applications for mobile computing devices approved in advance by the Department;
- (b) submit the draft National Harvest Guide to the Department for comment and approval prior to its publication;
- (c) revise the National Harvest Guide at least once a month during the Term of this Deed;
- (d) ensure that the National Harvest Guide contains Harvest Information for each Harvest Area and all other major horticultural areas in Australia;
- (e) display the National Harvest Guide prominently on the Harvest Trail Website; and
- (f) include in the National Harvest Guide, the following statements:
  - (i) "This publication has been produced with the financial assistance of the Commonwealth Department of Employment"; and
  - (ii) "The Department of Employment does not accept any responsibility for the contents of this publication and any actions taken in reliance on its contents".

*Reports*

136.10 In accordance with clause 24, the Provider must provide the Department with:

- (a) quarterly Reports within 15 Business Days of the following dates for each year of the Term of the Deed:
  - (i) 31 March;
  - (ii) 30 September; and
  - (iii) 31 December; and
- (b) annual Reports within 15 Business Days of 30 June for each year of the Term of the Deed.

136.11 Reports provided to the Department in accordance with clause 136.10 must, at a minimum, include the following information:

- (a) for quarterly Reports:
  - (i) details of maintenance of the Harvest Trail Website, including the:
    - (A) gathering of Harvest Information;
    - (B) provision of marketing and promotional activities about Harvest Labour Services; and
    - (C) verification activities undertaken in relation to the Harvest Information published on the Harvest Trail Website;

- (ii) details of the administration of the National Harvest Telephone Information Service, including the:
  - (A) number of calls received on the National Harvest Telephone information Service line;
  - (B) percentage of calls where the Provider was able to provide the caller with the requested information;
  - (C) percentage of abandoned calls;
  - (D) average time it took to answer the calls;
  - (E) average call duration of calls;
  - (F) the number of queries the Provider was unable to answer;
  - (G) the number of calls referred to providers of Harvest Labour Services;
  - (H) the number of calls referred to other bodies;
  - (I) number of complaints received; and
  - (J) how issues of concern raised by the Account Manager were resolved;
- (iii) details of drafting of the National Harvest Guide; and
- (iv) any other information as required by the Department; and
- (b) for annual Reports:
  - (i) a summary of the relevant year's quarterly Reports;
  - (ii) the information required in clause 136.11(a) in respect of the 3 month period (quarter) immediately preceding 30 June in the respective year; and
  - (iii) any other information as required by the Department.

**137. National Harvest Labour Information Service – Fees**

137.1 Subject to this Deed, the Provider may claim and the Department will pay Fees for the provision of NHLIS each Financial Year as set out in item 9.1 of Schedule 1:

- (a) payable in four equal instalments with:
  - (i) the first instalment claimable on the Deed Commencement Date; and
  - (ii) the second and subsequent instalments claimable on the first day of each Financial Quarter following Deed Commencement Date; and
- (b) provided that:
  - (i) with the exception of the instalment referred to in clause 137.1(a)(i), the Department has received either a quarterly Report or an annual Report (as relevant) from the Provider to the Department's satisfaction, pursuant to clause 136.10;
  - (ii) the Provider has rendered a Tax Invoice for the relevant Fee to the Department;
  - (iii) the Department accepts the Tax Invoice; and
  - (iv) the Provider holds Documentary Evidence as specified under clause 15.4(a).

## **SCHEDULE 1 – Deed and business details**

## **SCHEDULE 2 – Service Delivery Plan**