



Australian Government



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**Deed Variation History:** This document shows variations from the original Deed, which commenced on the Deed Commencement Date. A variation history is provided at the end of this document.

# Transition to Work Deed

## 2016-2020

Effective 1 January 2016

## Reader's Guide to this Deed

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

There are two Parts:

1. Part A – GENERAL CONDITIONS
2. Part B – TRANSITION TO WORK SERVICES

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 two Annexures in Part B – TRANSITION TO WORK SERVICES:

- B1. General Services
  - B2. Specific Services
  - B3. Mutual Obligation Requirements and Activities
  - B4. Outcomes and Payments
- Annexure B1 – Outcomes and Payments
- Annexure B2 – Transition to Work Service Guarantee

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

- Schedule 1 – Deed and business details
- Schedule 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.

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# PART A - GENERAL CONDITIONS

## CHAPTER A1 - INTRODUCTION

### Section A1.1 – Definitions and interpretation

#### 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;
  - (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;
  - (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.
- 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;
  - (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.
- 1.4 The word 'Reserved' indicates that a particular clause is not applicable to the Services.

- 1.5 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 Annexure A1 [Definitions] and Annexure B1 [Outcomes and Payments]);
  - (b) the Schedules;
  - (c) the Particulars;
  - (d) the Guidelines; and
  - (e) Annexure A2 [Joint Charter of Deed Management] and Annexure B2 [Transition to Work Service Guarantee],

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.

## **CHAPTER A2 – BASIC CONDITIONS**

### **Section A2.1 – Deed length**

#### **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 up to a maximum of two years; 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 17, 21, 24, 26, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 50, 52, 54 and 64 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 the Services**

#### **4. General Requirements**

- 4.1 The Provider must carry out the Services:
- (a) in accordance with:
    - (i) this Deed, including any Guidelines; and

- (ii) any representation made by the Provider in its response to the request for proposal for this Deed, unless otherwise agreed with the Department;
- (b) in a manner which meets the objectives of the Transition to Work Service as specified at clause 4.2; and
- (c) so as to achieve optimum performance when measured against the KPIs.

4.2 The objectives of Transition to Work Service are to assist eligible young people so that they can gain and retain Employment (including apprenticeships or traineeships), move into Education and/or improve their Work-Readiness.

4.3 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 response to the request for proposal for this Deed;
- (b) it provided information in its response to the request for proposal for this Deed which is misleading or deceptive, or otherwise incorrect or inaccurate; or
- (c) it failed to provide information in its response to the request for proposal for this Deed 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) if clause 4.3(a) applies, the details of the requirements or undertakings which it is unable to satisfy or failed to comply with;
- (e) if clause 4.3(b) applies, the details of the information in its response to the request for proposal for this Deed which is misleading or deceptive, or otherwise incorrect or inaccurate;
- (f) if clause 4.3(c) applies, the details of the information which it failed to provide in its response to the request for proposal for this Deed; and
- (g) any other information that the Department requests.

4.4 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. Timing and location of the Services**

5.1 The Provider must deliver the Services from the Service Start Date for each Employment Region 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 the Services in accordance with, and only as specified in, item 6 of Schedule 1.

*Note: Schedule 1 specifies, amongst other things, the Provider's Employment Regions, Locations and Sites, and whether Services will be provided at Sites on a Full-time, Part-time or Outreach basis.*

5.3 The Provider must ensure that:

- (a) any Site 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 Sites referred to in clause 5.3(a).

5.4 The Provider must ensure that its Sites are open for the provision of the Services on all Business Days and any other days specified in item 6.5 of Schedule 1 and the Provider's response to the request for proposal for this Deed, 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 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 person or persons; and

- (b) without limitation to any rights of the Department under this Deed or at law where 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.

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 "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 "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) 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.*

## **7. Information provided to the Department**

7.1 Subject to clause 16.4(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 17.2, 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 be involved in the Services, including any Activity, the Provider must arrange and pay for all checks, and comply with any other conditions in relation to the person's involvement, 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.

8.2 The Provider must not arrange for any Personnel or a potential Supervisor to be involved in the Services, including any 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.

### *Participants*

8.3 Before arranging for a Participant to be involved in any Activity or Employment that involves close proximity with Children (excluding other Participants) or people who are elderly, disabled or otherwise vulnerable, the Provider must arrange and pay for all checks in relation to the 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;

8.4 The Provider must not arrange for 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;
- (b) if:
  - (i) a relevant check shows that the Participant has been convicted of a crime and a reasonable person would consider that the conviction means that the Participant would pose a risk to other persons involved in the Activity or Employment; or
  - (ii) there is otherwise a reasonably foreseeable risk that the Participant 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.*

## **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 any Participant in receipt of Income Support Payments:

(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 proposal 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 agreeing on applicable terms and conditions.

## **15. The Department may vary certain terms**

15.1 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) Employment Regions, Locations and Sites;

- (c) Places, Referrals, the Referral Cap for jobactive, Outcome Performance Targets and the number of Participants on the Provider's caseload,

for all or part of the Term of this Deed:

- (d) based on the Department's assessment of projected changes to labour market conditions in a Location or an Employment Region (including past and/or future projected Participant demand); or
- (e) acting reasonably, for any other reason as determined by the Department at its absolute discretion,

by providing Notice to the Provider.

15.2 If the Department exercises its rights under clause 15.1:

- (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.

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

#### **16. General**

16.1 Subject to:

- (a) sufficient funds being validly appropriated for the Services;
- (b) this clause 16; and
- (c) 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.

16.2 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.

16.3 Where the Department determines that the Provider is in breach of clause 16.2, 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.

16.4 With the exception of Payments verified by DHS data in accordance with any Guidelines, 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; and
- (b) has delivered the Services relevant to its claim for Payment, and has done so in accordance with this Deed, including any Guidelines.

16.5 It is a further precondition of the Provider's entitlement to be paid a Payment that it:

- (a) has a valid ABN;
- (b) immediately Notifies 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 Notifies the Department of any changes to its GST status; and
- (f) unless otherwise advised by the Department, submits Tax Invoices to the Department for payment and ensures that invoices:
  - (i) are correct and complete;
  - (ii) are addressed to the Account Manager; and
  - (iii) include the following information:
    - (A) the words "tax invoice" stated prominently;
    - (B) the Provider's name and ABN;
    - (C) the Department's name and address;
    - (D) the date of issue of the invoice;
    - (E) the title of this Deed and the agreement number (if any) or date of execution;
    - (F) details of the Services to which the invoice relates;
    - (G) the total amount payable (including GST); and
    - (H) the GST amount shown separately.

16.6 Subject to the terms of this Deed, the Department will make Payments to the Provider within 20 Business Days of receiving the relevant invoice.

16.7 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.

16.8 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.

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

17.1 Subject to any Guidelines, the Provider must retain the Documentary Evidence specified at clause 16.4(a) for such period as is required under clause 37.9.

17.2 The Provider must submit the Documentary Evidence referred to in clause 17.1 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.

- 17.3 If:
- (a) the Provider does not comply with a request by the Department under clause 17.2, 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 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.
- 17.4 The Department may contact Employers or Participants or any other relevant parties to verify Documentary Evidence provided by a Provider.

## **18. Exclusions**

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

## **19. Ancillary Payments**

- 19.1 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.

## **20. Overpayment and double payment**

### *Overpayment*

- 20.1 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 the Department's absolute discretion, recover some or all of the relevant payment from the Provider as a debt owed to the Department in accordance with clause 21.

### *Double payment*

- 20.2 The Provider warrants that neither it, nor any Related Entities, are entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing to Participants services that are the same as, or are similar to, the Services, and the Department may require the Provider to provide evidence, in a form acceptable to the Department, which proves that the Provider or any Related Entity is not so entitled.
- 20.3 For the purposes of clause 20.2, if the Department determines, at 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 services that are the same as, or are similar to, the Services, 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.

20.4 Regardless of any action the Department may take under clause 20.3 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 20.3.

## **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.

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**

### **24. General reporting**

24.1 Without limiting any other provisions of this Deed, the Provider must provide as required by the Department:

- (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 any performance issues raised by the Department, and training provided to Personnel and Subcontractors;
  - (ii) the financial status of the Provider; and
  - (iii) the Provider's performance against the KPIs;
- (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.

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 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 Group Respondent or a partnership, then the Provider must provide one copy of the consolidated financial statements for the Group Respondent or partnership, if available, and individual annual financial statements for each member of the Group Respondent.
- 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.
- 25.4 Financial statements provided to the Department pursuant to this clause 25 must be, at a minimum be:
- (a) audited if the Provider is required to produce audited annual financial statements under Commonwealth or state or territory legislation;
  - (b) reviewed if the Provider is required to have annual financial statements reviewed under Commonwealth or state or territory legislation; or
  - (c) in a form consistent with the Australian Equivalents to International Financial Reporting Standards requirements for financial statements.

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

### **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.

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

- 27.1 Throughout the Term of this Deed, the Department may conduct Programme Assurance Activities and the Provider must fully cooperate with the Department in relation to all such activities as required by the Department.

## 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 KPIs, the Joint Charter of Deed Management, the Service Delivery Plans, any representations in the Provider's response to the request for proposal for this Deed and the Transition to Work Service Guarantee.
- 28.2 For the purposes of clause 28.1:
- (a) the Provider must provide the Department with any information it requests; and
  - (b) the Department may rely on data collected from any source, including, without limitation, feedback from Participants, Employers, DHS, jobactive providers and other employment services providers, and intelligence from the Department's Employment Services Tip off Line.
- 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 Employment Region and Location, 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.
- 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

### Readers 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 12 Week Employment Outcomes 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 16.3 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; or
- (e) exercise any of its rights to take remedial action in relation to the Provider's performance under clause 92, as 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.

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**

### **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 response to the request for proposal for this Deed and, for Services, the Service Guarantee 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, 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 A3.1 – Information Technology**

#### **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.
- 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, which 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; and
- (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 Systems 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.

*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 clause 32:

**'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.

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 A3.2 – Property rights**

### **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 Layouts Act 1989* (Cth), constitute an infringement.

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

### **Section A3.3 – Control of information**

#### **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.

- 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;
  - (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).

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 A3.4 – Records management**

#### **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; 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.

#### *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.

#### *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.

#### *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 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.

### **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;
  - (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.

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 A4.1 – Indemnity and insurance**

#### **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(a)(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(a)(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 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).

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 Transition to Work 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.

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 Group Respondent – each member of the Group Respondent;

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.

*Note: Clause 68 provides that 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.*

### **44. Special rules about Group Respondents**

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

- (a) agrees that its members are as specified at item 7 of Schedule 1 as relevant;
- (b) warrants that each of its members have given their authority to the member named in the Particulars as the Group Respondent's lead member to negotiate, bind and act on that member's behalf in relation to this Deed and any variations thereto; and
- (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.

## Section A4.2 – Changes in persons delivering Services

### 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 Directors, 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.

*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) Group Respondent 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.

#### **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 item 8 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 A4.3 – Resolving Problems**

#### **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 16, 17, 20, 21, 23, 28, 29, 32, 38, 40, 45, 46, 48, 51, 52, 53, 54, 55, 56 or 92;
  - (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 KPIs 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; and/or
  - (iii) 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, 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; and/or
  - (ii) 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 the number of Referrals and/or Places, permanently or temporarily;
- (j) reducing the scope of this Deed; and
- (k) taking any other action set out in this Deed.

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 Referrals, 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 employment services or employment related services agreements in operation within seven years prior to the Deed Commencement Date 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.

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 Transition to Work 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 Transition to Work 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 50 invalid claims in a Financial Year; and

- (ii) a further \$3000 for each 50 invalid claims in excess of the first 50 invalid claims in a Financial Year.

*Note: for the purposes of clause 54.1(b) and (d), and by way of example, the total amount payable for 150 invalid claims made in a Financial Year would be \$9,000.*

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 Transition to Work provider to provide services at the relevant Site(s), and transferring Participants, records, monies and relevant materials to the alternative Transition to Work 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 relevant Places without going to market;
- (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 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.

## **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 its obligations under 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 to any of its Subcontractors or to any Activity Host Organisation or any Employer; 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 response to the request for proposal 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 A4.4 – Other matters**

##### **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 Transition to Work 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;
- (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 77 and 78; 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.dpmc.gov.au/indigenous-affairs/publication/commonwealth-indigenous-procurement-policy>).*

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

- 59.1 The Provider must:
- (a) within three months of the Deed Commencement Date, 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
  - (c) provide a copy of this strategy to the Department on request.

- 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.
- 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;
  - (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.
- 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 Transition to Work provider.

## **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, agency and subcontract**

- 63.1 The Provider, its Personnel, agents, 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, agents or subcontractors or otherwise able to bind or represent the Commonwealth.
- 63.2 Subject to this Deed, the Provider must not represent itself, and must ensure that its Personnel, agents, Subcontractors and Third Party IT Providers do not represent themselves, as being Department Employees, agents or subcontractors or as otherwise able to bind or represent the Commonwealth.

### **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, Working with Children 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) 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;
- (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);
- (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;
- (e) within 24 hours of becoming aware of such circumstances, inform the Department of the full details of:
  - (i) any suspected contravention of the WHS Laws relating to the Services;
  - (ii) 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
  - (iii) any proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws; and
  - (iv) 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
- (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.

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.

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

## *General definitions*

‘**12 Week Employment Outcome**’ means an Employment Outcome as specified in row 1 of Table 1 at Annexure B1.

‘**12 Week Hybrid Outcome**’ means a Hybrid Outcome as specified in row 6 of Table 1 at Annexure B1.

‘**12 Week Period (Employment Outcome)**’ means, for Employment that satisfies the Outcome Description of a 12 Week Employment Outcome, a period of 12 cumulative weeks that:

- (a) starts from the relevant Outcome Start Date;
- (b) may be comprised of multiple periods, provided that each such period:
  - (i) begins in the first 12 months of the Participant’s Transition to Work Service Period;
  - (ii) for a Participant that is not in receipt of Income Support Payments, is no less than four weeks;
  - (iii) for a Participant that is in receipt of Income Support Payments, is for no less than two DHS Fortnights; and
- (c) does not overlap with the Outcome Period for any other Outcome that has been claimed in relation to the relevant Participant by any Transition to Work Provider, except as otherwise provided in any Guidelines.

‘**12 Week Period (Hybrid Outcome)**’ means, for Employment and Education that satisfies the Outcome Description of a 12 Week Hybrid Outcome, a period of 12 consecutive weeks that starts from the relevant Outcome Start Date and does not overlap with the Outcome Period for any other Outcome that has been claimed in relation to the relevant Participant by any Transition to Work Provider, except as otherwise provided in any Guidelines.

‘**26 Week Period**’ means, for Employment and Education (if relevant) which satisfies the requirements for a Sustainability Outcome, a period of 14 consecutive weeks that:

- (a) starts on the first day following the completion of a 12 Week Employment Outcome or 12 Week Hybrid Outcome;
- (b) follows and is in addition to a 12 Week Period; and
- (c) does not overlap with the Outcome Period for any other Outcome that has been claimed in relation to the relevant Participant by any Transition to Work Provider, except as otherwise provided in any Guidelines.

‘**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.



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

**'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.

**'Appointment'** means a time for a meeting between the Provider and a Participant in accordance with clause 80, and recorded in the Electronic Diary.

**'Australian Equivalents to International Financial Reporting Standards'** or **'AEIFRS'** mean 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).

**'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.

**'Bonus Outcome'** means:

- (a) a 12 Week Employment Outcome;
- (b) a 12 Week Hybrid Outcome; and
- (c) an Education Outcome,

which is above the Outcome Performance Target.

**'Bonus Outcome Payment'** means the Fee, as set out in Table 3 in Annexure B1, payable for a Bonus Outcome.

**'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.

**'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 Group Respondent:
  - (i) any change in the membership of the Group Respondent;
  - (ii) a change of the lead member of the Group Respondent, if the Group Respondent 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 Group Respondent.

**'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 the Provider in relation to the processing of claims for Payment.

**'Commence'** or **'Commencement'** means for:

- (a) Group One Participants and Group Three Participants, the time at which the Provider has recorded the completion of their Initial Interview on the Department's IT Systems; and
- (b) Group Two Participants, the time at which:
  - (i) the Provider has recorded the completion of their Initial Interview on the Department's IT Systems; and
  - (ii) the Participant has, in accordance with any Guidelines, agreed to participate.

**'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/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).

**'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.

**'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 a service:

- (a) administered, provided or funded by the Commonwealth or a state or territory government;
- (b) delivered for the purpose of supporting:
  - (i) young people to participate in Education and training;
  - (ii) employers to hire, train or sustain Employment including through wage subsidies; or
  - (iii) young people to address Non-vocational Barriers (i.e. specialist services); and
- (c) as specified in any Guidelines or advised by the Department,

which the Provider may access to provide additional specialised assistance to a Participant, but does not include an Excluded Service.

**'Completion Date'** means either:

- (a) the day after the latest of the following:

- (i) the Service Period end date; or
  - (ii) 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.

**'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.

**'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.

**'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 Participant in accordance with clause 80.4.

**'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).

**'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 January 2016, 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.

**'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.

**'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. Relevant policies are available on the Department's IT Systems through the following path: Provider Portal > TTW > Provider Operations > IT Security & Access, or at such other location as advised by the Department.

**'DHS'** means the Department of Human Services and includes its officers, delegates, employees, contractors and agents.

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

**'Direct Registration'** or **'Directly Register'** means Registration by the Provider of a Participant who does not have a Referral, in accordance with clause 76 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.

**'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.

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

**‘Education Outcome’** means an Outcome as specified in rows 3 to 5 of Table 1 of Annexure B1.

**‘Effective Exit’** means the automatic removal of a Participant from the Department’s IT Systems as being eligible for the Transition to Work Service.

**‘Electronic Diary’** means the Provider’s electronic diary, in the Department’s IT Systems, used for making and managing a Participant’s Appointments.

**‘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.

**‘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 Outcome’** means:

- (a) a 12 Week Employment Outcome; and
- (b) a Sustainability Outcome (Employment).

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

- (a) identified and displayed at [lmip.gov.au](http://lmip.gov.au), as varied by the Department 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.

**‘Employment Services Assessment’** or **‘ESAt’** means an assessment of a person’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 services 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 services 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.

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

- (a) where the Participant resides in an area which is affected by:
  - (i) extreme weather conditions (if agreed to by the Department);
  - (ii) a natural disaster;
  - (iii) public transport strikes; or
- (b) other circumstances advised by the Department.

**‘Excluded Service’** means a service administered, provided or funded by the Commonwealth or a state or territory government and:

- (a) that is for the specific purpose of supporting young persons to develop their Work Readiness; or
  - (b) which otherwise overlaps with, duplicates, or is not compatible with the Services,
- as specified in any Guidelines or advised by the Department.

**‘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 Participant with Mutual Obligation Requirements 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 Participant from Services in accordance with clause 88.1 and **'Exited'** has an equivalent meaning.

**'Extended Service Periods'** means one or more periods of time that the Term of this Deed is extended for in accordance with clauses 2.2 and 2.3.

**'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-Time'** means for a Site, Monday to Friday from 9am to 5pm daily on Business Days, or as otherwise agreed with the Department.

**'Group One Participant'** means a person who:

- (a) is aged 15 to 21;
- (b) has not been awarded a Year 12 certificate or a Certificate III or higher;
- (c) is receiving Youth Allowance (other), or any other activity tested Income Support Payments; and
- (d) is assessed by the Job Seeker Classification Instrument as eligible for Stream B in jobactive, but excludes a person with a pending ESAT.

**'Group Two Participant'** means a person who:

- (a) is aged 15 to 21; and
- (b) has not been awarded a Year 12 certificate or a Certificate III or higher; or
- (c) has been awarded a Year 12 certificate and has not engaged in Education or Employment for the previous six months or more; and
- (d) is not already participating in employment services;
- (e) is not currently working an average of eight hours or more per week for a period of 13 weeks (104 hours);
- (f) has not attended Education for a period of 13 weeks; and
- (g) is not currently enrolled in Education or has an approved exemption from legal requirements to attend school.

*Note 1: This group includes young people who are not receiving Income Support Payments or who are receiving non-activity tested Income Support Payments such as Parenting Payment.*

*Note 2: Subject to this Deed, the number of Group One Participants and Group Two Participants serviced by the Provider is unlimited and demand driven.*

**'Group Three Participant'** means a person in Stream C of jobactive who:

- (a) is aged 15 to 21;
- (b) is identified by their jobactive provider as having a capacity to benefit from Services; and
- (c) is Referred by their jobactive Provider to the Provider.

*Note 1: 'Stream C' means the stream of services of that name under jobactive for people with multiple and complex Vocational Barriers and Non-vocational Barriers.*

*Note 2: The number of Group Three Participants serviced by the Provider is subject to the Referral Cap for jobactive.*

**'Group Respondent'** 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.

**'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 and available at the following website: <http://guides.dss.gov.au/guide-social-security-law>.

**'Guidelines'** refers to the guidelines, if any, as described in this Deed and issued by the Department.

**'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.

**'Hybrid Outcome'** means:

- (a) a 12 Week Hybrid Outcome; and
- (b) a Sustainability Outcome (Hybrid).

**'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.

**'Initial Interview'** means an initial Contact between the Provider and a Participant in accordance with clause 82.

**'Initial Phase'** means a period from Commencement up to the first four weeks of a Participant's Period of Registration.

**'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.

**'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 provider'** means any entity contracted by the Commonwealth to provide jobactive services under the jobactive Deed 2015-2020.

**'Job Plan'** means the plan described in clause 83, and which includes an employment pathway plan under the *Social Security Act 1991* (Cth), or, if the *Social Security Act 1991* (Cth) is amended, any other such plans.

**'Job Plan Officer'** means a person engaged by the Provider who is a delegate of the Secretary of the Department under the Social Security Law.

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

**'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 services providers to work cooperatively to achieve shared goals and outcomes in the delivery of employment services.

**'KPI'** means the performance indicators specified in clause 91 or as Notified by the Department.

**'Location'** means an area of an Employment Region that the Provider is contracted to service under this Deed, as specified in item 6.2 of Schedule 1.

**'LTU and Indigenous Wage Subsidy'** means the Wage Subsidy of that name which provides incentives for long-term unemployed Participants, Aboriginal and Torres Strait Islander peoples and any other persons in accordance with any Guidelines.

**'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.

**'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 Participant must meet in order to receive an Income Support Payment in accordance with any Guidelines.

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

**'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 100.1 and any Guidelines.

**'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.

**'Outcome'** means an Employment Outcome, an Education Outcome and a Hybrid Outcome as specified in Table 1 of Annexure B1.

**'Outcome Description'** means the description of an Outcome as specified in Column D of Table 1 of Annexure B1.

**'Outcome Payment'** means a Fee payable for an Outcome as set out in Table 3 in Annexure B1.

**'Outcome Performance Target'** means the number of:

- (a) 12 Week Employment Outcomes;
- (b) 12 Week Hybrid Outcomes; and
- (c) Education Outcomes,

that the Provider must achieve and claim for a period calculated at the Department's absolute discretion and Notified by the Department to the Provider.



**'Outcome Period'** means the period from the relevant Outcome Start Date to the relevant Outcome Completion Date (inclusive) for an Outcome.

**'Outcome Start Date'** means the start date for an Outcome as specified in Column B of Table 1 in Annexure B1.

**'Outcome Completion Date'** means the completion date for an Outcome as specified in Column C of Table 1 in Annexure B1.

**'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 the Services.

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

**'Parents Wage Subsidy'** means the Wage Subsidy of that name which provides incentives for the Employment of parents who are Participants, in accordance with any Guidelines.

**'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.

**'Participant'** means a person who is a Group One Participant, a Group Two Participant or a Group Three Participant.

**'Participant Placement'** means:

- (a) the placement of a Participant by the Provider into a Vacancy, an apprenticeship or a traineeship; or
- (b) circumstances where the Participant has found the relevant position themselves.

**'Participant Placement Start Date'** means:

- (a) the date on which the Participant first commences in a Participant Placement; or
- (b) if the Participant Placement includes an initial Paid Induction Period, either:
  - (i) the day on which the Participant first commences in the Participant Placement; or
  - (ii) the first day of continuous Employment following the Paid Induction Period,whichever the Provider selects.

**'Participant Service 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 Requirement'** means the requirement, specified in any Guidelines or otherwise Notified by the Department, as to the number of hours that a Participant must undertake Activities.

**'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.

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

**'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 Participant on the Provider's caseload:

- (a) beginning on their Commencement;
- (b) ending when they are transferred from the Provider or Exited, whichever is the earliest; and
- (c) which is halted in accordance with clause 86 when the Participant is Suspended.

**'Period of Unemployment'** means the period which commences on the date on which a Participant registers with DHS or directly with the Provider as unemployed, and concludes in accordance with clause 89.1.

**'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.

**'Place'** means a funded unit of servicing, as specified in item 9.2 of Schedule 1, that the Provider must use in accordance with this Deed to service one or more Participants in a particular Employment Region.

**'Post-placement Support'** means contact with a Participant and their Employer or Education institution:

- (a) frequently, during the early stages of the Participant's placement in Employment or Education, to ensure that the Participant is settling in and any issues are identified quickly and addressed;
- (b) regularly, throughout the Participant's placement in Employment or Education, to assist the Participant to remain engaged with the Employment or Education until the achievement of an Outcome or until the Provider determines that an Outcome is unlikely to be achieved; and
- (c) in accordance with the Service Delivery Plan and 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.

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

**'Provider'** means the Transition to Work 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 Group Respondent contracted under this Deed, where applicable.

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

**'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 be an adjunct to the Department's IT Systems.

**'Purchase'** means to acquire Activities or services from an Activity Host Organisation or a Supervisor by the payment of money, in accordance with any Guidelines.

**'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 in relation to the management, retention and disposal of Records.

**'Referral'** or **'Referred'** means a referral of a person to the Provider by DHS, the Department, or a jobactive provider.

**'Referral Cap for jobactive'** means the maximum number of Places that can be used to service Group Three Participants as specified at item 9.3 of Schedule 1.

**'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 be Notified by the Department to be a reimbursement.

**'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 Directors who are also directors 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, Directors, officers or other like persons exists between that entity and the principals, owners, Directors, officers or like persons of the Provider.

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

**'Schedule'** means a schedule to this Deed.

**'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.

**'Services'** means the services that the Provider is contracted to provide under this Deed.

**'Service Delivery Plan'** means the document at Schedule 2, which has been developed by the Provider and approved by the Department in accordance with clauses 73.1 to 73.3 of this Deed.

**'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(s) as specified in item 3 of Schedule 1.

**'Site'** means the one or more physical locations specified in items 6.3 of Schedule 1, as relevant.

**'Skills for Education and Employment (SEE) programme'** means the Commonwealth programme of that name that provides language, literacy and numeracy training to eligible Participants, with the expectation that such improvements will enable them to participate more effectively in training or in the labour force.

**'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 instruments, and the Guide to Social Security Law.

**‘Statement of Applicability’** or **‘SOA’** means the document of that name that specifies the accreditation requirements for Provider IT Systems, issued by the Department.

**‘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 Participants engaged in an Activity.

**‘Supervision’** means the action or process of directly monitoring and managing Participants participating in the Services.

**‘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 Systems, and during which the requirement to provide Services to a Participant is suspended in accordance with clause 87.

**‘Sustainability Outcome’** means:

- (a) a Sustainability Outcome (Employment); and
- (b) a Sustainability Outcome (Hybrid).

**‘Sustainability Outcome (Employment)’** means an Employment Outcome as specified in row 2 of Table 1 at Annexure B1.

**‘Sustainability Outcome (Hybrid)’** means a Hybrid Outcome as specified in row 7 of Table 1 at Annexure B1.

**‘Sustainability Outcome Payment’** means the Fee of that name, as set out in Table 3 in Annexure B1, payable for a Sustainability Outcome.

**‘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.

**‘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 <https://docs.employment.gov.au/node/34977>.

**‘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 Participant is transferred to the Provider in the Department’s IT Systems, or as otherwise Notified by the Department.

**‘Transition to Work Service’** means the Commonwealth service of that name (or such other name as advised by the Department), administered by the Department.

**‘Transition to Work Service Guarantee’** means a set of minimum service standards for Transition to Work Services as specified in Annexure B2.

**‘Transition to Work Service Period’** means the cumulative total of all Periods of Registration for a Participant with any Transition to Work Provider.

**‘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.

**‘Transition Period’** means the period, if any, Notified by the Department to the Provider in accordance with clause 57.1.

**‘Transitioned Participant’** means a person identified as transitioned to the Provider by the Department’s IT Systems.

**'Upfront Payment'** means the Fee of that name, as set out in Table 2 in Annexure B1, payable per Place.

**'Unsubsidised Self-Employment'** means self-employment where a Participant does not receive a personal income subsidy of any kind.

**'Vacancy'** means any one or more vacant positions for:

- (a) paid Employment with an Employer; or
- (b) Unsubsidised Self Employment.

**'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 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.

**'Vulnerable Group'** means a group of young people who have specific characteristics which indicate a higher risk of not achieving sustained Education and Employment outcomes and who require targeted/specific support. For example, Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse, refugees, homeless, people with a disability, ex-offenders, parents, people with mental health issues.

**'Wage Subsidy'** means a payment under the LTU and Indigenous Wage Subsidy, Youth Wage Subsidy or Parents Wage Subsidy, in accordance with any Guidelines, and any other wage subsidy as advised by the Department.

**'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 Participant who 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 Readiness'** means possessing the core skills and behaviours required by employers, including:

- (a) teamwork skills;
- (b) communication skills; and
- (c) a positive attitude and work ethic, including motivation, reliability and a willingness to work.

**'Work Trial'** means a short period of paid Employment on a trial or probation basis.

**'Work Experience (other)'** means an Activity which meets the criteria specified for Work Experience (other) in any Guidelines and provides eligible Participants with opportunities to enhance their vocational skills and experience in a work-like environment.

**'Working with Children Laws'** means the:

- (a) *Child Protection (Working with Children) Act 2012* (NSW);
- (b) *Commission for Children and Young People and Child Guardian 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.

**'Youth Wage Subsidy'** means the Wage Subsidy of that name which provides incentives for the Employment of Participants under 30 years of age in accordance with any Guidelines.

## Annexure A2 – Joint Charter of Deed Management

# Employment Services Joint Charter of Deed Management

The Department of Employment and providers delivering services under the jobactive Deed 2015–2020, jobactive Deed 2015–2020 - Work for the Dole Coordinator 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, jobactive 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.

### 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:***

|                                     |                      |
|-------------------------------------|----------------------|
| <b>Respect and support</b>          | <b>Respect</b>       |
| <b>Openness and transparency</b>    | <b>Collaboration</b> |
| <b>Integrity and accountability</b> |                      |
| <b>Continuous improvement</b>       |                      |

# 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).

## 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 participants, the Department, other providers, and industry stakeholders with courtesy and consideration
- respond to queries appropriately.

## 2 Collaboration

- develop and maintain effective relationships with the Department, employers, other providers, 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 participants, employers, and other stakeholders
- actively identify and manage risks.

## 4 Continuous Improvement

Providers will:

- work to increase job outcomes for participants
- further develop service strategies that increase job outcomes for Indigenous participants
- 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 – TRANSITION TO WORK SERVICES

## CHAPTER B1 – GENERAL SERVICES

### Section B1.1 – Application and allocation of Participants to the Provider

#### 72. Services

72.1 Subject to this Deed, the Provider must provide Services to all Participants:

- (a) who are Referred to, Directly Register with or transfer to the Provider;
- (b) in accordance with
  - (i) this Part B; and
  - (ii) their Job Plan; and
- (c) for the duration of their Period of Registration with the Provider.

#### *Transitioned Participants*

72.2 The Provider must Commence each Transitioned Participant in Services within four weeks of their Transition Date.

#### 73. Transition to Work Service Guarantee and Service Delivery Plan

#### *Approval of Service Delivery Plan*

73.1 The Provider must develop and submit a draft service delivery plan for the Department's approval in the manner and within the timeframe specified by the Department.

73.2 The Department may, at its absolute discretion:

- (a) approve the draft service delivery plan as the Service Delivery Plan; or
- (b) direct the Provider to:
  - (i) amend the draft service delivery plan; and
  - (ii) resubmit the draft service delivery plan to the Department for its approval,in the manner and within the timeframe specified by the Department, and the Provider must comply with any such direction.

73.3 The Parties agree that on Notification by the Department of its approval of the draft service delivery plan, the draft service delivery plan becomes the Service Delivery Plan.

73.4 The Department may immediately exercise its rights under clause 52.2 [Remedies] if the Provider fails to comply with clause 73.1 or clause 73.2(b).

#### *Conduct of the Services*

73.5 The Provider must:

- (a) conduct Services:
  - (i) at or above the minimum standards in the Transition to Work Service Guarantee; and
  - (ii) in accordance with all representations made by the Provider with regards to Services, as specified in the Service Delivery Plan(s) and the Provider's response to the request for proposal for this Deed; and
- (b) prominently display the Transition to Work Service Guarantee and Service Delivery Plan(s) in its offices and all Sites, and make these available to Participants, potential Participants and Employers.

#### **74. Engagement with other services in the community**

- 74.1 In providing Services, the Provider must work cooperatively, and in accordance with any Guidelines with:
- (a) other programmes and services provided by the Commonwealth, state or territory governments, relevant local governments, private and community organisations and stakeholders; and
  - (b) jobactive providers, Employers, schools and Education institutions in the Provider's Employment Region(s).

#### **75. Referrals by DHS, the Department, or jobactive providers**

- 75.1 The Provider must only accept Referrals of Participants made through the Department's IT Systems or directly by DHS.

*Note 1: Referrals are made by way of an Appointment in the Electronic Diary for an Initial Interview.*

*Note 2: Referrals of Group Three Participants can be made by a jobactive provider where the jobactive provider has assessed the job seeker as having the capacity to benefit from the Transition to Work. However, these Referrals are subject to the Referral Cap for jobactive.*

#### **76. Sourcing and Direct Registration of Group Two Participants**

- 76.1 The Provider must actively recruit Group Two Participants in its Locations and in accordance with any Guidelines.
- 76.2 Subject to this Deed, where a Group Two Participant is recruited by the Provider, the Provider must Directly Register them and conduct an Initial Interview.

#### **77. Relocation of Participants between Provider's Sites**

- 77.1 If a 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 Services to them at no additional cost to the Department.

#### **78. Transfer of Participants from the Provider**

- 78.1 A Participant may, at any time, be transferred from the Provider to another Transition to Work Provider:
- (a) by DHS or the Department, where the 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 Participant will receive services that could better enhance their Employment prospects from the other Transition to Work Provider; or
    - (ii) the Participant and the Provider are unable to achieve or maintain a reasonable and constructive servicing relationship, as determined by the Department; or
  - (c) by the Department or by the Provider, if the Department, the Provider, another Transition to Work provider and the Participant agree to the transfer.
- 78.2 If a Participant is transferred in accordance with clause 78.1, 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 78.2(b), maintain all Records relating to the Participant in accordance with clause 37.9.

## **79. Transfer of Participants to the Provider**

79.1 If a 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 Services to continue to be provided to the Participant;
- (b) conduct an Initial Interview with the Participant in accordance with clause 82 within two Business Days of the transfer;
- (c) immediately provide Services to the Participant in accordance with this Deed;
- (d) comply with the Department's directions in relation to the transfer of Material and Participants; and
- (e) maintain the servicing arrangements for the Participant that were in place prior to the transfer.

*Note 1: If a Participant is transferred to or from the Provider during a 12 Week Period or 26 Week Period, clause 107 describes the situation with regards to eligibility to claim an Outcome Payment.*

## **Section B1.2 – Appointments and Contacts**

### **80. Appointments with Participants**

80.1 Unless otherwise agreed with the Department, the Provider must ensure that the Electronic Diary has, at all times, capacity to receive an Appointment for a Participant within the next two Business Days.

80.2 Where:

- (a) DHS fails to make an Appointment in the Electronic Diary, for a Participant that is Referred to the Funding Recipient, within five Business Days of the Participant's Referral;
- (b) a Participant Directly Registers with the Provider; or
- (c) the Provider or Participant needs to reschedule an Appointment,

the Provider must make an Appointment with the Participant at the next available opportunity.

80.3 Where a Participant has an Appointment with the Provider, the Provider must, in accordance with this Deed including any Guidelines, meet with the Participant on the date and at the time of the Appointment as recorded in the Electronic Diary.

#### *Contacts*

80.4 The Provider must provide each Participant 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 Electronic Diary, or as subsequently arranged between them and the Provider;
- (b) any additional Contacts necessary during the Initial Phase to deliver the Services specified in 81.1;
- (c) any other Contacts as outlined in the Provider's Service Delivery Plan and its response to the request for proposal for this Deed, and as otherwise required to ensure the Participant satisfies the requirements of their Job Plan; and
- (d) Post-placement Support.

80.5 The Provider must ensure that each Contact is appropriately tailored to meet the circumstances of the individual Participant and that the result of the Contact is recorded in the Department's IT Systems in accordance with any Guidelines.

### **81. Initial Phase**

81.1 The Provider must, during the Initial Phase for each Participant:

- (a) explain the Services that the Provider will provide to them;

- (b) assist them to identify and choose relevant Activities to participate in and record these Activities on the Department's IT Systems;
- (c) conduct the JSCI, where it has not already been completed by DHS;
- (d) prepare or update a Job Plan in accordance with clause 83; and
- (e) for Participants with Mutual Obligation Requirements, explain that participation in Transition to Work fully meets their Mutual Obligation Requirements;
- (f) explain the consequences of not participating appropriately in Services; and
- (g) otherwise comply with any Guidelines.

## **82. Initial Interview**

- 82.1 The Provider must conduct an Initial Interview with each Participant in accordance with any Guidelines.
- 82.2 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.

## **Section B1.3 – Job Plans**

### **83. General requirements for a Job Plan**

- 83.1 The Provider must, within the Initial Phase and in accordance with any Guidelines, for each Participant:
  - (a) if the Participant does not have a Job Plan, arrange for a Job Plan Officer to create, enter into and approve a new Job Plan with the Participant;
  - (b) if the Participant does have a Job Plan, arrange for a Job Plan Officer to update the Job Plan for them;
  - (c) explain the Job Plan to the Participant; and
  - (d) ensure that, at all times thereafter, the Participant has a current Job Plan.
- 83.2 When working with a Participant on a Job Plan, the Provider must ensure that the relevant Job Plan Officer complies with the Social Security Law and the rules set out in any Guidelines in relation to entering into a Job Plan.
- 83.3 The Provider must ensure that a Job Plan Officer reviews, and, if appropriate, updates the Activities in each Participant's existing Job Plan in accordance with any Guidelines, as events occur which result in the need to change those Activities.

#### *Contents of a Job Plan*

- 83.4 The Provider must ensure that the Job Plan for each Participant:
  - (a) describes the Activities that the Participant agrees to participate in so as to meet their Participation Requirements;
  - (b) contains the details of any vocational and non-vocational activities that are specifically tailored to address the 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 Services the Participant is receiving and any other support referred to in clause 93.1;
  - (c) is in a form approved by the Department and specifies all information required by any Guidelines.
- 83.5 The Provider must provide the Participant with the assistance, and arrange and monitor the activities, specified in the Job Plan.

### **84. Wage Subsidies**

- 84.1 The Provider must promote, deal with enquiries, manage, pay and report on Wage Subsidies, in accordance with any Guidelines.

84.2 Once the Provider has paid a Wage Subsidy in accordance with any Guidelines, the Provider may submit a claim for Reimbursement to the Department.

*Transfer of Wage Subsidy Participants following their Transition to Work provider ceasing business*

84.3 Where a Wage Subsidy Participant is transferred to the Provider following their Transition to Work provider ceasing business, and the Wage Subsidy Participant is the subject of a Wage Subsidy Agreement on the date of their transfer to the Provider, the Provider must:

- (a) notwithstanding that the Wage Subsidy Participant has Exited or is not part of the Provider's caseload, use its best endeavours to enter into a Wage Subsidy Agreement with the Wage Subsidy Employer or the Wage Subsidy 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; and
- (c) comply with any direction by the Department in relation to the Wage Subsidy Participant.

## **Section B1.4 - Job opportunity management**

### **85. Job opportunity management**

85.1 The Provider must engage and work with Employers to understand their needs and identify Vacancies, apprenticeships and traineeships.

85.2 The Provider must ensure that each Vacancy, apprenticeship and traineeship it identifies is current and is not a position that is excluded under clause 104.4.

85.3 The Provider must, in accordance with any Guidelines:

- (a) encourage Participants to consider job opportunities outside of their local area;
- (b) refer suitable Participants to:
  - (i) Employers with Vacancies; and
  - (ii) apprenticeships or traineeships; and
- (c) record Participant Placement Start Dates for a Participant in the Department's IT Systems within 28 days of them commencing in:
  - (i) Employment, where the Participant is successful in gaining Employment;
  - (ii) Unsubsidised Self Employment;
  - (iii) an apprenticeship; or
  - (iv) a traineeship,as relevant.

## **Section B1.5 – Participant Suspension and Exit from Services**

### **86. Suspensions**

86.1 The Provider agrees that a Participant is Suspended if:

- (a) DHS notifies the Provider that a Participant has an Exemption; or
- (b) for Group Two Participants, the Provider identifies that the Participant has experienced circumstances which prevent the Participant from participating in the Services for a specified period of time, in accordance with any Guidelines.

86.2 The Provider agrees that a Participant will remain Suspended until, as relevant:

- (a) DHS notifies the Provider that their Exemption has reached its end date; or

- (b) for Group Two Participants, the Provider determines that the Participant is able to participate in the Services.

## **87. Effect of Suspensions**

- 87.1 Where a Participant is Suspended, the Participant's Period of Unemployment continues but the Participant's current Period of Registration and Transition to Work Service Period are halted and recommence when the Suspension ends.

## **88. Exits**

- 88.1 A Participant is Exited when:

- (a) an Effective Exit occurs;
- (b) a Provider Exit occurs; or
- (c) any other event, as advised by the Department or as specified in any Guidelines, occurs.

### *Effective Exits*

- 88.2 An Effective Exit occurs when:

- (a) the Participant is a Group One Participant or a Group Three Participant, and the Department is advised by DHS that the Participant has stopped receiving an Income Support Payment;
- (b) the Participant is commenced in Disability Employment Services or the Communities Development Programme;
- (c) the Participant participates in Green Army;
- (d) the Participant is a Group Two Participant, and they reach 12 months of their Transition to Work Service Period; and
- (e) the Participant's Income Support Payment changes from Youth Allowance (other) to Youth Allowance (student);
- (f) the Participant participates in an activity, or an event occurs in relation to the Participant, that the Department may advise as being an Effective Exit

*Note: clause 95 requires Post-placement Support to be provided where a Participant is progressing towards an Outcome including after 12 months of their Transition to Work Service.*

### *Provider Exits*

- 88.3 If a Participant:

- (a) ceases to participate appropriately in the Transition to Work Service or to meet their Participation Requirements, as determined by the Provider;
- (b) advises the Provider that they no longer wish to participate in the Transition to Work Service;
- (c) ceases to meet the eligibility criteria for Services as specified in any Guidelines; or
- (d) commences in an Excluded Service;
- (e) is a Group Three Participant and the Provider assesses during the Initial Phase that the Participant is unsuitable for Services, in accordance with any Guidelines;
- (f) is a Group One Participant or a Group Three Participant and:
  - (i) has not, by 12 months of their Transition to Work Service Period, commenced in Employment or Education which is sufficient to meet the requirements for an Outcome; or
  - (ii) an Outcome Start Date occurs before 12 months of their Transition to Work Service Period, and at or after 12 months of their Transition to Work Service Period they achieve the Outcome or cease to progress towards the Outcome;

- (iii) has Partial Capacity to Work and is fully meeting their Partial Capacity to Work through Education or Employment; or
- (iv) is a Principal Carer with part-time Participation Requirements and is fully meeting their Participation Requirements through Education or Employment; or
- (g) does any other act or fails to do an act, where such act or failure is specified in any Guidelines as requiring a Provider Exit,

the Provider must:

- (h) for Group One Participants and Group Three Participants:
  - (i) in the case of circumstances under clause 88.3(f)(i), refer the Participant to jobactive in accordance with clause 97.1; and
  - (ii) in the case of circumstances under clauses 88.3(a) to (e) and 88.3(f)(ii) and (g), refer the Participant to jobactive in accordance with clause 97.2;
  - (iii) in the case of circumstances under clauses 88.3(f)(iii) and 88.3(f)(iv), not refer the Participant; and
- (i) for Group Two Participants, refer the Participant in accordance with any Guidelines,

and then perform a Provider Exit for the Participant.

*Rules relating to Exits*

88.4 Where an Exit occurs, the Provider may cease providing Services in relation to a Participant unless clauses 84 [Wage Subsidies], 88.5 or 95 [Post-placement Support] apply.

88.5 Where an Exit occurs for a Participant, but the Participant returns to the Services less than 13 consecutive weeks after the date of the Exit:

- (a) the Participant's:
  - (i) Period of Registration;
  - (ii) Transition to Work Service Period; and
  - (iii) Period of Unemployment,
 continue from the date of the Participant's return, and
- (b) the Provider must, as soon as it becomes aware of the Participant's return:
  - (i) resume providing Services to the Participant; and
  - (ii) record the resumption of Services on the Department's IT Systems in accordance with any Guidelines.

88.6 Where an Exit occurs for a Participant and the Participant subsequently advises the Provider of their wish to return to the Transition to Work Service at 13 consecutive weeks or more after the date of the Exit, the Provider must:

- (a) for Group One Participants and Group Three Participants:
  - (i) who are registered with a jobactive provider, direct the Participant back to their jobactive provider for reassessment of their eligibility and, if eligible, Referral to the Transition to Work Service; and
  - (ii) who are not registered with a jobactive provider, direct the Participant to DHS for reassessment; and
- (b) for Group Two Participants, reassess the Participant's eligibility to participate in the Transition to Work Service in accordance with any Guidelines.

88.7 If a Participant is:



- (a) directed to DHS in accordance with clause 88.6(a) and is subsequently Referred to the Provider by DHS;  
or
- (b) a Group Two Participant, and is assessed in accordance with clause 88.6(b) as eligible to participate in the Transition to Work Service,

the Provider must Commence the Participant in Services and the Participant begins a new Period of Registration, Transition to Work Service Period and Period of Unemployment.

## **89. Effect of Exits**

89.1 Subject to clauses 84 [Wage Subsidies], 88.5 or 95 [Post-placement Support], when a Participant is Exited in accordance with this Section B1, the Period of Registration, Transition to Work Service Period and Period of Unemployment for the Participant end.

*Note: Under other employment services deeds, there may be a concept of 'period of unemployment' which may be different to the equivalent concept under this Deed and will operate pursuant to the terms of those deeds.*

## **90. Other Suspensions and Exits**

90.1 Participants may be otherwise Suspended or Exited, as relevant, in accordance with any Guidelines.

## **Section B1.6 – Performance management**

### **91. Performance Indicators**

*KPIs*

91.1 The KPIs are as follows:

- (a) KPI 1 (Effectiveness): The extent to which the Provider meets the objectives of Transition to Work specified at clause 4.2.
  - (i) KPI 1 measurement: the Department's assessment of the Provider's performance, based on:
    - (A) the number of Outcomes (excluding Sustainability Outcomes) achieved for Participants relative to the Outcome Performance Target;
    - (B) the number of Outcomes achieved for Participants relative to the number of Commencements;
    - (C) achievement of Outcomes that result in a Participant moving fully off Income Support Payments; and
    - (D) from 1 July 2017, the degree of improvement in a Participant's Work Readiness from Commencement to Exit; and
    - (E) the number of Commencements of Group Two Participants.
  - (b) KPI 2 (Efficiency):
    - (i) KPI 2 measurement: the Department's assessment of the Provider's performance based on:
      - (A) the time lapsing between Referral and Commencement of Participants;
      - (B) the number of Participants serviced relative to the number of Places;
      - (C) the time lapsing between Commencement and the achievement of an Outcome for Participants; and
      - (D) the time lapsing between completion by Participants of their participation in Services and commencement in jobactive.
    - (c) KPI 3 (Quality):
      - (i) KPI 3 measurement: The Department's assessment of quality and assurance including:

- (A) service delivery against the Service Guarantee and the Service Delivery Plan(s); and
- (B) the extent of engagement of Participants with Services and the number of Provider Exits occurring under clause 88.3(a) and clause 88.3(b).

*Other factors in performance assessment*

91.2 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 and other Vulnerable Groups;
- (b) the Provider's performance in building linkages with Employers to understand and meet the skills needs of the local labour market;
- (c) the effectiveness of Post-placement Support;
- (d) collaboration with other Transition to Work Providers and jobactive providers;
- (e) the Provider's compliance with this Deed and any representation made by the Provider in its response to the request for proposal for this Deed; and
- (f) any other information available to the Department, including Provider feedback, feedback from Participants, Employers, intelligence from the Department's Employment Services Tip off Line and DHS.

**92. Action about performance**

92.1 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 KPIs and the outcomes of any Programme Assurance Activities), the Department may, at its absolute discretion,

- (a) reduce the number of Places for the relevant the Employment Region, including to zero; 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.

92.2 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 number of Places for a period of time specified by the Department.

*Action following performance assessments*

92.3 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 performance in the relevant Employment Region or at the relevant Site is not to the Department's satisfaction, the Department may, at its absolute discretion, and without limitation of any of the Department's rights under this Deed or the law:

- (a) for the Employment Region:
  - (i) by Notice, reduce the Provider's Places in that Employment Region; and
  - (ii) transfer Participants on the Provider's caseload to another Transition to Work Provider; and
- (b) 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 Participants from that Site, including to another Transition to Work Provider, and if the Department takes the action specified in clause 92.3(b)(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 Transition to Work Providers or another Site of the Provider as directed by the Department.

*Decreasing Places in an Employment Region to zero*

- 92.4 References in this clause 92 to decreasing Places in an Employment Region, include decreasing the Places in the Employment Region to zero.
- 92.5 If, in accordance with this clause 92, the Department decreases the Provider's Places 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 Transition to Work 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 Participants affected by the discontinuation of the Provider's Services in that Employment Region are transferred to other Transition to Work Providers as specified by the Department.
- 92.6 For the avoidance of doubt, any decrease in Places under this clause 92 is not a reduction of scope or termination for which compensation is payable.
- 92.7 If the Department takes any action under this clause 92:
- (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.
- 92.8 This clause 92 operates without prejudice to any other right which the Commonwealth has or which may accrue to the Commonwealth under this Deed or the law.

## **CHAPTER B2 – SPECIFIC SERVICES**

### **Section B2.1 – Specific Services**

#### **93. Intensive Assistance**

93.1 In addition to the Services specified in:

- (a) Chapter B1;
- (b) the Service Delivery Plan; and
- (c) the Provider's response to the request for proposal for this Deed,

the Provider must, for each Participant, as appropriate to their needs, and in accordance with any Guidelines:

- (d) support them to access the full range of Activities and specialist services in their local area so as to address Non-vocational Barriers and improve their personal situation and/or Work Readiness;
- (e) assist them to address literacy and numeracy deficits;
- (f) arrange National Work Experience Programme Placements for up to four weeks;
- (g) arrange Work Experience (other) placements as specified in any Guidelines;
- (h) refer them to Vacancies, apprenticeships and traineeships;
- (i) once they are eligible for Wage Subsidies in accordance with any Guidelines, use Wage Subsidies to help secure sustainable Employment placements for them;
- (j) refer them, where appropriate, to Education courses that help them to complete Year 12 or gain a Certificate III or higher qualification;
- (k) provide help to them to gain their drivers licence, particularly in regional areas;
- (l) refer them to Complementary Services;

- (m) provide, purchase, broker or arrange Activities sufficient to allow the Participant to meet their Participation Requirement; and
- (n) monitor their participation in Transition to Work and manage any failure to participate appropriately in accordance with this Deed, including clause 88.3 and any Guidelines;
- (o) provide other support as directed by the Department.

#### **94. Complementary Services and Excluded Services**

- 94.1 The Provider must make itself aware of other relevant initiatives and services available to Participants, including Complementary Services and Excluded Services, and work collaboratively with relevant providers to ensure that its referrals of Participants to Complementary Services are appropriate.
- 94.2 If a Participant commences in an Excluded Service, the Provider must perform a Provider Exit for the Participant in accordance with clause 88.3.

#### **95. Post-placement Support**

- 95.1 Notwithstanding clause 89 [Effect of Exits], where a Participant is progressing towards an Outcome, the Provider must provide Post-placement Support to the Participant until the relevant Outcome and any related Sustainability Outcome has been achieved or until the Provider determines that the Participant is unlikely to achieve the relevant Outcome or related Sustainability Outcome.

### **Section B2.2 – Places**

#### **96. Places**

- 96.1 The Provider must use the Places to provide Services to Participants.
- 96.2 The Provider must not, without the Department's prior written approval, exceed the Referral Cap for jobactive.  
*Note: 'Referral Cap for jobactive' means the maximum number of Places that can be used to service Group Three Participants, as specified at item 9.3 of Schedule 1.*
- 96.3 For the first three months following the Service Start Date for each Employment Region, the number of Places and the Referral Cap for jobactive will be 75 per cent of the numbers specified at items 9.2 and 9.3 of Schedule 1, respectively.
- 96.4 The Provider may use its Places as is required to accommodate variation in the flow of Participants over time, provided, subject to clause 96.5, that it uses above 90 per cent of the Places in servicing Participants in accordance with any Guidelines.

##### *Variation in Places and the Referral Cap for jobactive*

- 96.5 The Department may, at any time and at its absolute discretion, by Notice to the Provider, vary the number of Places and/or the Referral Cap for jobactive, and where the Department Notifies the Provider of such a variation, items 9.2 and 9.3 of Schedule 1 are automatically varied accordingly, as relevant.

*Note 1: the Department will regularly review the number of Places allocated for each Employment Region and vary that number to reflect changes in labour market demands.*

*Note 2: Places and the Referral Cap for jobactive can also be varied under clause 15.1(c).*

### **Section B2.3 – Movement from Transition to Work Service to jobactive**

#### **97. Movement from Transition to Work Service to jobactive**

- 97.1 Where clause 88.3(h)(i) applies to a Group One Participant or a Group Three Participant, the Provider must, in accordance with any Guidelines:
- (a) provide advice to the Participant regarding jobactive, including information about all jobactive providers available to them;

- (b) determine the Participant's choice of jobactive provider;
- (c) in the first week of the twelfth month of the Participant's Transition to Work Service Period, arrange and conduct a meeting with the Participant and the relevant jobactive provider to determine appropriate activities for the Participant to participate in during the relevant phase of their servicing under jobactive (if relevant); and
- (d) in the final week of the twelfth month of the Participant's Transition to Work Service Period, arrange and conduct a meeting with the Participant and the relevant jobactive provider and facilitate the preparation or updating of the Participant's Job Plan and their commencement of servicing under jobactive.

*Note 1: Clause 88.3(h)(i) applies to a Group One Participant or a Group Three Participant who has not, by 12 months of their Transition to Work Service Period, commenced in Employment or Education which is sufficient to meet the requirements for an Outcome.*

*Note 2: The Department will regularly monitor movements of Participants to jobactive providers and the information provided to moved Participants.*

97.2 Where clause 88.3(h)(ii) applies to a Group One Participant or a Group Three Participant, the Provider must, in accordance with any Guidelines:

- (a) provide advice to the Participant regarding jobactive, including information about all jobactive providers available to them;
- (b) determine the Participant's choice of jobactive provider; and
- (c) within one month of the circumstances under clauses 88.3(a) to 88.3(e), 88.3(f)(ii) and 88.3(g), as relevant, arising:
  - (i) arrange and conduct a meeting with the Participant and the relevant jobactive provider to determine appropriate activities for the Participant to participate in during the relevant phase of their servicing under jobactive (if relevant); and
  - (ii) facilitate the preparation or updating of the Participant's Job Plan and their commencement of servicing under jobactive.

*Note 1: Clause 88.3(h)(ii) applies to a Participant who is subject to a Provider Exit under clauses 88.3(a) to 88.3(e) and 88.3(f)(ii) to 88.3(g).*

## **CHAPTER B3 – MUTUAL OBLIGATION REQUIREMENTS AND ACTIVITIES**

### **Section B3.1 – Mutual Obligation Requirements**

#### **98. Mutual Obligation Requirements**

98.1 The Provider must, in accordance with any Guidelines, ensure that each Participant with Mutual Obligation Requirements fully understands that by participating in Transition to Work they meet their Mutual Obligation Requirements, and if they fail to participate in Transition to Work appropriately, as determined by the Provider, they will be Exited from Transition to Work and will be required to undertake other activities to meet their Mutual Obligation Requirements.

### **Section B3.2 – Activities**

#### **99. Activities**

99.1 The Provider must ensure that:

- (a) each Participant who commences in Transition to Work participates in Activities which:
  - (i) are in accordance with their Job Plan;
  - (ii) take into account their circumstances and work capacity; and

- (iii) are sufficient to allow the Participant to meet their Participation Requirement; and
  - (b) unless expressly excluded by the Department or any Guidelines, Activities made available to Participants include any described in its response to the request for proposal for this Deed and the Service Delivery Plan.
- 99.2 Subject to this Deed including any Guidelines, the Provider must provide, Broker, Purchase or arrange Activities for the purposes of clause 99.1.
- 99.3 For the purposes of clause 99.2, 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 Participants in accordance with any Guidelines.
- 99.4 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 Participants, it does not need to do so under a formal agreement, except for National Work Experience Programme Placements, Work Experience (other) placements and any other Activities as specified in any Guidelines.
- 99.5 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.
- 99.6 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 Participants; or
  - (e) the Provider must not provide, Broker, Purchase or arrange an Activity or type of Activity for Participants.
- 99.7 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.
- 99.8 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.

*Recording information about Activities in the Department's IT Systems*

99.9 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
- (b) any other information as specified in any Guidelines.

## **100. Work experience**

100.1 Subject to clause 100.2, the Provider may provide, Purchase, Broker or arrange National Work Experience Programme Placements and Work Experience (other) placements for eligible Participants, if this is specified in their Job Plan, but only:

- (a) if each National Work Experience Programme Placement and Work Experience (other) placement does not, in whole or in part, involve work which would have been undertaken by a paid worker if the National Work Experience Programme Placement had not taken place; and
- (b) for National Work Experience Programme Placements, if the Provider is satisfied that, for each National Work Experience Programme Placement, there is a likelihood that the relevant 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
- (c) in accordance with any Guidelines.

100.2 The Provider must ensure that each National Work Experience Programme Placement and Work Experience (other) placement does not exceed:

- (a) for National Work Experience Programme Placements, a maximum of four weeks' duration with a maximum of 25 hours participation per week; and
- (b) for Work Experience (other) placements, any maximum duration specified in any Guidelines.

100.3 For National Work Experience Programme Placements, where the Provider has assessed, for the purpose of clause 100.1(b), 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).

100.4 Where the Provider places an eligible Participant into a National Work Experience Programme Placement or a Work Experience (other) placement, the Provider must, prior to the Participant starting the relevant placement, ensure that:

- (a) the Participant; and
- (b) the Activity Host Organisation,

have signed an agreement as specified by the Department in any Guidelines.

## **101. Work health and safety**

101.1 Prior to the commencement of a Participant in Voluntary Work, a National Work Experience Programme Placement or a Work Experience (other) 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:

- (a) is complying with work health and safety requirements relevant to the jurisdiction in which the Activity occurs; and
- (b) has sufficient and appropriate insurance with regard to the Activities.

101.2 The Provider must, in accordance with any Guidelines:

- (a) undertake a risk assessment:

- (i) for all Voluntary Work, National Work Experience Programme Placements and Work Experience (other) placements; and
- (ii) in any case, for each individual Participant, with regard to their potential participation in any Voluntary Work, National Work Experience Programme Placement or Work Experience (other) placement,

prior to the commencement of:

- (iii) any such Activities; and
- (iv) each Participant in such Activities; and

- (b) retain Records of each risk assessment referred to in clause 101.2(a) and any action taken in accordance with the risk assessment, and provide the relevant Records to the Department upon request.

101.3 If the Provider does not itself employ a Competent Person relevant to meeting the obligations at clauses 101.1 and 101.2, it must engage a relevant Competent Person, as required, for this purpose.

101.4 Prior to the commencement of a Participant in Voluntary Work, a National Work Experience Programme Placement or a Work Experience (other) placement, and at all times during each Activity, the Provider must, in accordance with any Guidelines:

- (a) ensure that an Activity Host Organisation Agreement is in place with the relevant Activity Host Organisation;
- (b) examine the relevant risk assessment to ensure that the Voluntary Work, National Work Experience Programme Placement or Work Experience (other) placement is appropriate for the Participant being considered for placement, with regard to their health and safety, taking into consideration any relevant circumstances and work restrictions;
- (c) ensure that any required actions, identified in the relevant risk assessment, have been undertaken;
- (d) identify any training, including work health and safety training, that will be required to ensure that the Participant can participate in the activities safely, and ensure that training of sufficient length and quality is provided to all Participants by the Activity Host Organisation at the commencement and for the duration of the Activities;
- (e) ensure that appropriate facilities (such as toilets and access to drinking water) will be available to all Participants for the duration of the Activities;
- (f) identify if any specific equipment, clothing or materials are required for Participants to participate safely in the relevant activities, and ensure that such materials will be provided to Participants;
- (g) ensure that the 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
- (h) if it determines that the Activity Host Organisation does not have sufficient and appropriate insurance with regard to the Activities:
  - (i) purchase or fund additional insurance for the Voluntary Work, National Work Experience Programme Placement or Work Experience (other) placement; or
  - (ii) terminate the Participant's involvement in the Activities.

#### *Incidents*

101.5 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 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.

101.6 Where an incident referred to in clause 101.5 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.

101.7 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 Participants.

## **102. 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.*

102.1 This clause 102 only applies in relation to Activities that the Provider provides, Brokers, Purchases, or arranges.

102.2 The Provider must, in accordance with any Guidelines, ensure that:

- (a) it provides adequate and appropriate Supervision for all Voluntary Work, National Work Experience Programme Placements and Work Experience (other) placements so as to ensure that relevant Participants are undertaking appropriate tasks and operating in a healthy and safe environment; and
- (b) where Voluntary Work, National Work Experience Programme Placements and Work Experience (ther) placements involve Children (excluding other Participants) or people who are elderly, disabled or otherwise vulnerable, the Supervision provided is continuous over the entire duration of the Activity.

102.3 The Provider must ensure that relevant checks are conducted on all Participants and all relevant Personnel and Supervisors in accordance with clause 8 whenever an Activity involves close proximity with Children (excluding other Participants) or people who are elderly, disabled or otherwise vulnerable.

102.4 The Provider must ensure that all relevant Personnel and Supervisors for Voluntary Work, National Work Experience Programme Placements and Work Experience (other) 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 Participants.

102.5 The Department may give Notice, on reasonable grounds related to the performance of Voluntary Work, National Work Experience Programme Placements and Work Experience (other) placements requiring the Provider to remove a Supervisor from work on the Activities.

102.6 Where the Department gives Notice under clause 102.5, 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.

- 102.7 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 Participant as soon as practicable, but no later than at the end of the relevant working week.
- 102.8 All Supervisors who:
- (a) are contracted by the Provider to provide Supervision for National Work Experience Programme Placements, Work Experience (other) 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).

### **103. Other matters**

- 103.1 The Provider must:
- (a) ensure that each 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 Participant is aware of the process to lodge a complaint or voice safety concerns about an Activity.
- 103.2 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 Participant that any Activity itself will create legal relations between the Participant and:
- (a) the Department;
  - (b) the Provider; or
  - (c) the Activity Host Organisation.

## **CHAPTER B4 – OUTCOMES AND PAYMENTS**

### **Section B4.1 – OUTCOMES**

#### **104. Rules relating to Outcomes**

- 104.1 The Parties agree that a Participant may achieve more than one Outcome, but, except as otherwise provided in any Guidelines, cannot achieve an Outcome concurrently with another Outcome.

*Note 1: Clause 107.5(e) provides that, except as otherwise provided in any Guidelines, an Outcome cannot be claimed if it overlaps with another Outcome that has already been claimed in relation to the same Participant by any Transition to Work Providers, including the Provider.*

*Note 2: Outcomes are specified at Table 1 of Annexure B1.*

*Increase in Employment that started prior to Commencement*

- 104.2 Where:
- (a) a Participant participates in Employment, Unsubsidised Self-Employment, an apprenticeship or traineeship that started before their Commencement; and
  - (b) after their Commencement:

- (i) for a Participant who is not in receipt of an Income Support Payment, they increase their hours in Employment, Unsubsidised Self-Employment, apprenticeship or traineeship to an average of 20 hours per week or more; or
- (ii) for a Participant who is in receipt of an Income Support Payment, they increase their Employment Unsubsidised Self-Employment, an apprenticeship or traineeship sufficiently to reduce their Income Support Payments to nil,

then the Outcome is not excluded under clause 104.4(h), and the Outcome Start Date occurs:

- (c) for a Participant who is not in receipt of an Income Support Payment, on the day of their increase in Employment to 20 hours or more per week; and
- (d) for a Participant who is in receipt of an Income Support Payment, on the first day of the DHS Fortnight for which their Income Support Payments are reduced to nil.

*Increase in Education that started prior to Commencement*

104.3 Where:

- (a) a Participant participates in Education that started before their Commencement; and
- (b) after their Commencement, the Participant's Education increases to full time (as defined by the relevant Education Institution),

then the Outcome is not excluded under clause 104.5(c), and the Outcome Start Date occurs on the day of their increase to full time Education.

*Situations excluded from being Employment Outcomes*

104.4 The Provider agrees that an Employment Outcome excludes a position:

- (a) involving nudity or work in the sex industry;
- (b) in volunteer work, work experience or unpaid work;
- (c) in a training course;
- (d) in Activities;
- (e) in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company;
- (f) involving illegal activity;
- (g) involving income or funds from gambling deemed to be inappropriate by the Department;
- (h) that started before the Commencement of the relevant Participant, except as provided for by clause 104.2;
- (i) in a programme, including a Work Trial programme, which is funded by the Commonwealth or by a state or territory government, as advised by the Department;
- (j) 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;
- (k) 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 a national minimum wage order;
- (l) in the Provider's Own Organisation; and
- (m) that the Department may advise or as specified in any Guidelines.

*Situations excluded from being Education Outcomes*

104.5 The Provider agrees that an Education Outcome excludes the following:

- (a) a training course not eligible for Austudy, Abstudy, or Youth Allowance (Student);
- (b) 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>;
- (c) Education that started before the Commencement of the relevant Participant, except as provided for by clause 104.3;
- (d) an Education or training course in circumstances where the Provider has already claimed an Outcome in relation to that course for the same Participant in the same Period of Unemployment; and
- (e) any other situation that the Department may advise or as specified in any Guidelines.

*Situations excluded from being Hybrid Outcomes*

104.6 The Provider agrees that a Hybrid Outcome excludes the following:

- (a) Employment that would be excluded under clause 104.4; and
- (b) Education that would be excluded under clause 104.5.

## **105. Outcome Performance Targets**

105.1 The Provider must achieve the Outcome Performance Target for each Employment Region.

*Note 1: Outcome Performance Targets relate to all claimed Outcomes except Sustainability Outcomes.*

*Note 2: A Bonus Outcome is an Outcome achieved above the Outcome Performance Target.*

105.2 In addition to any other rights of the Department under this Deed, if the Department determines, at its absolute discretion, that the Provider has failed to achieve Outcome Performance Targets for one or more Employment Regions, the Department may, without limitation of any of the Department's rights under this Deed or the law:

- (a) decrease the Places in the relevant Employment Region(s), including to zero; or
- (b) terminate this Deed.

## **Section B4.1 – PAYMENTS**

### **106. Upfront Payments**

106.1 Subject to this Deed, the Department will pay the Provider an Upfront Payment for each Place:

- (a) at the Service Start Date for each Employment Region, on a pro-rata basis in accordance with the calculation at clause 106.2; and
- (b) thereafter, at the start of each subsequent Financial Quarter for the Term of this Deed.

*Note: Clause 96.3 provides that for the first three months following the Service Start Date for each Employment Region, the number of Places and the Referral Cap for jobactive will be 75 per cent of the numbers specified at items 9.2 and 9.3 of Schedule 1, respectively.*

106.2 The Upfront Payment to be paid at the Service Start Date for each Employment Region is calculated as:

Upfront Payment amount x  $\frac{\text{No. of days from the Service Start Date until the end of the relevant Financial Quarter}}{\text{No. days in the relevant Financial Quarter}}$

106.3 Where the Provider is allocated an additional Place by the Department part way through a Financial Quarter during the Term of this Deed, the Upfront Payment for the Place in that Financial Quarter will be paid on a pro-rata basis calculated as:

Upfront Payment amount x  $\frac{\text{No. of days from Place commencement until the end of the relevant Financial Quarter}}{\text{No. days in the relevant Financial Quarter}}$

where 'Place commencement' is the date advised by the Department to the Provider to be the commencement date for the additional Place.

106.4 The Provider must comply with any Guidelines in relation to the payment of Upfront Payments.

## **107. Outcome Payments**

107.1 Subject to this Deed, the Department will pay Sustainability Outcome Payments and Bonus Outcome Payments to the Provider where:

- (a) for Sustainability Outcome Payments, a Participant who is on the Provider's caseload has satisfied the relevant requirements for a Sustainability Outcome;
- (b) for Bonus Outcome Payments:
  - (i) a Participant who is on the Provider's caseload has satisfied the relevant requirements for an Outcome other than a Sustainability Outcome; and
  - (ii) the relevant Outcome is in excess of the Outcome Performance Target for the relevant Employment Region; and
- (c) the Provider has rendered a Tax Invoice for the relevant Outcome Payment to the Department within 56 days of the Outcome Completion Date and the Department accepts the Tax Invoice; and
- (d) data and/or Documentary Evidence is entered into the Department's IT Systems (either by DHS or, where relevant, by the Provider) confirming the Outcome Start Date and the satisfaction of the requirements of the Outcome.

107.2 For the avoidance of doubt and subject to clauses 107.1 and 107.4, where a Participant on the Provider's caseload is placed in a Vacancy by a Transition to Work Provider other than the Provider, the Provider may claim and the Department will pay the applicable Outcome Payment, provided that all relevant requirements of clause 107.1 are met.

107.3 Where a Participant is transferred from the Provider during an Outcome Period, the Provider may claim and the Department will pay the related Outcome Payment (including any Payment for a subsequent Sustainability Outcome) in the circumstances specified in any Guidelines, and provided that all relevant requirements of clause 107.1 are met.

### *Pay Slip Verified Outcome Payments*

107.4 Where the Provider considers that:

- (a) all requirements for payment of an Outcome Payment for an Employment Outcome under clause 107.1 have been met; but
- (b) the data in the Department's IT Systems does not correctly record or reflect the details of that Outcome,

the Provider may claim a Pay Slip Verified Outcome Payment from the Department if:

- (c) the Outcome Start Date for the Outcome is entered on the Department's IT Systems in accordance with any Guidelines;
- (d) 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 12 Week Period or 26 Week Period and the Department accepts the Tax Invoice; and
- (e) the Provider:
  - (i) holds and submits any Documentary Evidence as specified under clauses 16.4(a) and 17.2(a); and
  - (ii) complies with any procedural requirements specified in any Guidelines,at the time it makes the claim.

### *Limits on Outcome Payments*

- 107.5 The Department will not pay the Provider, and the Provider must not claim, an Outcome Payment under clauses 107.1 or 107.4:
- (a) on a pro rata basis;
  - (b) in relation to a situation specified at clauses 104.4 to 104.6;
  - (c) for an Outcome which satisfies paragraph (a) or (f)(ii) of a 12 Week Employment Outcome or a Sustainability Outcome under column D of Table 1 in Annexure B1, where:
    - (i) the Participant is placed into Employment; and
    - (ii) the 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;
  - (d) for a 12 Week Employment Outcome, 12 Week Hybrid Outcome or Education Outcome, where the Outcome Start Date occurs outside of the Participant's Period of Registration;
  - (e) 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 Participant by any Transition to Work Provider, including the Provider; and
  - (f) in any other circumstances specified in any Guidelines.

### **108. Mid-term Fee increase**

108.1 The amounts of Fees specified in:

- (a) Table 2 at Annexure B1 (Upfront Payments), will increase by 3.4% from the Financial Quarter commencing on 1 July 2018; and
- (b) Tables 3 at Annexure B1 (Outcome Payments) will increase by 3.4% from 1 July 2018 for all Outcomes achieved on or after 1 July 2018.

*Note: the Department will advise the Provider of the precise payment amounts prior to 1 January 2018.*

# Annexure B1 – Outcomes and Payments

## Table 1 – Outcomes

Note: Table 1 provides a description of the different types of Outcomes which can be achieved by Participants in the Transition to Work Service and relevant Outcome Start Date and Outcome Completion Date.

| Row | A<br>OUTCOME TYPE          | B<br>OUTCOME START DATE   | C<br>OUTCOME COMPLETION DATE                         | D<br>OUTCOME DESCRIPTION   |
|-----|----------------------------|---|--|--|
| 1   | 12 Week Employment Outcome | <p>For a Participant who:</p> <p>(a) is in receipt of an Income Support Payment, the first day of the DHS Fortnight that applies to the Participant following the Participant Placement Start Date;</p> <p>(b) is not in receipt of an Income Support Payment, the day of the Participant Placement Start Date; or</p> <p>(c) started their Employment prior to their Commencement and has subsequently increased their Employment in accordance with clause 104.2, the Outcome Start Date described in clause 104.2, if that day occurs during the Participant's Period of Registration.</p> | Completion of a 12 Week Period (Employment Outcome). | <p>For the duration of a 12 Week Period (Employment Outcome), a Participant:</p> <p>(a) who was in receipt of Income Support Payments on the Outcome Start Date (other than Participants to whom items (c) to (f) apply), generates sufficient income in Employment, Unsubsidised Self-Employment, an apprenticeship or a traineeship to reduce the Participant's Basic Rate of Income Support Payments by an average of at least 60 per cent;</p> <p>(b) who was not in receipt of Income Support Payments on the Outcome Start Date, is in Employment, Unsubsidised Self-Employment, an apprenticeship or a traineeship for an average of 15 or more hours per week;</p> <p>(c) who was in receipt of Income Support Payments with part-time Mutual Obligation Requirements of 30 hours or more each fortnight on the Outcome Start Date, is in Employment, Unsubsidised Self-Employment, an apprenticeship or a traineeship for an average of 10 or more hours per week;</p> <p>(d) who was identified on the Department's IT Systems on the Outcome Start Date as having a Partial Capacity to Work, is in Employment, Unsubsidised Self-Employment, 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 and advised by DHS, but is not less than an average of 8 hours of work per week; or</p> <p>(e) who was in receipt of:</p> <ul style="list-style-type: none"> <li>(i) a Parenting Payment (Partnered or Single) without Mutual Obligation Requirements; or</li> <li>(ii) a Carer Payment,</li> </ul> <p>on the Outcome Start Date and who chooses to work reduced hours due to caring responsibilities (this choice being identified on the Department's IT Systems on or before the Outcome Start Date by DHS or another party identified by the Department), is in Employment,</p> |

| Row | A<br>OUTCOME TYPE                   | B<br>OUTCOME START DATE  | C<br>OUTCOME COMPLETION DATE        | D<br>OUTCOME DESCRIPTION   |
|-----|-------------------------------------|--|-------------------------------------|--|
|     |                                     |  |                                     | Unsubsidised Self-Employment, an apprenticeship or traineeship for an average of 10 hours or more each week; or<br>(f) for whom clause 104.2 applies and:<br>(i) who was in receipt of an Income Support Payment on the Outcome Start Date, increases their income from Employment, Unsubsidised Self-Employment, an apprenticeship or traineeship sufficiently to reduce their Income Support Payments to nil; or<br>(ii) who was not in receipt of an Income Support Payment on the Outcome Start Date, increases their Employment, Unsubsidised Self-Employment, an apprenticeship or traineeship to an average of 20 hours per week or more;<br>(g) meets the requirements for any other event that the Department may Notify the Provider as being a 12 Week Employment Outcome.  |
| 2   | Sustainability Outcome (Employment) | First day following the completion of a 12 Week Employment Outcome or 12 Week Hybrid Outcome.  | Completion of 26 Week Period.       | For the duration of a 26 Week Period, a Participant meets the Outcome Description at paragraph (a) to (g) of Row 1 Column D of this Table 1.   |
| 3   | Education Outcome                   | (a) The first day of participation in relevant Education;<br>(b) if a Participant does not satisfy the Outcome Description on the first day of their participation in relevant Education, the first day that the Participant participates full-time (as defined by the relevant Education institution) in Education; or<br>(c) if the Participant started their Education prior to their Commencement and has subsequently increased their Education in accordance with clause 104.3, the Outcome Start Date described in clause | Completion of 26 consecutive weeks. | For 26 consecutive weeks, a Participant:<br>(a) who was not in receipt of Income Support Payments on the Outcome Start Date, participates full-time (as defined by the relevant Education institution);<br>(b) who was in receipt of Income Support Payments on the Outcome Start Date (other than to whom items (c) to (e) apply), participates full-time (as defined by the relevant Education institution);<br>(c) who was in receipt of Income Support Payments with part-time Mutual Obligation Requirements of 30 hours or more each fortnight on the Outcome Start Date, participates for an average of at least 15 or more hours per week while the course is running;<br>(d) who was identified on the Department's IT Systems on the Outcome Start Date as having a Partial Capacity to Work, participates on average at least 100 per cent of the minimum number of hours per week in the range as assessed and advised by DHS while the course is running;<br>(e) who was in receipt of:<br>(i) a Parenting Payment (Partnered or Single) without Mutual Obligation Requirements; or |



| Row | A<br>OUTCOME TYPE      | B<br>OUTCOME START DATE  | C<br>OUTCOME COMPLETION DATE  | D<br>OUTCOME DESCRIPTION   |
|-----|------------------------|--|---|--|
|     |                        | 104.3,<br>if that day occurs during the Participant's Period of Registration.  |   | <ul style="list-style-type: none"> <li>(ii) a Carer Payment, on the Outcome Start Date and who chooses to work reduced hours due to caring responsibilities (this choice being identified on the Department's IT Systems on or before the Outcome Start Date by DHS or another party identified by the Department), participates for an average of at least 10 hours or more each week while the course is running; or</li> <li>(f) participates as otherwise specified in any Guidelines,</li> </ul> in: <ul style="list-style-type: none"> <li>(g) a Certificate III or higher course;</li> <li>(h) secondary Education leading to Year 12;</li> <li>(i) the Skills for Education and Employment programme; or</li> <li>(j) a course otherwise specified in any Guidelines.</li> </ul> |
| 4   | Education Outcome      | The first day of participation in the relevant Certificate III or higher course, if that day occurs during the Participant's Period of Registration. | Successful completion of the relevant Certificate in the relevant course. | Successful completion of Certificate III or higher in the relevant course or otherwise as specified in any Guidelines.   |
| 5   | Education Outcome      | The first day of participation in secondary Education leading to Year 12, if that day occurs during the Participant's Period of Registration.        | Successful completion of Year 12.   | Successful completion of Year 12 or otherwise as specified in any Guidelines.  |
| 6   | 12 Week Hybrid Outcome | The first day the Participant meets the Outcome Description, if that day occurs during the Participant's Period of Registration.                     | Completion of a 12 Week Period (Hybrid Outcome).                          | For the duration of a 12 Week Period (Hybrid Outcome), a Participant participates in: <ul style="list-style-type: none"> <li>(a) Education in:               <ul style="list-style-type: none"> <li>(i) a Certificate III or higher course;</li> <li>(ii) secondary Education leading to Year 12;</li> <li>(iii) the Skills for Education and Employment programme; or</li> <li>(iv) a course otherwise specified in any Guidelines; and</li> </ul> </li> <li>(b) Employment, Unsubsidised Self-Employment, an apprenticeship or a traineeship,</li> </ul>   |

| Row | A<br>OUTCOME TYPE               | B<br>OUTCOME START DATE   | C<br>OUTCOME COMPLETION DATE    | D<br>OUTCOME DESCRIPTION  |
|-----|---------------------------------|---|---------------------------------|---|
|     |                                 |   |                                 | <p>for a combined total of no less than:</p> <ul style="list-style-type: none"> <li>(c) 25 hours on average per week; or</li> <li>(d) for a Participant who was in receipt of Income Support Payments with part-time Mutual Obligation Requirements of 30 hours or more each fortnight on the Outcome Start Date, 15 hours or more on average per week; or</li> <li>(e) for a Participant who was identified on the Department's IT Systems on the Outcome Start Date as having a Partial Capacity to Work, on average 100 per cent of the minimum number of hours per week in the range as assessed and advised by DHS; or</li> <li>(f) for a Participant who was in receipt of: <ul style="list-style-type: none"> <li>(i) a Parenting Payment (Partnered or Single) without Mutual Obligation Requirements; or</li> <li>(ii) a Carer Payment, on the Outcome Start Date and who chooses to work reduced hours due to caring responsibilities (this choice being identified on the Department's IT Systems on or before the Outcome Start Date by DHS or another party identified by the Department), 10 hours or more on average per week,</li> </ul> </li> </ul> <p>and as specified in any Guidelines.</p> |
| 7   | Sustainability Outcome (Hybrid) | First day following the completion of a 12 Week Hybrid Outcome or 12 Week Employment Outcome. | Completion of a 26 Week Period. | For the duration of a 26 Week Period, a Participant meets the Outcome Description at paragraph (a) to (f) of Row 6 Column D of this Table 1.  |

*Note: clause 104 prescribes rules that apply to Outcomes in particular cases.*

## PAYMENTS

### UPFRONT PAYMENTS

**Table 2 – Upfront Payments**

| <b>Upfront Payment</b> | <b>Payment amount per Financial Quarter</b> |
|------------------------|---|
| Per Place              | \$1,325                                     |

*Note 1: In accordance with clause 108.1(a), the amount of the Upfront Payment in Table 2 will increase by 3.4% from the Financial Quarter commencing on 1 July 2018.*

*Note 2: Upfront Payments are paid at the start of each Financial Quarter for the Term of the Deed in accordance with clause 106.*

### OUTCOME PAYMENTS

**Table 3 – Outcome Payments**

| <b>Outcome Payment</b>         | <b>Payment amount</b> |
|--------------------------------|-----------------------|
| Bonus Outcome Payment          | \$3,500               |
| Sustainability Outcome Payment | \$3,500               |

*Note 1: Bonus Outcomes are paid for all Outcomes which are achieved above the Outcome Performance Target, other than Sustainability Outcomes.*

*Note 2: Sustainability Outcomes are specified at row 2 and row 7 of Table 1 of Annexure B1.*

*Note 3: In accordance with clause 108.1(b), the amounts of the Outcome Payments in Table 3 will increase by 3.4% from 1 July 2018 for all Outcomes achieved on or after 1 July 2018.*

# Annexure B2 – Transition to Work Service Guarantee

## Transition to Work Service Guarantee

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*This Transition to Work Service Guarantee reflects the Australian Government's expectations of Transition to Work 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 young people looking for work. The main objective of Transition to Work is to improve work-readiness and help early school leavers to find and keep a job.

### **What you can expect from your Transition to Work provider**

Your provider will:

- work with you to develop your Job Plan. This sets out the services you will receive and the activities that you will undertake to improve your work readiness
- identify your strengths and any challenges you face to increase your work readiness
- provide services to help you improve your work readiness
- reassess your needs if your circumstances change
- help you access, where appropriate, education courses to complete Year 12 or gain a Certificate III qualification (or above)
- provide access to apprenticeship/traineeship opportunities
- provide tailored career advice, help you prepare a résumé and write job applications
- refer you to suitable jobs
- help you with wage subsidies or unpaid work experience placements (where appropriate)
- keep in contact with you and your employer once you have started a job and provide support if there are difficulties in keeping the 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
- contact your provider as soon as possible if you are unable to attend an appointment or if you are having difficulties doing an activity in your Job Plan
- notify your provider of any changes in your circumstances, e.g. if your address changes.

If your provider determines that you are not meeting these requirements, they may exit you from Transition to Work.

**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 Transition to Work 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 Transition to Work provider first. Your Transition to Work 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 Transition to Work 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 Transition to Work 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).

## **SCHEDULE 1 – Deed and business details**

## **SCHEDULE 2 – Service Delivery Plan**