



Australian Government

Department of Social Services

**New Specialist Disability Employment
Program Deed
Effective 1 July 2025**

Reader's Guide to this Deed

In this Deed, related clauses are collected together into 'Chapters', which are subdivided into 'Sections' where appropriate.

There is one Schedule to this Deed which contains details specific to the individual Provider:

1. Schedule 1 – Deed Details.

There are five Chapters:

1. Introduction
2. Basic Conditions
3. Information and Information Management
4. Deed Administration
5. New Specialist Disability Employment Program (NSDEP).

There are three Annexures:

- A. Definitions
- B. Fees and Outcomes
- C. Code of Conduct and Service Guarantee.

This Reader's Guide, Notes at various places in this Deed and 'Information about' sections at the start of several Chapters do not form part of this Deed for legal purposes except where expressly stated to the contrary. Rather, they are intended to make this Deed easier to read and understand.

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Schedule 1 – Deed Details

- 1.1 This Schedule 1 sets out the details of the Parties and details of the Services to be provided by the Provider under this Deed.
- 1.2 Schedule 1 forms part of, and is to be read in conjunction with, the Deed.

EXPOSURE DRAFT

SCHEDULE 1 – Deed Details

Item 1: **Department and ABN**

Name: The Commonwealth of Australia, as represented by the Department of Social Services

ABN: 36 342 015 855

Item 2: **Provider Name and ABN**

Name: [Insert]

ABN: [Insert]

Item 3: **Services Start Date**

[Insert Services Start Date]

Item 4: **Deed End Date**

[The last day of the Deed Term]

Item 5: **Specialist Provider Services Parameters** (if applicable)

Item 5.1 Employment Services Area (s)	Item 5.2 Location (s) Serviced (if not servicing the whole ESA)	Item 5.3 Central Employment Services Area for Hub and Spoke Model (if applicable)	Item 5.4 Specialist Service Group	Item 5.5 Site(s)	Item 5.6 Site Maximum Caseload	Item 5.7 Site type (Full-Time Site, Part-Time Site or Outreach Site)	Item 5.8 Business Days of operation of Site	Item 5.9 Site opening hours on each Business Day	Item 5.10 Subcontractor/Group Respondent Member servicing Site (if relevant)

Item 6: **Generalist Provider Services Parameters** (if applicable)

Item 6.1 Employment Services Area (s)	Item 6.2 Market Share	Item 6.3 Site(s)	Item 6.4 Site type (Full-Time Site, Part-Time Site or Outreach Site)	Item 6.5 Business Days of operation of Site	Item 6.6 Site opening hours on each Business Day	Item 6.7 Subcontractor/Group Respondent Member servicing Site (if relevant) (clauses 57 and 61, of the Deed)

Item 7: **Subcontractors approved by the Department**

Item 7.1 Employment Service Area	Item 7.2 Subcontractor(s)	Item 7.3 Type of Provider and Specialist Service Group (if Specialist Provider)	Item 7.4 Site(s)	Item 7.5 Terms and conditions relating to use of each Subcontractor

Item 8: **Group Respondent Members approved by the Department**

Item 8.1 Employment Service Area	Item 8.2 Group Respondent lead member	Item 8.3 Group Respondent Members (as applicable)	Item 8.4 Type of Provider and Specialist Service Group (if Specialist Provider)	Item 8.5 Site(s)	Item 8.6 Terms and conditions relating to use of each Group Respondent Member

Item 9 – **Provider account details for payment**

Bank BSB Number	Bank Account Number	Bank Account Name
<Primary BSB number>	<Primary Account number>	<Primary Account Name>
Bank Name		Bank Branch
<Bank Name>		<Branch Address Details>

Item 10 **Provider Contact Person** (clause 15 and Annexure A - Definitions)

Contact < Title> < Name> < Surname>
Telephone < Phone> Mobile < Mobile>
Email < Email>
Physical Address < Physical Address Line1> Postal Address < Postal Address Line1>
< Physical Address Line2> < Postal Address Line2>
< Physical Address Line3> < Postal Address Line3>
<Suburb> <State> <Postcode> <Suburb> <State> <Postcode>

Item 11 **Department Relationship Manager** (clause 15 and Annexure A - Definitions)

Contact < Title> < First Name> < Surname>
Position < Position>
Telephone < Phone> Mobile < Mobile>
Email < Email>
Physical Address <Physical Address Line1> Postal Address < Postal Address Line1>
< Physical Address Line2> <Postal Address Line2>
< Physical Address Line3> < Postal Address Line3>
<Suburb> <State> <Postcode> < Suburb> <State> < Postcode>

Execution page

Executed as a deed for and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the **DEPARTMENT OF SOCIAL SERVICES**, ABN: 36 342 015 855, by its duly authorised delegate:

In the presence of:

.....
Signature of delegate

.....
Signature of witness

.....
Name of delegate (print)

.....
Name of witness (print)

.....
Date

.....
Date

Executed as a deed for and on behalf of **[PROVIDER]**, ABN [Insert ABN] in accordance with section 127 of the *Corporations Act 2001* (Cth):

In the presence of:

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Name of Director (print)

.....
Name of Director/Company Secretary (print)

.....
Date

.....
Date

Note to tenderers: An alternate signature block may be included for successful tenderers if required.

CHAPTER 1 INTRODUCTION

1. Definitions and interpretation

- 1.1 In this Deed (including the Guidelines), unless the contrary intention appears:
- (a) all capitalised terms have the meaning given to them in Annexure A (Definitions) and all other words have their natural and ordinary meaning;
 - (b) words in the singular include the plural and vice versa;
 - (c) words importing a gender include all genders;
 - (d) a reference to a person includes a natural person, partnership and a body whether corporate or otherwise;
 - (e) 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;
 - (f) any schedules, attachments and annexures to this Deed, and any other document incorporated by reference (including the Guidelines), form part of this Deed;
 - (g) all references to dollars, \$, A\$ or AUD are to Australian dollars;
 - (h) a reference to time is to the time in the place where the obligation is to be performed or, to the extent that there is any uncertainty, to the time in the Australian Capital Territory;
 - (i) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur, on or by the next Business Day;
 - (j) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time, and includes regulations or other instruments made under it;
 - (k) a reference to a document, publication, Commonwealth policy or instrument is a reference to the document, publication, Commonwealth policy or instrument as altered, supplemented or replaced from time to time;
 - (l) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
 - (m) a reference to a clause is to a clause of this Deed, and includes a subclause of that clause;
 - (n) a reference to an Item is to an Item in Schedule 1 – Deed Details;
 - (o) an 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 or is seeking to rely on the provision;
 - (p) a reference to an internet site includes that site as altered, supplemented or replaced from time to time;
 - (q) if 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;

- (r) a reference to writing is a reference to any visible representation of words, figures or symbols; and
- (s) the words “including”, “for example” and words of similar expression are not words of limitation.

1.2 The Provider agrees that:

- (a) Guidelines form part of this Deed; and
- (b) the Provider must perform all obligations in this Deed in accordance with any Guidelines.

2. Precedence

2.1 Unless the contrary intention appears, if there is any conflict or inconsistency between any part of:

- (a) Schedule 1 – Deed Details;
- (b) clauses 1 to 168 of this Deed;
- (c) the Annexures;
- (d) any Guidelines; and
- (e) any document incorporated by reference,

then the provisions in the higher ranked document in the above list has precedence over a lower ranked document, to the extent of any conflict or inconsistency.

2.2 If there is any conflict or inconsistency between provisions at the same level in the above order of precedence, then the provisions of that document take precedence in the order in which they appear (i.e. front to back), to the extent of any conflict or inconsistency.

CHAPTER 2 BASIC CONDITIONS

Section 2A Deed duration

3. Term of this Deed

- 3.1 This Deed takes effect from the Deed Commencement Date and continues for the duration of the Initial Deed Term unless:
- (a) extended in accordance with clause 4; or
 - (b) terminated earlier in accordance with clauses 67 [Termination or reduction in scope with costs] or 68 [Termination or reduction in scope for default] or otherwise.

4. Extension of this Deed

- 4.1 The Department may, at its absolute discretion, offer the Provider an extension of the Deed Term, for one or more periods of up to an aggregate total of three years, by giving Notice to the Provider not less than 60 Business Days prior to the end of the then current Deed Term.
- 4.2 Subject to clause 70 [Transition out], if the Provider accepts the Department's offer to extend the Deed Term, the extension of the Deed Term takes effect from the end of the then current Deed Term and all terms and conditions of this Deed that are in effect at the end of the then current Deed Term continue to apply, unless otherwise agreed in writing between the Parties.

5. Survival

- 5.1 The operation of clauses:
- (a) 27 [Debts and offsetting];
 - (b) 23 [Evidence to support claims for payment]
 - (c) 30 [General reporting];
 - (d) 33 [Evaluation activities];
 - (e) 39 [General];
 - (f) 40 [Access and information security assurance];
 - (g) 41 [Intellectual Property Rights];
 - (h) 42 [Moral Rights];
 - (i) 43 [Personal and Protected Information];
 - (j) 44 [Confidential Information];
 - (k) 46 [Records the Provider must keep];
 - (l) 47 Public Sector Data
 - (m) 48 [Access by Participants and Employers to their own Personal Information in connection with the NSDEP];
 - (n) 49 [Access to documents];

- (o) 50 [Program Assurance Activities and audits]
- (p) 53 [Indemnity];
- (q) 54 [Insurance];
- (r) 55 [Liability of the Provider to the Department]
- (s) 63 [Dispute Resolution];
- (t) 65 [Remedies for breach];
- (u) 66 [Liquidated damages];
- (v) 70 [Transition out];
- (w) 71 [Provider's obligation to assist and cooperate with the Department]
- (x) 74 [Acknowledgement and promotion]; and
- (y) 83 [Applicable law and jurisdiction],

in this Deed and any provisions, other than those listed in this clause 5.1, that are expressly specified as surviving, or by implication from their nature are intended to continue, including definitions and interpretational provisions, will survive the expiry or earlier termination of this Deed.

- 5.2 Clause 52 [Access to premises and records] of this Deed survives for seven years from the expiry or earlier termination of this Deed.

Section 2B Some basic rules about Services

6. General Requirements

- 6.1 The Provider must perform the Services, including providing Services to Participants, in accordance with this Deed.
- 6.2 The Provider must perform the Services:
- (a) efficiently, effectively and ethically;
 - (b) in a manner that meets the Objectives;
 - (c) so as to achieve an optimum performance when measured against the Performance Framework; and
 - (d) to the Department's satisfaction.
- 6.3 Without limiting the Department's rights under this Deed or at law, if the Provider becomes aware that it is unable to satisfy or has otherwise failed to comply with the requirements of the Deed, the Provider must promptly Notify the Department of:
- (a) the details of the requirements that it is unable to satisfy or with which it has failed to comply; and
 - (b) any other information that the Department requests.

7. Use of interpreters

- 7.1 The Provider must, wherever necessary when carrying out the Services, provide an interpreter, in accordance with any Guidelines, to facilitate communication between the Provider and a Participant, including if the 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 in which the Participant's command of English may decrease temporarily; or
 - (d) at group forums or public consultations, if the Participant does not easily speak or understand English, or has a hearing impairment.
- 7.2 The Provider must provide access to interpreter services fairly and without discrimination, based on a proper assessment of a Participant's needs. This will be at the Provider's cost except as otherwise provided in the Guidelines.
- 7.3 If a Participant requests the use of an interpreter and the Provider refuses to provide one, the Provider must record that fact and the reason(s) for the Provider's decision.
- 7.4 The Provider must ensure that those of its Personnel who, when performing the 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 applicable Guidelines or as otherwise advised by the Department.
- 7.5 The Provider must keep Records of the use of interpreters in accordance with any applicable Guidelines.

8. Engagement with other services in the community

- 8.1 In performing the Services, the Provider must, as appropriate, work cooperatively with other Program Providers and with other programs and services provided by the Department, relevant Commonwealth, State, Territory and local government entities, private and community services and other stakeholders, including:
- (a) Employment Service Providers;
 - (b) Supported Employment Services (including those traditionally known as Australian Disability Enterprises);
 - (c) providers of the Jobs, Land and Economy Program, including the Remote Jobs and Economic Development Program;
 - (d) National Disability Insurance Scheme (NDIS) Local Area Coordinators;
 - (e) training organisations and education institutions;
 - (f) social enterprises;
 - (g) community welfare organisations and local community services, including accommodation and homeless services, AMEP, health and mental health services; and
 - (h) other providers of government services, including Commonwealth, State, Territory and local government entities.

9. Objectives

- 9.1 The Objectives for the delivery of the NSDEP are to:
- (a) help individuals with disability, injury or a health condition to prepare for, secure and maintain sustainable Employment in the open labour market; and
 - (b) assist in boosting the productive capacity of the workforce, addressing skills shortage areas and supporting Employers with inclusive recruitment and workplace practices.

The Objectives for the Services are specified in Chapter 5 of this Deed.

10. Location and Accessibility

- 10.1 The Provider must ensure that:
- (a) any location from which the Services are provided, and any information delivered by electronic means that forms part of the delivery of the Services (such as online information or information delivered by telephone), is:
 - (i) accessible to people with 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 that the Provider could reasonably foresee would be likely to cause injury or harm to Participants or any other persons at the locations referred to in clause 10.1(a).
- 10.2 Any Deed Material designed or developed by or for the Provider in the performance of this Deed for Participants and Employers must comply with Australian Government accessibility standards, as specified in any applicable Guidelines.

11. Timing

- 11.1 The Provider must deliver the Services:
- (a) from the Services Start Date, as specified in Item 0 of Schedule 1 – Deed Details; and
 - (b) throughout the Deed Term,
unless otherwise Notified by the Department in accordance with clause 64 [Provider Suspension] of this Deed.
- 11.2 The Provider must ensure that its Sites are open for the provision of the Services on the Business Days and at the times specified in Items 0 or 0 (as applicable) of Schedule 1 – Deed Details unless otherwise Notified by the Department in accordance with clause 64 [Provider Suspension] of this Deed.
- 11.3 The Provider must ensure that its Site(s) are established and fully operational in the suburb(s) specified in Item 0 or 0 of Schedule 1 – Deed Details by no later than 1 July 2025, unless a different start date for the Site is specified in Item 00 of Schedule 1 – Deed Details.
- 11.4 If the Provider fails to establish a Site as required by clause 11.3, the Department may take action under clause 65 [Remedies for breach].

12. Directions

- 12.1 The Department may issue a written direction to the Provider in relation to this Deed (a '**Direction**'), to clarify the manner in which the requirements of this Deed will apply, including in respect of:
- (a) any change in Commonwealth, State or Territory Government law or policy that has, or has the potential to have, without limitation, an impact on the scope of the Services or the manner in which the Services are to be performed; or
 - (b) any adjustment to the Fees (including under clause 156 [Adjustment of Fees]).
- 12.2 The Provider must perform the Services (or any other obligation under this Deed) in accordance with, and within any timeframe specified in, any Direction given by the Department from time to time, at no additional cost to the Department.
- 12.3 To avoid doubt, a Direction forms part of this Deed, but it is not a variation to this Deed and the Department is not required to issue a Direction in accordance with clause 67 [Termination or reduction in scope with costs] or 68 [Termination or reduction in scope for default].

13. Provider's conduct

- 13.1 The Provider must, in relation to this Deed at all times, act:
- (a) in good faith towards the Department, Participants and other Customers; and
 - (b) in a manner that maintains the good reputation of the Services and the Department.
- 13.2 The Provider must promptly Notify the Department of any matter or incident that could be damaging to the reputation of the Services, the Provider or the Department, if it were to become publicly known.
- 13.3 The Provider must not engage in, and must ensure that its Personnel, Subcontractors, Third Party IT Vendors, Related Entities and agents do not engage in, any practice that:
- (a) dishonestly; or
 - (b) improperly, as determined by the Department, manipulates any aspect of the Services including any:
 - (c) Record (including any Documentary Evidence) or other information provided in performing the Services;
 - (d) Outcome;
 - (e) Payment or Payment-related process;
 - (f) Participant, Activity Host Organisation or Employer; or
 - (g) monitoring of the Services by the Department or the Auditor-General,

with the effect or intent of maximising payments to, or otherwise obtaining a benefit (including with regard to performance assessment) for, or hiding any wrongful conduct by, the Provider or any other person.

- 13.4 If the Provider identifies or becomes aware of an improper practice, it must immediately:
- (a) take all action necessary to either stop the practice or otherwise change or rectify the practice so that the Provider is not in breach of clause 13.3;
 - (b) Notify the Department of the practice identified and the action taken by the Provider under clause 13.4(a);
 - (c) remediate the impacts of any wrongful conduct identified; and
 - (d) provide all information in relation to the situation as required by the Department.
- 13.5 If, after investigation, the Department determines that the Provider has been engaged in activity described in clause 13.3, the Department may:
- (a) take action under clause 65 [Remedies for breach]; or
 - (b) immediately terminate this Deed under clause 68 [Termination or reduction in scope for default] by providing Notice to the Provider.
- 13.6 The Provider must not have a remuneration or rewards structure that encourages its Personnel to act in a manner that is inconsistent with:
- (a) the Objectives of the Services, as specified in clause 9 and Chapter 5A; or
 - (b) the requirements of this Deed.
- 13.7 The Provider must advise its officers and employees:
- (a) of the requirements of the DSI Act, the Guidelines, the Code of Conduct and the National Standards for Disability Services (NSDS) with which the officers and employees must comply;
 - (b) that they are Commonwealth public officials for the purposes of section 142.2 of the *Criminal Code Act 1995* (Cth);
 - (c) that acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties including imprisonment;
 - (d) that 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 and that, if 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; and
 - (e) that suspicions or evidence of incorrect claims or acceptance of payments or any other activities that may be a breach of the Deed may be reported to the Department through the Employment Services Tip Off Line.

13.8 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.

14. Provider's responsibility

14.1 The Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Deed, notwithstanding any other matter or arrangement, including:

- (a) Subcontracting any part of the Services;
- (b) any obligation that a Subcontractor comply with the Department's requirements in relation to using the Department's IT Systems in performing any part of the Services under its Subcontract;
- (c) access rights specified in, or any action taken under, clause 52 [Access to premises and records];
- (d) involvement by the Department in the performance of the Services; or
- (e) payment made to the Provider for the Services.

15. Liaison and compliance

15.1 The Provider must:

- (a) liaise with and provide information to the Department, or any other person nominated by the Department, as reasonably requested by the Department;
- (b) promptly comply with all of the Department's reasonable requests related to this Deed.

15.2 The Department and the Provider have, respectively, nominated a Relationship Manager and a Contact Person, and must Notify the other Party as soon as practicable of any change to the details of the individuals occupying those positions.

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

- (a) is to be handled by the Relationship Manager and the Contact Person or their delegates; and
- (b) may be undertaken by the Relationship Manager and the Contact Person or their delegates by means of electronic mail.

15.4 The Provider must ensure that it has a valid electronic mail address for the Contact Person (as specified in Item 0 of Schedule 1 – Deed Details), and any other relevant Personnel, so as to facilitate the day to day management of the Services and communication between it and the Department.

15.5 The Provider must, at its own cost, 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.

15.6 The Provider must notify Services Australia, in a manner consistent with any applicable Guidelines, of any change in the circumstances of a Participant as soon as possible,

and at the latest within five Business Days, after becoming aware of the change in circumstances.

- 15.7 The Provider must respond as soon as possible, and at the latest within five Business Days, to any requests for information by Services Australia or the Department about any change in circumstances referred to in clause 15.6.

16. Minimising delay

- 16.1 The Provider must take all reasonable steps to minimise delay in meeting its obligations under this Deed.
- 16.2 If the Provider becomes aware that it will be delayed in meeting its obligations under this Deed, or receives a Notice from the Department in relation to a delay, the Provider must immediately Notify the Department of:
- (a) the cause and nature of the delay; and
 - (b) the steps the Provider will take to limit the delay.
- 16.3 The Provider must comply with the steps it Notifies to the Department in accordance with clause 16.2(b), subject to any additional requirements which the Department may Notify to the Provider.
- 16.4 If:
- (a) the Provider does not Notify the Department of any delay in accordance with clause 16.2 or fails to comply with clause 16.3; or
 - (b) the Department determines that the delay, as Notified by the Provider or the Department pursuant to clause 16.2, places the Services in jeopardy,
- the Department may, at the Department's absolute discretion:
- (c) take action under clause 65 [Remedies for breach];
 - (d) immediately terminate this Deed under clause 68 [Termination or reduction in scope for default] by providing Notice to the Provider; or
 - (e) take such other steps as are available under law or in equity.
- 16.5 Unless, and to the extent that, clause 16.3 applies, the Provider must comply with the timeframe for meeting its obligations as set out in this Deed.

17. Business level expectations

- 17.1 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 of the Services;
 - (c) the numbers of Participants for any ESA or Site ; or
 - (d) the market and other information provided in the tender process.

18. Gap filling and action to address unmet demand

- 18.1 If the Department identifies the need for the performance of additional Services, due to unmet demand, or a gap in the provision of Services during the Deed Term, the Department may:
- (a) agree with the Provider to the provision of additional Services by the Provider, including in additional ESAs, on the same terms as specified in this Deed, and vary Schedule 1 accordingly;
 - (b) agree with other Program Providers for them to provide additional Services in any ESA;
 - (c) if the Department determines, in its absolute discretion, that it cannot address any unmet demand or gap in Services through existing Program Providers under 18.1(a) or 18.1(b), undertake a limited or open tender process; or
 - (d) undertake any other process that delivers a value for money outcome for the Commonwealth, including by redistributing the Market Share among Program Providers in any ESA.
- 18.2 The provision of Services under clause 18.1(a) could require the Provider:
- (a) to perform Services in a particular ESA;
 - (b) to perform Services in one or more ESAs through modified service delivery modes;
 - (c) to perform Services in one or more ESA(s) as a condition of performing Services in another ESA or ESAs; or
 - (d) expanding its delivery locations in order to provide greater coverage within an ESA.
- 18.3 Any changes to this Deed (including Schedule 1) for the purpose of this clause 18 will be given effect in accordance with clause 82 [Variation of Deed].

19. Additional services

- 19.1 The Department and the Provider may agree, by variation to this Deed in accordance with clause 82 [Variation of Deed] or in a separate agreement, to the provision of:
- (a) other disability employment services (i.e. other than the services set out in Chapter 5 of this Deed as at the Deed Commencement Date);
 - (b) employment services; or
 - (c) employment-related services,
- by the Provider on behalf of the Department, including applicable terms and conditions.

Section 2C Safety and Compliance Requirements

20. Checks, Child Safety and reasonable care

Provider Personnel and Supervisors

- 20.1 Before arranging for any of Provider Personnel or any Supervisor to be involved in the Services, including any Activity (except any Activity specified to be excluded in any applicable Guidelines or Notified as such by the Department), the Provider must arrange and pay for all checks or similar, and comply with any other requirements, to ensure that the relevant Personnel or Supervisor's involvement does not breach:
- (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 applicable Guidelines.
- 20.2 The Provider must ensure that any Provider Personnel or any Supervisor who has direct involvement in the provision of the Services to Participants, including any Activity (except any Activity specified to be excluded in any applicable Guidelines or Notified as such by the Department), is a fit and proper person.
- 20.3 The Provider must promptly Notify the Department if it becomes aware, or has reason to believe, that any Provider Personnel or any Supervisor has engaged in conduct, in the course of providing the Services to Participants or otherwise, that:
- (a) demonstrates that they are not a fit and proper person; or
 - (b) is likely to:
 - (i) be prejudicial to, or diminish the public confidence in, the Department or the NSDEP; or
 - (ii) bring the Department or NSDEP into disrepute.

Child Safety

- 20.4 The Provider must:
- (a) comply, and ensure that all Child-Related Personnel comply, with all applicable Working with Children Laws in relation to the involvement of Child-Related Personnel in the Services, including obtaining, at the Provider's cost, all necessary Working With Children Checks however described; and
 - (b) ensure that Working With Children Checks obtained in accordance with clause 20.1 remain current and that all Child-Related Personnel continue to comply with all applicable Working with Children Laws for the duration of their involvement in the Services.

National Principles for Child Safe Organisations and other action for the safety of Children

- 20.5 The Provider must, in relation to the Services:
- (a) implement, and ensure that all Child-Related Personnel implement, the National Principles for Child Safe Organisations;
 - (b) complete and update, at least annually, a risk assessment to identify the level of responsibility the Provider and Child-Related Personnel have for Children and the level of risk of harm or abuse to Children;

- (c) put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required under clause 20.5(b);
 - (d) provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - (i) the National Principles for Child Safe Organisations;
 - (ii) the Provider's risk management strategy required under clause 20.5(c);
 - (iii) applicable Working with Children Laws, including in relation to undertaking Working With Children Checks; and
 - (iv) relevant legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - (e) at the Provider's cost, provide to the Department an annual statement of compliance with the Child Safety Obligations, in such form as may be specified by the Department.
- 20.6 With reasonable notice to the Provider, the Department may conduct a review of the Provider's compliance with the Child Safety Obligations.
- 20.7 The Provider agrees to:
- (a) promptly notify the Department of any failure by the Provider or any Child-Related Personnel, as relevant, to comply with the Child Safety Obligations;
 - (b) cooperate with the Department in any review conducted by the Department of the Provider's implementation of the National Principles for Child Safe Organisations or compliance with the Child Safety Obligations; and
 - (c) promptly, and at the Provider's cost, take such action as is necessary to rectify, to the Department's complete satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with the Child Safety Obligations.
- 20.8 If Child Safety Obligations are relevant to a Subcontract, the Provider must ensure that:
- (a) the Subcontract imposes on the Subcontractor the same Child Safety Obligations that the Provider has under this Deed; and
 - (b) the Subcontract also requires the same Child Safety Obligations (if relevant) to be included by the Subcontractor in any secondary subcontracts.
- 20.9 The Provider must not allow any Provider Personnel or any potential Supervisor to participate in the provision of the Services, including any Activity (except any Activity specified to be excluded in any applicable Guidelines or Notified as such by the Department):
- (a) if any relevant legislation or any Guidelines provide or mean that the individual 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 individual would consider that the conviction means that the

individual would pose a risk to other individuals involved in the Services;
or

- (ii) there is otherwise a reasonably foreseeable risk that the individual may cause loss or harm to any other individual,

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

Participants

20.10 If an Activity or Employment involves close proximity with people (excluding other Participants) who are elderly, have a disability, are otherwise vulnerable or are Children, before arranging for a Participant to be involved in the Activity or placed in the Employment, the Provider must, unless Notified otherwise, arrange and pay for all checks or similar, and comply with any other requirements, to ensure that the Participant's involvement or placement does not breach:

- (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 applicable Guidelines.

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

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

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

Note: If 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.

21. Compliance with Commonwealth, State and Territory requirements

21.1 If the Provider or any of its Personnel, or a Subcontractor or any of its Personnel, may breach a relevant statutory requirement of State or Territory legislation as a result of their compliance with any provision of this Section 2C, the Provider must promptly Notify the Department.

- 21.2 The Department may issue a Direction to the Provider in relation to any matter Notified by the Provider pursuant to clause 21.1. The Direction may include instructions as to how the Provider should comply with its obligations under Section 2C of this Deed in respect of any State or Territory legislation referred to in the Provider's Notice.

Section 2D Financial matters

22. General

- 22.1 Subject to sufficient funds being validly appropriated for the Services and compliance by the Provider with this Deed to the Department's satisfaction, the Department will make any payments owed to the Provider under this Deed at the times and in the manner specified in this Deed and any Guidelines, and to the account(s) specified in Item 0 of Schedule 1 – Deed Details.
- 22.2 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.
- 22.3 If the Department determines that the Provider is in breach of clause 22.2, the Department may recover some or all of the amount of the relevant Payment, at its absolute discretion, from the Provider as a debt in accordance with clause 27, and exercise any other remedies specified in clause 65 [Remedies for breach].
- 22.4 Subject to any Guidelines, the Provider must have, at the time it claims or accepts any Payment, true, complete and accurate Documentary Evidence sufficient to prove that the Provider:
- (a) is entitled to the Payment;
 - (b) has delivered the Services relevant to its claims for Payment; and
 - (c) has done so in accordance with this Deed, including any Guidelines.
- 22.5 If the Provider identifies that it has claimed, or accepted, a Payment:
- (a) in breach of this Deed; or
 - (b) in circumstances in which 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.
- 22.6 It is a precondition of the Provider's entitlement to be paid any amount under this Deed, that it:
- (a) has a valid ABN (and it must immediately notify the Department if it ceases to have a valid ABN);
 - (b) correctly quotes its ABN on all documentation provided to the Department;
 - (c) supplies proof of its GST registration, if requested by the Department (and it must immediately notify the Department of any changes to its GST status); and
 - (d) unless otherwise advised by the Department or specified in an Guideline, submits Tax Invoices to the Department for payment.

23. Evidence to support claims for payment

- 23.1 The Provider must retain sufficient Documentary Evidence to prove its claim for payment under this Deed for such period as is required under clause 46.9.
- 23.2 The Provider must provide Documentary Evidence to the Department which must be uploaded to the Department's IT Systems:
- (a) if required by any Guidelines, at the time of making the relevant claim for a Payment; or
 - (b) otherwise, within 10 Business Days after receipt of any request by the Department to do so.
- 23.3 If:
- (a) the Provider does not comply with clause 23.2;
 - (b) the Department has already paid the Provider in relation to the claim for payment; and
 - (c) an extension of time to comply with clause 23.2 has not been both requested by the Provider 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
 - (e) the Department may recover the relevant payment amount from the Provider as a debt in accordance with clause 27 [Debts and offsetting], without prejudice to any other rights that the Department may have under this Deed, under statute, at law or in equity.
- 23.4 The Department may contact Employers, Activity Host Organisations, Supervisors or Participants or any other relevant persons to verify any Documentary Evidence provided by the Provider. Nothing in this Deed prevents the Department from making enquiries to the extent permitted by law with any person or organisation in order to validate any claims made by a Provider. These enquiries may involve the use of data matching techniques to compare data held by government agencies to identify discrepancies.

24. Exclusions

No additional payments

- 24.1 The Department will not pay any money to the Provider in excess of the Payments that are set out in, and payable in accordance with, this Deed.

Superannuation

- 24.2 The Department is not required to make any superannuation contributions in respect of Provider Personnel or Participants in connection with this Deed.
- 24.3 The Provider is responsible for all payments to, and in relation to, its Personnel, including payment by way of salary, remuneration or commissions, bonuses, annual leave, long service leave, personal leave, termination, redundancy, taxes, superannuation and workers' compensation premiums and liabilities.

No charge to Participants

- 24.4 Unless otherwise agreed in writing by 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.

25. Overpayment

General

- 25.1 If, at any time, the Department determines that an overpayment was made by the Department to the Provider, for any reason, including if a Tax Invoice is found to have been incorrectly rendered after payment, or a payment has been made by the Department to the Provider in error, then the Department may, at its absolute discretion and without prejudice to any other rights that the Department may have under this Deed or the law, recover some or all of the relevant payment amounts from the Provider, as a debt in accordance with clause 27 [Debts and offsetting].

Double payments

- 25.2 The Provider warrants that neither it, nor any Related Entities, are entitled to payment from the Department, or other Commonwealth, State, Territory or local government entities, for providing services that are the same as, or similar to, the Services provided, or required to be provided, under this Deed (**Double Payment**), and the Department may require the Provider to provide evidence, in a form acceptable to the Department, which proves that the Provider is not entitled to a Double Payment.
- 25.3 If the Department determines, in its absolute discretion, that the Provider, or any Related Entity, is entitled to a Double Payment, the Department may:
- (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 27 [Debts and offsetting].
- 25.4 Without limiting any other action the Department may take under clause 25.3, the Department may, at any time, issue Guidelines setting out the circumstances in which the Department will or will not make a payment in connection with any situation of the type described in clause 25.3.
- 25.5 Throughout the Term of this Deed, the Provider must Notify the Department if it intends to enter any arrangement to which clause 25.2 may apply.

26. The Department may change certain terms

- 26.1 The Department may at any time adjust:
- (a) the payments to be made under this Deed, such as by increasing the amounts of Payments or making new types of payments including for any Additional Services; or
 - (b) the number of Participants receiving Services from the Provider,
- for all or part of the Term of this Deed, by providing Notice to the Provider:
- (c) based on the Department's assessment of:

- (i) the extent to which the Services are meeting any Objectives for the Services specified in this Deed; or
- (ii) projected changes to labour market conditions in an ESA or LMR (including projected Participant demand); or
- (d) acting reasonably, for any other reason as determined by the Department in its absolute discretion.

26.2 If the Department exercises its rights under clause 26.1, the Provider must continue to perform all of its obligations under this Deed, including in respect of any changed Services, unless the Department agrees otherwise in writing.

27. Debts and offsetting

27.1 If the Provider owes the Commonwealth any amount:

- (a) under this Deed, the Department may recover some or all of the amount, at its absolute discretion, as a debt due to the Commonwealth from the Provider without further proof of the debt being necessary; and/or
- (b) under this Deed, and/or under any other arrangement with the Commonwealth, the Department may offset some or all of the amount against any Payment at its absolute discretion,

and, if clause 27.1(a) or 27.1(b) applies:

- (c) the Department will Notify the Provider of that fact including Notifying the Provider within 10 Business Days after having exercised any rights under either clause 27.1(a) or 27.1(b); and
- (d) the Provider must continue to perform its obligations under this Deed despite any action taken by the Department under clause 27.1(a) or 27.1(b).

27.2 Unless otherwise agreed by the Department in writing, 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.

27.3 If the Provider owes any debt to the Commonwealth under this Deed, Interest is payable by the Provider on receipt of a Notice from the Department requiring payment of Interest, if the debt is not repaid within 30 calendar days of receipt of a Notice from the Department requiring payment of the debt, until the amount of debt is paid in full.

28. Taxes, duties and government charges

28.1 Unless expressly stated to the contrary, all dollar amounts set out in this Deed are stated inclusive of any applicable GST.

28.2 If a claim for Payment is not in relation to a Taxable Supply, the Provider must only claim an amount exclusive of GST and the Department will only pay the GST exclusive amount under this Deed.

28.3 Unless otherwise advised by the Department or specified in any Guidelines, 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.

- 28.4 The Provider must not claim from the Department any amount for which it can claim an Input Tax Credit.
- 28.5 If any debt is repaid, including by offset under clause 27, an Adjustment Note must be provided to or by the Department, as applicable, if required by the GST Act.
- 28.6 Subject to this clause 28, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed and its performance must be borne by the Provider and are taken to be included in all Payment amounts set out in this Deed.

29. Fraud

- 29.1 The Provider must, and must ensure that its Personnel, Subcontractors and agents do:
- (a) comply with, and take all steps reasonably required to enable the Commonwealth to comply with, the Commonwealth Fraud Control Framework (available at: <https://www.counterfraud.gov.au/library/framework-2024>) (**Framework**); and
 - (b) not engage in Fraud.
- 29.2 The Provider must take all reasonable steps to prevent and detect Fraud in accordance with the Framework, including the implementation of an appropriate Fraud control plan, a copy of which must be provided to the Department on request.
- 29.3 The Provider acknowledges that the occurrence of Fraud by the Provider or its Personnel will constitute a breach of this Deed.
- 29.4 If the Provider has committed Fraud, or the Provider has failed to take reasonable steps to prevent Fraud by its Personnel or has not otherwise complied with the Framework, the Provider must reimburse the Department for the reasonable costs or losses that the Commonwealth incurs as a result of the Fraud.
- 29.5 If, after investigation, the Department determines that the Provider or its Personnel have engaged in Fraud or otherwise materially not complied with the Framework, the Department may:
- (a) take action under clause 65 [Remedies for breach]; or
 - (b) immediately terminate this Deed under clause 68 [Termination or reduction in scope for default]
- 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 2E Reports

30. General reporting

Provider's obligation to provide Reports

- 30.1 Without limiting any other provisions of this Deed, the Provider must provide, as required by the Department from time to time:
- (a) specific Reports on:

- (i) the Services, including, but not limited to, qualifications or leadership capabilities held by, and training provided to, the Provider's Personnel and Subcontractors, performance issues raised by the Department, and the results of internal and external audits of Payment claims and claim processes; and
 - (ii) the financial status of the Provider; and
- (b) a suitably qualified, informed and authorised representative at any meeting arranged by the Department in order to discuss and accurately answer questions relating to the Reports referred to in clause 30.1(a) or those otherwise required under this Deed.

Other Reports

- 30.2 The Provider must also provide any other Reports (i.e. in addition to those referred to in clause 30.1) that may reasonably be required by the Department within the timeframes requested by the Department or as specified in any Guidelines.

Form and content of Reports

- 30.3 The Provider warrants that all Reports accurately represent the information in the Report and are true and correct.

Note: The Provider should note that, under section 137.1 of the Criminal Code Act 1995 (Cth), giving false or misleading information is a serious offence punishable by penalties including imprisonment.

- 30.4 The Provider must provide:
- (a) all Reports in English;
 - (b) all Reports in a form acceptable to the Department; and
 - (c) if, in the Department's opinion, either the form or the content of a Report is not satisfactory and the Provider is Notified by the Department, a revised Report, to the Department's satisfaction, within 10 Business Days after the Notice to the Provider from the Department.

Failure to provide satisfactory Reports

- 30.5 If the Provider does not provide a Report to the Department within 10 Business Days of the due date for the delivery of the Report, or a Report fails to satisfy the Department, the Department may:
- (a) take action under clause 65 [Remedies for breach]; or
 - (b) immediately terminate this Deed under clause 68 [Termination or reduction in scope for default] by providing Notice to the Provider.

31. Financial statements and guarantees

- 31.1 Subject to clauses 31.3 and 31.4, the Provider must, for the Deed Term, provide to the Department its financial statements:
- (a) within 20 Business Days after its annual general meeting or if no annual general meeting is held, within 20 Business Days after the compilation of the financial statements; and

(b) in any case, no later than 120 Business Days after the end of its financial year.

- 31.2 If requested by the Department, the Provider must also provide to the Department financial statements for any Subcontractor, within the timeframe required by the Department, acting reasonably.
- 31.3 If the Provider is a Group Respondent or a partnership, then the Provider must provide to the Department one copy of the consolidated financial statement for the Group Respondent or partnership, if available, and individual annual financial statements for each member of the Group Respondent, in accordance with clause 31.1.

Financial statements

- 31.4 If required by the Department, the Provider must provide to the Department financial statements in a form, with the content and at a frequency, as directed by the Department.
- 31.5 For the purposes of this clause 31, if audited financial statements are created for the Provider, they must be provided to the Department.

Financial undertaking and performance guarantee

- 31.6 If directed by the Department, the Provider (or, if so directed, a Related Entity) must provide to the Department within 20 Business Days after the relevant direction by the Department, a financial undertaking and performance guarantee in a form and in terms satisfactory to the Department.
- 31.7 The financial undertaking and performance guarantee provided in accordance with clause 31.6 must remain in place until the Department Notifies the Provider that it is no longer required or it is released by the Department in accordance with its terms.
- 31.8 The financial undertaking and performance guarantee provided under clause 31.6 will be exercisable by the Department for either or both of the following, to the extent required:
- (a) to obtain compensation for the costs, losses, damages and expenses suffered by the Department in the event that the Provider fails to perform any or all of its obligations under this Deed, including on the termination of this Deed in accordance with clause 68 [Termination or reduction in scope for default]; or
 - (b) to recover any debts owed by the Provider under or in connection with this Deed in accordance with clause 27 [Debts and offsetting].
- 31.9 Without limiting any of the Department's other rights under this Deed or otherwise, if the Provider (or Related Entity) fails to provide or maintain the financial undertaking and performance guarantee required by clause 31.6, the Department may withhold all or part of any Payment under this Deed until the Provider (or Related Entity) meets those obligations.
- 31.10 If the Department exercises any or all of its rights under the financial undertaking and performance guarantee provided under clause 31.6, the Department will not be liable for, and the Provider releases the Department from liability for, any resultant loss or damage to the Provider.
- 31.11 The Department's rights to recover from the Provider the balance of any costs, losses, damages and expenses suffered by the Department after exercise of the financial

undertaking and performance guarantee provided under clause 31.6 will not be limited by the Department's exercise of the security.

32. Information provided to the Department

32.1 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 a 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 32.1(a); and
- (c) any data entered into the Department's IT Systems is consistent with any associated Documentary Evidence held by the Provider.

Section 2F Evaluation Activities

33. Evaluation activities

Cooperation in evaluation activities

33.1 The Provider agrees:

- (a) that evaluation activities may be undertaken by the Department for the purposes of evaluating the Services and the performance of this Deed, including:
 - (i) the Provider's performance of the Services and other obligations under this Deed, including the timeliness of its performance;
 - (ii) the suitability of the Provider's Personnel, including Subcontractor Personnel, including their expertise and professional conduct during the performance of the Services;
 - (iii) the effectiveness of the Provider's management of this Deed (including interaction with the Relationship Manager);
 - (iv) the extent to which the Objectives were met, and if not, how the Provider responded to these challenges;
 - (v) the value added by the Provider; and
 - (vi) the Provider's ability to adapt to the changing needs of the Department;
- (b) that all evaluation activities will be conducted in a mutually cooperative manner, and may include:
 - (i) the Department monitoring, measuring and evaluating the delivery of the Services by the Provider;
 - (ii) the Provider's Personnel, including Subcontractor Personnel, Participants to whom the Services have been provided and Supervisors, being surveyed or 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, and those of its Subcontractors, in accordance with clause 52 [Access to premises and records];
- (c) to assist the Department or the Department's evaluator in carrying out all evaluation activities that the Department requires to be undertaken, including a review and final evaluation of the Services; and
- (d) to fully cooperate and participate in any other general research, monitoring or evaluation activities undertaken by the Department, or on behalf of the Department.

33.2 The Department may provide the information obtained through the conduct of the evaluation activities referred to in clause 33.1 to other Commonwealth entities, if this serves the legitimate interests of the Commonwealth.

Section 2G Customer and Provider feedback

34. Customer feedback process

34.1 The Provider must establish, and publicise to its Customers in accordance with applicable Guidelines, the existence and details of a Customer feedback process which must deal with any feedback, including Complaints lodged by Customers, about its performance of the Services.

34.2 The Provider's Customer feedback process must:

- (a) be simple, user-centred and easy to use;
- (b) be consistent with this Deed, any applicable Guidelines, and, if relevant, the Code of Conduct and the Service Guarantee; and
- (c) clearly indicate that Customers may also make a Complaint directly to the Department using the National Customer Service Line or the Complaints Resolution and Referral Service.

34.3 Upon request, the Provider must provide to the Department details of the process it has established to receive and manage Customer feedback.

35. Dealing with Customer feedback

35.1 The Provider must:

- (a) explain the Customer feedback process to Customers on initial contact, including potential Participants upon first Referral to, or on Direct Registration with, the Provider, and to Customers or Participants at any time upon request;
- (b) make copies of the Customer feedback process available to Participants or other Customers upon request;
- (c) ensure that all Complaints it receives are investigated by an appropriately senior staff member;
- (d) ensure that all other feedback received by it is dealt with appropriately;
- (e) effectively communicate the outcome of any investigation and any action the Provider proposes to take about a Complaint to the complainant and, if

requested by the Department, to the Department. If a Customer is dissatisfied with the results of the Customer feedback process, the Provider must refer the Customer to the National Customer Service Line or the Complaints Resolution and Referral Service for further investigation of the matter;

- (f) must assess whether a complaint relates to the Code of Conduct and, if it does, promptly inform the Department of the Complaint;
- (g) when approached by the Department in relation to Customer feedback or a Complaint, actively assist:
 - (i) the Department in its investigation of the matter;
 - (ii) in negotiating a resolution of the feedback or Complaint; and
 - (iii) other authorities in negotiating a resolution of the feedback or Complaint, if the relevant Customer has chosen to utilise other legislative or administrative complaints mechanisms; and
- (h) not withhold Services from a Participant who provides feedback or makes a Complaint, or discriminate against a Participant because of feedback or a Complaint.

36. Customer Feedback Register

- 36.1 The Provider must keep a Customer Feedback Register which includes, at a minimum, the information specified in the Guidelines.
- 36.2 The Provider must ensure that all Complaints it receives are recorded and can be compiled to produce Complaint insights and for reporting, quality assurance and review purposes as required.
- 36.3 Upon request, the Provider must give to the Department a copy of its Customer Feedback Register.

37. Complaints Resolution and Referral Service (CRRS)

- 37.1 In addition to the requirements under clauses 34 [Customer feedback process] to 36 [Customer Feedback Register], the Provider must actively assist with the CRRS to resolve Complaints, including by:
 - (a) providing any information relevant to the Complaint (including the Provider's Customer feedback process and information from the Customer Feedback Register) to the CRRS;
 - (b) allowing the CRRS to access the Provider's Sites to inspect relevant Records; and
 - (c) not preventing Participants or Provider Personnel from being interviewed by the CRRS.

38. Provider feedback

- 38.1 If the Provider wishes to provide feedback to the Department other than in relation to a dispute dealt with under clause 63 [Dispute Resolution], the Provider must, in the first instance, provide feedback to the Relationship Manager.

- 38.2 The Relationship Manager will consider all feedback received from the Provider and respond as appropriate.
- 38.3 If the Provider is not satisfied with the Relationship Manager's response to the Provider's feedback, the Provider may request the Relationship Manager to refer the matter to an appropriately senior Department officer. The Relationship Manager will then refer the matter to an appropriately senior Department officer for consideration and response as appropriate.

EXPOSURE DRAFT

CHAPTER 3 INFORMATION AND INFORMATION MANAGEMENT

Section 3A Information Technology

39. General

Use

- 39.1 If required by the Department, the Provider must perform the Services and other obligations under this Deed by Accessing the Department's IT Systems.
- 39.2 If any Provider Personnel require disability access to the Department's IT Systems, the Provider must install suitable accessibility software to allow such access.
- 39.3 The Department may require that specific data must only be stored on the Department's IT Systems, and the Provider must comply, and must ensure that any Subcontractors, auditors and Third Party IT Vendors, comply with any such requirements.

Training

- 39.4 The Department may provide training to the Provider Personnel in the use of the Department's IT Systems, by computer-assisted learning packages or otherwise.
- 39.5 The Provider must not, and must ensure that its Personnel, Third Party IT Vendors including Subcontractors do not, Access the Department's IT Systems until they have successfully completed the relevant training and onboarding specified by the Department by Notice or in Guidelines.

Accuracy and Completeness

- 39.6 The Provider must ensure that:
- (a) a Participant's details, are recorded on the Department's IT Systems as required by the Department; and
 - (b) all data entered on the Department's IT Systems is true, accurate and complete.

Costs

- 39.7 The Provider is responsible for all costs of meeting its obligations under this clause 39 and 40.

40. Access and information security assurance

Access to the Department's IT Systems

- 40.1 The Provider must provide information technology systems to Access and use the Department's IT Systems and to carry out its other obligations under this Deed that meet the requirements set out in this clause 40.
- 40.2 The Provider acknowledges and agrees that:
- (a) the External System Assurance Framework (**ESAF**) is the method used by DEWR and the Department to gain assurance over External IT Systems;
 - (b) DEWR is the accreditation authority for the ESAF; and

- (c) the requirements for a Provider IT System are outlined in the Right Fit For Risk (RFFR) program under the ESAF.

40.3 The Provider must:

- (a) advise DEWR, by email to securitycompliancesupport@dewr.gov.au or such other address as advised by the Department from time to time, prior to any proposed:
 - (i) use of any External IT System to Access the Department's IT Systems, and if the Department imposes any terms and conditions in respect of such use, comply, and ensure that all relevant Subcontractors comply, with those terms and conditions; and
 - (ii) modification to the functionality of any External IT System that impacts, or may have an impact, on the security of that External IT System, and if DEWR or the Department imposes any terms and conditions in respect of the use of that External IT System, comply, and ensure that all relevant Subcontractors comply, with those terms and conditions;
- (b) ensure that any External IT System used by it:
 - (i) is not accessible from outside of Australia, and that no data in relation to the Services is transferred to, stored or accessed from outside of Australia, without prior written approval from the Department; and
 - (ii) meets the minimum requirements specified in any Guidelines including the DEWR *External Systems Assurance Framework (ESAF) Guidelines*; and
- (c) ensure that any and all Records held in any External IT System relating directly or indirectly to the Services can be, and are, provided on request to the Department or DEWR and in an unadulterated form (i.e. with no amendments or transformations to the Records or their data structures).

40.4 The Department:

- (a) may make changes to the Department's IT Systems at any time, notwithstanding that such changes may affect the functioning of an External IT 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 External IT Systems are consistent with the Department's IT Systems at all times; and
- (d) agrees that the Department and DEWR are not responsible for any Loss by the Provider arising from such changes.

40.5 The Provider must, and must ensure that any Subcontractors, ensure that, prior to any access to the Department's IT Systems, any External IT System used by any of them:

- (a) meets the minimum requirements of the Department for entry to the Department's IT Systems, and for record keeping and program assurance purposes, as advised by the Department;

- (b) does not have an adverse impact on the performance, availability or data integrity of the Department's IT Systems;
- (c) is built and assessed to meet DEWR's **ESAF**, which outlines requirements for Provider IT system accreditation such as **RFFR**;
- (d) does not introduce or permit the introduction of Harmful Code into the Department's IT Systems, including by:
 - (i) use of the most appropriate and up-to-date virus detection software for preventing and detecting Harmful Code; and
 - (ii) implementing practices and procedures that are consistent with industry best practice;
- (e) has secure logons for each operator such that each operator's logon is identifiable to the Department and entries are traceable, and have date and time stamps; and
- (f) does not provide default answers to questions or input fields if the Department's IT Systems has no default setting.

40.6 If the Provider becomes aware that any Harmful Code has been introduced into any of the Department's IT Systems, the Provider must:

- (a) promptly notify the Department and DEWR;
- (b) provide all information reasonably requested by the Department or DEWR in relation to the Harmful Code, its manner of introduction and the effect the Harmful Code has had or is likely to have;
- (c) take all necessary remedial action to:
 - (i) eliminate the Harmful Code and prevent its re-occurrence; and
 - (ii) rectify any consequences of the Harmful Code (to the extent that they are capable of rectification);
- (d) if the Harmful Code causes a loss of data or loss of operational efficiency, assist the Department and DEWR to mitigate the losses and restore the efficiency and/or data;
- (e) retain evidence and logs regarding the incident to help in determining the cause, damage and likely source; and
- (f) ensure that sufficient resources and technology of the Provider are available to meet its obligations under this clause 40.6.

Provider IT System accreditation

40.7 All Providers must comply with the ESAF, which outlines requirements for Provider IT system accreditation such as RFFR.

40.8 Subject to the ESAF, the Provider must, and must ensure that its Subcontractors:

- (a) obtain RFFR accreditation for any Provider IT System in accordance with the requirements and timeframes set out in the ESAF and bear any costs associated with doing so; and
- (b) maintain such RFFR accreditation for the duration of the Deed Term.

- 40.9 If a Provider IT System is modified, the Provider must take all steps necessary to obtain RFFR reaccreditation for that Provider IT System in accordance with the requirements and timeframes set out in the ESAF.
- 40.10 If the Provider does not obtain accreditation or reaccreditation within the timeframes specified in the ESAF or this clause 40, the Provider will be in breach of clause 40.8(b) and must immediately cease using the relevant Provider IT System until accreditation or reaccreditation has been obtained.
- 40.11 The Provider must:
- (a) keep Records of accreditation and reaccreditation obtained as required by this clause 40; and
 - (b) when requested by the Department, provide those Records to the Department within the timeframe required by the Department.
- 40.12 The Provider must:
- (a) not directly or indirectly allow Access to the Department's IT Systems or electronic Records relating to the Services (including any derivative thereof), by any Third Party IT System until the Third Party IT System has met the relevant requirements of the ESAF for Access as specified in any Guidelines;
 - (b) if the Third Party IT System is a Third Party Employment System:
 - (i) ensure that the relevant Third Party IT Vendor has entered into a current Third Party IT Vendor Deed with DEWR in relation to the Third Party Employment System; and
 - (ii) only allow Access in accordance with the terms of the relevant Third Party IT Vendor Deed and any Guidelines;
 - (c) if the Third Party IT is a Third Party Supplementary IT System:
 - (i) ensure that the Provider has included the Third Party Supplementary IT System as part of its Provider IT System in accordance with the requirements of the ESAF; and
 - (ii) only allow Access in accordance with the terms of the ESAF; and
 - (d) comply with any Guidelines in relation to obligations to be included in any contract with any Third Party IT Vendor and in any Subcontract with any Subcontractor Accessing the Department's IT Systems or electronic Records relating to the Services.
- 40.13 The Provider acknowledges and agrees that the Department and DEWR:
- (a) do not warrant that any Third Party Employment System that is accredited in accordance with a Third Party IT Vendor Deed is:
 - (i) fit for its intended use or for a Provider's specific business processes; or
 - (ii) free from error or security weaknesses; and

- (b) are not liable or responsible for any Loss incurred by the Provider in connection with its use of a Third Party IT Vendor in connection with this Deed.

40.14 In addition to any applicable requirements under clause 61 [Subcontracting], the Provider must ensure that any arrangement with a Third Party IT Vendor includes a right of termination for the Provider to take account of DEWR's:

- (a) right to revoke accreditation of a Third Party Employment System under any Third Party IT Vendor Deed; and
- (b) right of termination under clauses 67 [Termination or reduction in scope with costs] and 68 [Termination or reduction in scope for default] of this Deed,

and the Provider must, as appropriate, make use of that right in its arrangement in the event of a revocation of accreditation of any Third Party Employment System or termination of any Third Party IT Vendor Deed, by DEWR.

40.15 The Provider must impose the obligations set out in this clause 40 on any Subcontractor Accessing electronic Records relating to the Services.

Technical advice

40.16 The Provider must:

- (a) nominate Personnel to receive technical advice from the Department or DEWR on the Department's IT Systems, and to provide advice to the Department or DEWR on technical issues arising from Accessing the Department's IT Systems ('IT Contact');
- (b) ensure that an IT Contact is appointed at all times during the Deed Term and that, at all times, the Department and DEWR have up-to-date contact details for the current IT Contact by promptly advising the Department and DEWR if the IT Contact changes; and
- (c) ensure that the IT Contact:
 - (i) disseminates technical advice to the Provider Personnel, including Subcontractors, in order to minimise disruption to the Services;
 - (ii) provides advice, as requested by DEWR or the Department:
 - (A) to assist in the resolution of any technical issues affecting the Department's IT Systems; and
 - (B) in relation to the Provider's readiness to deploy system upgrades to the Department's IT Systems; and
 - (iii) meets all requirements specified in an Guidelines.

Security

General security obligations

40.17 The Provider must comply, and must ensure that its Personnel (including Subcontractors and their Personnel) and Third Party IT Vendors comply, with:

- (a) all relevant requirements specified in:
 - (i) Security Policies of the Department and DEWR; and

(ii) the Protective Security Policy Framework; and

(b) any variations or additions to these security requirements of which the Department Notifies the Provider from time to time.

40.18 The Provider acknowledges that, in performing this Deed, it may become subject to certain statutory provisions relating to security and security issues, and must ensure that its Personnel, including Subcontractors, are aware of, and comply, with those statutory provisions.

Personnel security

40.19 If the ESAF requires that any of the Provider Personnel, including Subcontractor Personnel, must obtain security clearances for the purposes of accreditation or reaccreditation or the Department otherwise Notifies the Provider that particular Personnel must hold a particular level of Commonwealth security clearance:

(a) the Provider must ensure that the relevant Personnel obtain, and maintain, the required security clearances, and bear any costs associated with doing so; and

(b) the Department will sponsor such clearances as required by the ESAF.

40.20 The Provider is responsible for all costs associated with obtaining security clearances.

Information security

40.21 The Provider must not permit any of its Personnel to have any access to Security Classified Information unless:

(a) the relevant person has been cleared to the appropriate security level; and

(b) the relevant person has complied with all directions by the Department relating to access to, and use of, the Security Classified Information.

40.22 The Provider must promptly Notify the Department if it becomes aware that any unauthorised person has had access to Security Classified Information provided by the Department under this Deed.

40.23 The Provider must not perform work under this Deed, including providing any part of the Services, outside Australia, or transfer Security Classified Information outside Australia, without the Department's prior written consent.

Physical security

40.24 If the Provider is required to access the Department's premises, it may only do so if it:

(a) has the Department's written authorisation; and

(b) complies with the Department's requirements set out in this Deed and any additional requirements Notified by the Department.

40.25 The Provider must ensure that its Personnel safeguard any keys or passes or other Commonwealth Material detailing or enabling access arrangements that are provided to the Provider for the purposes of this Deed.

40.26 The Provider must protect any Commonwealth Material that it possesses or controls to the same extent as if it were the Department, including ensuring that unauthorised persons cannot access any Official Information.

Security Contact and reports

- 40.27 The Provider must ensure that a Security Contact is appointed at all times during the Deed Term and that at all times the Department has up to date contact details for the current Security Contact.
- 40.28 The Provider must (through its Security Contact) report all actual, suspected or potential breaches of IT security to Digital Solutions Support, including reports from any Personnel or any Subcontractor that suspects that a breach may have occurred or is likely to occur, including by providing the following information:
- (a) details of the incident, including steps taken by the Provider to address the incident;
 - (b) when appropriate, recommendations for security improvements;
 - (c) any proposed or actual changes of the Provider's Personnel; and
 - (d) any other information that the Department reasonably requires.

Responses to security incidents

- 40.29 If the Department considers that the Provider may be in breach of this clause 40, or there is a risk of such a breach, the Department may, at its absolute discretion, by providing Notice to the Provider, immediately suspend Access to the Department's IT Systems for any one or more of the following:
- (a) any Provider Personnel, including any Subcontractor Personnel;
 - (b) any Third Party IT Vendor;
 - (c) the Provider; or
 - (d) any Third Party System.
- 40.30 If the Department determines that the Provider is in breach of, or has previously breached, this clause 40, the Department may take action to remedy the breach including any one or more of the following actions:
- (a) suspending or terminating Access to the Department's IT Systems for any Provider Personnel, Subcontractor, Third Party IT Vendor or the Provider;
 - (b) applying bandwidth throttling measures in respect of all Access to the Department's IT Systems for any Provider Personnel, Subcontractor, Third Party IT Vendor, Third Party System or the Provider;
 - (c) requiring the Provider to obtain new logon IDs for any Provider Personnel or Third Party IT Vendor and, if it does so, the Provider must promptly obtain such new logons IDs; or
 - (d) requiring the Provider to prepare and implement an IT security plan to the Department's satisfaction, and if it does so, the Provider must comply within the timeframe required by the Department.
- 40.31 Any action taken by the Department under clauses 40.28 and 40.29 does not limit any other rights the Department has under this Deed, including pursuant to clause 65.2, or under statute, at law or in equity.

- 40.32 If the Department gives Notice to the Provider that Access to the Department's IT Systems is revoked for any Provider Personnel, Subcontractors or Third Party IT Vendor, the Provider must immediately take all actions necessary to terminate that Access and promptly confirm with the Department that it has complied with the Department's requirements.

Section 3B Intellectual Property Rights and Moral Rights

41. Intellectual Property Rights

- 41.1 This clause 41 does not affect the ownership of the Intellectual Property Rights in any Existing Material or Third Party Material.
- 41.2 The Provider must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Third Party Material available for the purpose of this Deed or the Services.
- 41.3 All:
- (a) Intellectual Property Rights in; and
 - (b) rights of ownership of any physical documents comprising,
- any Deed Material vest in the Department on creation.
- 41.4 To the extent that the Department needs to use any of the Existing Material or Third Party Material provided by the Provider, in connection with the Services, or for any other Department or Commonwealth purpose, including to make full use of the Deed Material, the Provider grants to, or must obtain for, the Department a perpetual, irrevocable, world-wide, royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, communicate, broadcast, distribute, exploit and publish that Existing Material or Third Party Material.
- 41.5 To the extent that the Provider needs to use any of the Commonwealth Material or Deed Material for the purpose of performing its obligations under this Deed, the Department grants to the Provider, subject to any direction by the Department, a royalty-free, non-exclusive, non-transferable, revocable, limited licence to use, reproduce, adapt, modify and communicate such Material solely for the purpose of performing its obligations under this Deed.
- 41.6 On the expiration or earlier termination of this Deed, or on such earlier date as may be specified by the Department, the Provider must (subject to any legal obligations it may have to the contrary) deliver to the Department a copy of any:
- (a) Deed Material; and
 - (b) Commonwealth Material,
- in the possession or control of the Provider, any of its Personnel or any Subcontractor, or deal with the Material as otherwise directed by the Department.
- 41.7 The Provider warrants that:
- (a) any Warranted Material and the Department's use of any Warranted Material will not infringe the Intellectual Property Rights or Moral Rights of any entity; and

- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 41.

41.8 If an entity or person claims, or the Department reasonably believes that an entity or person is likely to claim, that any Warranted Material or the Department's use of any Warranted Material infringes that entity's Intellectual Property Rights or Moral Rights, the Provider must promptly, at the Provider's expense:

- (a) use its best efforts to secure the rights for the Department to continue to use the affected Warranted Material free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Material so that the Warranted Material or the use of it does not infringe the Intellectual Property Rights or Moral Rights of any other entity or person without any degradation of the performance or quality of the affected Warranted Materials.

41.9 For the purposes of this clause 41 'infringe' includes unauthorised acts that would constitute an infringement, but for the operation of:

- (a) section 163 or 163A of the *Patents Act 1990* (Cth);
- (b) section 96 or 96A of the *Designs Act 2003* (Cth);
- (c) section 183 of the *Copyright Act 1968* (Cth); or
- (d) section 25 of the *Circuits Layout Act 1989* (Cth).

41.10 The Provider must if requested by the Department, bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 41.

42. Moral Rights

42.1 To the extent permitted by law and for the benefit of the Department, the Provider must use its best endeavours to ensure that each of the Provider's Personnel, including Subcontractor Personnel, involved in the production or creation of the Deed Material gives genuine consent in writing, in a form acceptable to the Department, to the Specified Acts, even if such an act would otherwise be an infringement of their Moral Rights.

42.2 In this clause 42, 'Specified Acts' means:

- (a) falsely attributing the authorship of any Deed Material, or any content in the Deed Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- (b) materially altering the style, format, colours, content or layout of the Deed Material and dealing in any way with the Deed Material, the altered Deed Material or any infringing copies of the Deed Material (within the meaning of the *Copyright Act 1968* (Cth));
- (c) reproducing, communicating, adapting, publishing or exhibiting any Deed Material including dealing with infringing copies, within the meaning of the *Copyright Act 1968* (Cth), without attributing the authorship; and
- (d) adding any additional content or information to the Deed Material.

Commonwealth Coat of Arms

- 42.3 The Provider must not use the Commonwealth Coat of Arms for the purposes of, or in connection with, this Deed, except as authorised in accordance with the *Use of the Commonwealth Coat of Arms General Guidelines* available at:
<https://www.pmc.gov.au/sites/default/files/resource/download/commonwealth-coat-of-arms-information-and-guidelines.pdf>.

Section 3C Control of information

43. Personal and Protected Information

Application of this clause

- 43.1 This clause 43 applies when the Provider deals with Personal Information as a result of this Deed or for the purpose of performing the Services under this Deed.

Privacy definitions

- 43.2 In this clause 43, the terms 'agency', 'APP code', 'contracted service provider', 'eligible data breach', '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.

Privacy obligation

- 43.3 The Provider acknowledges that it is a contracted service provider and agrees in respect of its performance of this Deed or provision of the Services under this Deed:
- (a) to use or disclose Personal Information, including sensitive information, obtained as a result of this Deed or in the course of performing the Services, only for the purposes of this Deed or as otherwise permitted under the Privacy Act;
 - (b) except to the extent that 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, if 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 Information 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 performing this Deed or the Services under this Deed;
 - (e) unless expressly authorised or required under this Deed, not engage in any practice that would breach 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 Information Commissioner to the extent that they are consistent with the requirements of this clause 43;
- (h) not to transfer Personal Information outside 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 Information Commissioner;
- (j) if the Provider suspends or terminates Personnel:
 - (i) to remove any access that the Personnel have to any Personal Information;
 - (ii) to require that the Personnel return to the Provider or the Department any 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 Personal Information for the purposes of this Deed:
 - (i) are made aware of their obligations in this clause 43 including to undertake in writing to observe the APPs (or a registered APP code, if applicable); and
 - (ii) if required by the Department, undertake in writing to observe the APPs (or a registered APP code if applicable).

43.4 Clauses 43 to 52:

- (a) do not affect the Provider's obligations under the Privacy Act; and
- (b) do not affect the Provider's obligation to perform other obligations under this Deed, unless the Department agrees otherwise in writing.

Notification to the Department

43.5 The Provider must, as soon as possible and in any event within two Business Days, Notify the Department if it becomes aware:

- (a) of an actual or suspected eligible data breach, by any Personnel or Subcontractor;
- (b) of an actual or suspected breach of any of the obligations contained in, or referred to in, this clause 43 by any Personnel or Subcontractor;
- (c) that a disclosure of Personal Information may be required by law; or
- (d) of an approach to the Provider by the Information Commissioner or by a person claiming that there has been an interference with their privacy.

Notifiable data breaches

43.6 If the Provider becomes aware that there are reasonable grounds to suspect that there may have been an eligible data breach in relation to any Personal Information

held by the Provider as a result of this Deed or its performance of the Services, the Provider must:

- (a) Notify the Department in writing as soon as possible and within two business days after the Provider becomes so aware;
- (b) comply with its obligations under the Privacy Act in relation to the event;
- (c) unless otherwise directed by the Department, carry out an assessment as to whether there are reasonable grounds to believe that there has been an eligible data breach in accordance with the requirements of the Privacy Act; and
- (d) if the Department requires it, allow the Department to participate in the Provider's assessment of the event to determine if the event is an eligible data breach.

43.7 If the Provider is aware that there are reasonable grounds to believe that there has been, or if the Department Notifies the Provider that there has been, an eligible data breach in relation to any Personal Information held by the Provider as a result of this Deed or its performance of the Services, the Provider must:

- (a) take all reasonable action to mitigate the risk of the breach causing serious harm to any of the individuals to whom the Personal Information relates;
- (b) take all other action necessary to comply with the requirements of the Privacy Act (including preparing a statement for the Australian Information Commissioner and notifying affected individuals about the eligible data breach if required);
- (c) if the Privacy Act requires that the eligible data breach be notified to the Australian Information Commissioner, then the Provider must, within two Business Days after the determination or notification (as applicable), prepare and give to the Department a draft notice to the Australian Information Commissioner in respect of the eligible data breach; and
- (d) take any other action as reasonably directed by the Department or the Australian Information Commissioner.

43.8 The Department may:

- (a) require the Provider to make changes to the draft notice to the Australian Information Commissioner; or
- (b) determine that the Department will notify the Australian Information Commissioner of the eligible data breach, in which case the Department will give the Provider a copy of the notification before it is given to the Australian Information Commissioner.

43.9 The Provider must ensure that the Department is:

- (a) promptly advised of any investigation or other action taken by the Australian Information Commissioner in connection with the actual or suspected eligible data breach; and
- (b) kept informed in relation to the investigation or other action.

Protected Information

- 43.10 The Provider must ensure that its Personnel, Subcontractors and Third Party IT Vendors only obtain, record, disclose or otherwise use Protected Information as permitted by Division 3 [Confidentiality] of Part 5 of the *Social Security (Administration) Act 1999* (Cth).

44. Confidential Information

- 44.1 Subject to this clause 44 and clause 46.6;
- (a) a Party must not, without the other Party's prior written approval, disclose any of the other Party's Confidential Information to a third party; and
 - (b) the Provider must not, and must ensure that its Personnel do not, use any of the Department's Confidential Information for any purpose other than performing this Deed or providing the Services under this Deed.
- 44.2 In giving its written approval of a disclosure of Confidential Information, a Party may impose conditions as it thinks fit, and the other Party agrees to comply with the conditions.
- 44.3 If the Provider becomes subject to a legal obligation to provide any Confidential Information of the Department to a third party, the Provider must promptly:
- (a) Notify the Department;
 - (b) take all reasonable steps to lawfully resist or narrow the requirement to disclose the Confidential Information; and
 - (c) assist and cooperate with the Department if the Department seeks to limit or resist the requirement for the Confidential Information to be disclosed.
- 44.4 If the Provider becomes aware that any Confidential Information of the Department may have been lost, stolen, accessed or used in a manner inconsistent with this clause 44, or aware of any suspected or possible breach of this clause 44, the Provider must:
- (a) immediately Notify the Department giving details of the suspected or possible breach;
 - (b) do everything necessary to remedy the unauthorised access to, use or disclosure of the Confidential Information, or to prevent the suspected or possible breach of this clause 44;
 - (c) comply with all directions from the Department in relation to the actual, suspected or possible breach of this clause 44; and
 - (d) give the Department all assistance required in connection with any proceedings that the Department may institute against any person for breach of confidence or otherwise.
- 44.5 The Provider must ensure that each of the Provider Personnel who may have access to any Confidential Information of the Department is (before being given access to that Confidential Information) briefed on or otherwise made aware of the fact that the wrongful disclosure of, or the misuse of, Confidential Information would be a breach

of this Deed and may be a breach of Part 5.6 of the Criminal Code (contained in the Schedule to the *Criminal Code Act 1995* (Cth)).

44.6 The Department may at any time require:

- (a) the Provider Personnel; or
- (b) any other person to whom the Confidential Information may be disclosed,

to give a written undertaking in a form reasonably required by the Department relating to the use and non-disclosure of the Department's Confidential Information.

44.7 If the Provider receives a request under clause 44.6, it must promptly arrange for all such undertakings to be given.

44.8 The obligations on the Parties under this clause 44 will not be breached if information:

- (a) is disclosed by a Party in order to comply with obligations, or exercise rights, under this Deed;
- (b) is disclosed by a Party's internal management Personnel, solely to enable effective management or auditing of Deed related activities;
- (c) is shared by the Department within the Department, or with another Commonwealth agency, if this serves the Commonwealth's legitimate interests;
- (d) is disclosed by the Department to the responsible Minister or their staff;
- (e) is disclosed:
 - (i) in order to comply with the requirements of any regulatory body;
 - (ii) in order to respond to a request that is made by a Royal Commission, a body undertaking an administrative or statutory review, or an audit or inquiry (whether within or external to the Commonwealth), including a review, audit or inquiry that is conducted pursuant to clause 52 [Access to premises and records] or by the Commonwealth Auditor-General or the Privacy Commissioner; or
 - (iii) in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (f) is authorised or required by law to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of this clause 44.

44.9 If the Provider discloses the Department's Confidential Information to another person pursuant to clauses 44.8(a) or 44.8(b), the Provider must:

- (a) notify the receiving person that the information is confidential; and
- (b) not provide the information unless the receiving person agrees to keep the information confidential.

44.10 Nothing in this clause 44 limits the obligations of the Provider under clause 43 [Personal and Protected Information] or clause 52 [Access to premises and records].

- 44.11 The obligations of confidentiality under this clause 44 continue notwithstanding the termination or expiry of this Deed:
- (a) in relation to any information that the Parties agree in writing after the Commencement Date is to constitute Confidential Information for the purposes of this Deed, for the period agreed by the Parties in writing in respect of that information; and
 - (b) in relation to Confidential Information not referred to in clauses 44.11(a), for 20 years, unless the Department Notifies the Provider otherwise in writing.

45. Release of information on Provider's performance

- 45.1 The Provider agrees that the Department may publish information that the Department holds concerning its performance as the provider of the Services under this Deed.

Section 3D Records management

46. Records the Provider must keep

General

- 46.1 The Provider must create and maintain full and accurate Records of its management and provision of the Services, including, if relevant, Participant Services Records and the Customer Feedback Register and any other Material as set out in the Records Management Instructions or otherwise advised by the Department in writing.
- 46.2 If requested by the Department, the Provider must provide the Records, including relevant Records in the possession or control of a Third Party IT Vendor, to the Department, or to the Department's nominees:
- (a) within the timeframe required by the Department;
 - (b) in such form, and in such manner, as reasonably required by the Department; and
 - (c) at no cost to the Department.

Financial Accounts and Records

- 46.3 The Provider must keep financial accounts and Records of its transactions and 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; and
 - (ii) an auditor or other person may examine them at any time and thereby ascertain the Provider's financial position.

Storage

- 46.4 The Provider must store all Records created under clause 46.1 in accordance with the Records Management Instructions and the Department's Security Policies, and if relevant, its Privacy Act obligations.

Control

- 46.5 The Provider must maintain an up to date list of the Records that it holds, or is required to hold, under this Deed as listed in the Records Management Instructions, and make this list available to the Department on request.

Access

- 46.6 Subject to clauses 43 [Personal and Protected Information] and 52 [Access to premises and records], 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 the Services to a Participant or to any Third Party IT Vendor.

Transfer

- 46.7 Subject to clause 43 [Personal and Protected Information] and if relevant clause 70 [Transition out], the Provider must:
- (a) not transfer, or be a party to an arrangement for the transfer of custody of the Records created under clause 46.1 to any person, entity or organisation other than to the Department, without the prior written approval of the Department; and
 - (b) if transferring Records created under clause 46.1, only transfer the Records in accordance with the Records Management Instructions or as otherwise directed by the Department in writing.

Retention

- 46.8 Subject to clause 43 [Personal and Protected Information], all Records created in accordance with clause 46.1 must be retained by the Provider for a period of no less than seven years after the creation of the Record, unless:
- (a) the Provider has successfully uploaded the Record into the Department's IT Systems in accordance with clause 23.2; or
 - (b) otherwise specified in the Records Management Instructions.

- 46.9 On the expiry or termination of this Deed, the Provider must manage all Records created in accordance with clause 46.1 in accordance with the Records Management Instructions or as otherwise directed by the Department in writing.

Destruction

- 46.10 The Provider must:
- (a) not destroy or otherwise dispose of Records created in accordance with clause 46.1, except in accordance with the relevant Records Management Instructions, or as directed by the Department in writing; and
 - (b) provide a list to the Department of any Records that have been destroyed, as directed by the Department in writing.

47. Public Sector Data

47.1 In this clause 47, 'accredited data service provider', 'data scheme entity' and 'public sector data' have the meaning given in the *Data Availability and Transparency Act 2022* (Cth) (**DAT Act**).

Note: 'Public Sector Data' is defined in the DAT Act to mean "data lawfully collected, created or held by or on behalf of a Commonwealth body...".

47.2 The Provider acknowledges and agrees that the following is public sector data:

- (a) all data that is Deed Material or Commonwealth Material; and
- (b) any Existing Material or Third Party Material that is provided to the Department with, or incorporated in data that is, Deed Material or Commonwealth Material,

irrespective of where that data is stored, and whether or not that data is held by the Provider.

47.3 The Department may, at any time by Notice, require the Provider to provide public sector data to the Department or a third party nominated by the Department for the purposes of sharing that data pursuant to the DAT Act.

47.4 If Notified under clause 47.3, the Provider must:

- (a) provide the required Public Sector Data to the Department or a third party nominated by the Department within the timeframe and in the manner and form specified by the Department; and
- (b) in providing the required public sector data to the Department or a third party, comply with:
 - (i) any requirements in the Department's Notice under clause 47.3; and
 - (ii) the requirements set out in section 36 (Take steps to mitigate data breach) of the DAT Act in respect of the required public sector data, as if the Provider were a data scheme entity.

47.5 If the Department requires the Provider to provide public sector data directly to a nominated third party, the Department may require the Provider to take all steps necessary to seek accreditation as an accredited data services provider pursuant to the accreditation scheme in Part 5.2 of the DAT Act.

47.6 The Provider must bear its own costs incurred in complying with this clause 47.

48. Access by Participants and Employers to their own Personal Information in connection with the NSDEP

48.1 This clause 48 applies if:

- (a) the Provider receives a request from:
 - (i) a Participant;
 - (ii) an Employer who is an individual; or
 - (iii) any other individual,

for access to their own Personal Information in connection with the NSDEP (APP 12 Request); or

- (b) the Department Notifies the Provider of an APP 12 Request it has received, and requires the Provider to comply with this clause 48 in respect of that APP 12 Request.

48.2 The Provider must in accordance, with this Deed, Privacy Law and any Guidelines, promptly consider all APP 12 Requests and proceed to make a decision to either provide or refuse access in a manner consistent with this clause 48.

48.3 The Provider must refer to the Department for consideration any APP 12 Request:

- (a) which the Provider proposes to refuse;
- (b) which encompasses records containing information falling within the following categories:
 - (i) records also containing information about another person;
 - (ii) medical, including 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);
 - (iii) psychological records;
 - (iv) information provided by other third parties; or
- (c) if the Provider has other particular concerns about the documents (for example, because they are sensitive in nature).

48.4 If the Provider determines that access to the requested Personal Information should be provided to the individual making the APP 12 Request, it must, promptly provide access to, or copies of, the requested Personal Information and, in doing so:

- (a) ensure that the access or copies will only be provided to the individual making the APP 12 Request, or to another person if the individual has provided express written consent (or another legal authority exists) that permits the disclosure to that other person; and
- (b) notate the relevant files with details of the Records to which access was, or copies were, provided, the name of the person granted access and the date and time of such access.

48.5 The Provider must not charge any individual any amount in connection with an APP 12 Request.

48.6 The Provider must comply with any direction given by the Department in relation to the provision, or refusal, of access to, or the provision of copies of, Personal Information or Records.

49. Access to documents

49.1 In this clause 49, the terms 'Commonwealth contract', 'contracted service provider' and 'document' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

- 49.2 The Provider acknowledges that this Deed is a Commonwealth contract, and the Provider is a contracted service provider.
- 49.3 The Provider agrees that:
- (a) if the Department has received a request for access to a document created by, or in the possession of, the Provider or any Subcontractor or any Third Party IT Vendor, 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 Vendor provisions that will enable the Provider to comply with its obligations under this clause 49.

50. Program Assurance Activities and audits

- 50.1 The Department may conduct Program Assurance Activities and audits relevant to the performance of the Provider's obligations under this Deed including in relation to:
- (a) the Provider's operational practices and procedures as they relate to this Deed and the provision of the Services, including security procedures;
 - (b) the accuracy of the Provider's invoices and reports provided, or claims for payments made, under this Deed;
 - (c) the Provider's compliance with its confidentiality, privacy, Intellectual Property and security obligations under this Deed;
 - (d) Material (including Records) in the possession of the Provider relevant to the Services or this Deed;
 - (e) the financial statements of the Provider and the financial capacity of the Provider to perform the Services; and
 - (f) any other matters determined by the Department to be relevant to the Services or this Deed.
- 50.2 Each Party must bear its own costs in relation to any action under this clause 50.
- 50.3 The Provider's compliance with this clause 50 does not in any way reduce the Provider's responsibility to perform its obligations in accordance with this Deed.

51. Sample Reviews

- 51.1 The Provider acknowledges and agrees that:
- (a) 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;

- (b) 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; and
- (c) the Department may then exercise any remedies specified in clause 65 [Remedies for breach] in relation to the Deemed Invalid Claims.

51.2 The Department may engage in any form of sampling activity, including:

- (a) evaluating how the Provider has claimed Payments from the Department by reviewing and investigating only a sample of the Provider's claims for Payments generally, or claims for Payments of a particular type or class (**Sample Review**); and
- (b) for the purposes of a Sample Review, taking into account data collected from any source.

51.3 If the Department determines that all, or a proportion of, the claims for Payments included in a Sample Review are Invalid Claims, then, subject to clause 51.5, all, or that proportion of, the Provider's claims for Payments:

- (a) generally; or
- (b) of the type or class of Payments,

as relevant to the Sample Review, will be deemed to be Invalid Claims (**Deemed Invalid Claims**).

51.4 The Department may, at its absolute discretion, do one or more of the following in relation to any Deemed Invalid Claims:

- (a) exercise any remedies specified in clause 65 [Remedies for breach]; or
- (b) exercise any of its rights under clause 68 [Termination or reduction in scope for default].

Sampling methodology

51.5 For the purposes of clause 51.3, 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 51; and
- (b) will provide at least a 95 per cent confidence level that the proportion and/or value of Invalid Claims identified in the Sample Review can be extrapolated as specified in clause 51.3.

51.6 The Department must disclose the methodology used in a Sample Review to the Provider before exercising the Department's rights under clause 51.4.

52. Access to premises and records

General access rights

52.1 The Provider must at all reasonable times give or arrange for any Department Employee who is assessing the Provider's compliance with its obligations in this Deed:

- (a) unfettered access to:
 - (i) its Sites or premises and those of any Subcontractor or Third Party IT Vendor;
 - (ii) any External IT System, including those used for the purposes of regular and automated retrieval of Records through the Department's IT Systems;
 - (iii) All Material, including Material that is relevant to determining the Provider's compliance with the Deed, including making available:
 - (A) any Records in a data format and storage medium accessible by the Department by use of the Department's existing computer hardware and software; and
 - (B) any Material, however stored, relevant to claims for Payment, determining the Provider's financial viability, and compliance with relevant work, health and safety and industrial relations legislation;
 - (iv) Provider Personnel, including Subcontractor Personnel, and Personnel of Third Party IT Vendors; and
- (b) reasonable assistance to:
 - (i) undertake any activities for the purposes of any audit under clause 53.1;
 - (ii) inspect its Sites or premises and those of any Subcontractor or Third Party IT Vendor;
 - (iii) inspect the performance of the Services;
 - (iv) access any External IT System, including through the Department's IT Systems; and
 - (v) locate, inspect, copy and remove, all relevant Material including data stored on the Provider's information technology system or those of any Subcontractor or Third Party IT Vendor.

52.2 Subject to clause 52.3, the rights referred to in clause 52.1 are subject to:

- (a) the provision of reasonable prior Notice to the Provider; and
- (b) compliance with the Provider's reasonable security procedures.

52.3 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;

- (b) the Department is conducting Program Assurance Activities or an audit in relation to the Provider; or
- (c) the Department accesses any External IT System and any related Material pursuant to a regular, automated process of retrieval of Records including through the Department's IT Systems,

then clause 52.2 does not apply, and the Department may remove and retain Material and original Records that the Department determines are relevant to the investigation, including items stored on an electronic medium, provided that in the case of clauses 52.1(a) and 52.1(b) it returns a copy of all relevant Records and 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).

- 52.4 Each Party must bear its own costs in relation to any action under this clause 52.
- 52.5 The Provider's compliance with this clause 52 does not in any way reduce the Provider's responsibility to perform its obligations in accordance with this Deed.

CHAPTER 4 DEED ADMINISTRATION

Section 4A Indemnity and insurance

53. Indemnity

General indemnity

- 53.1 The Provider must indemnify (and keep indemnified) the Department and its Personnel (**those indemnified**) against any:
- (a) loss, cost or liability incurred by those indemnified;
 - (b) loss of or damage to the property of those indemnified; or
 - (c) loss or expense incurred by those indemnified in dealing with any claim against them, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by any of those indemnified,
- (collectively '**Loss**') arising from or in connection with:
- (d) any act or omission by the Provider in connection with this Deed, if there was fault on the part of the person whose conduct gave rise to that Loss;
 - (e) any breach by the Provider of this Deed;
 - (f) any publication of the information referred to in:
 - (i) clause 45 [Release of information on Provider's performance];
 - (ii) clause 75 [The Department's right to publicise the NSDEP and the Services]; and
 - (iii) clause 76 [The Department's right to publicise best practice],if the published information was provided by the Provider to the Department;
 - (g) any breach by the Provider of clause 43 [Personal and Protected Information]; or
 - (h) the use by those indemnified 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.
- 53.2 The Department will hold the rights of those indemnified on trust and those rights may be exercised by the Department as trustee or by those indemnified as beneficiaries.

Reduction of scope

- 53.3 The liability of the Provider to indemnify those indemnified under this clause 53 will be reduced proportionately to the extent that fault on the part of those indemnified contributed to the relevant Loss.

Preservation of other rights

- 53.4 The right of those indemnified to be indemnified under this clause 53 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.

Meaning of fault

- 53.5 In this clause 53, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including Fraud.

54. Insurance

Obligation to have and maintain insurance

- 54.1 Subject to this clause 54 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 in clause 54.1(b)(i)(A) and the professional indemnity insurance or errors and omissions insurance at clause 54.1(d), be written on an occurrence basis:

- (a) public liability insurance with a limit of indemnity of at least \$20 million in respect of each and every occurrence, that 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 55; and
 - (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider and its Personnel,

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), disability, shock, fright, mental anguish or mental injury or death of any individual (other than a liability insured under the insurance referred to in clause 54.1(b)),

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

- (b) insurance that insures against any injury, damage, expense, loss or liability suffered or incurred by any individual 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) when common law claims by such workers are permissible outside of the statutory scheme referred to in clause 54.1(b)(i)(A), for

- employer's liability at common law with a limit of indemnity of at least \$50 million in respect of each and every occurrence;
- (ii) in each Australian State or Territory where the Services are performed or delivered; and
 - (iii) when 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), disability, shock, fright, mental anguish or mental injury or death of, any individual 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); and
 - (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 end of the Term of this Deed, 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 55 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 by the Provider or its Personnel; and
 - (ii) unintentional breaches of Intellectual Property Rights;
- (e) if the provision of the Services involves the provision of 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 55; 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), disability, shock, fright, mental anguish or mental injury or death of, any individual (other than a liability insured under the insurance referred to in clause 54.1(b)),

arising out of or in connection with any goods or products manufactured, constructed, erected, installed, repaired, serviced, renovated, assembled, 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 between:
 - (A) the Provider's premises and the Participant's home or the Department's, DEWR's or Services Australia's premises, following Referral; and
 - (B) the Provider's premises and any premises of employment or Activities.

Note: The personal accident insurance referred to in clause 54.1(f)(iii) is not required to cover Participants in relation to the performance of an Activity.

- (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 personal injury or death or loss of or damage to 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 54.1(a); and

- (h) cyber risk insurance of at least \$500,000 per claim or loss, or such higher amount as appropriate for the Provider's business and the Services provided under this Deed, covering:
 - (i) the Provider, any of its Personnel (including Subcontractors) and the Department for their:
 - (A) repair, replacement, recreation or restoration costs for systems or data;
 - (B) investigation (including forensic), public relations, business interruption and legal costs; and
 - (C) loss of money or property paid in connection with an extortion demand; and
 - (ii) liability of the Provider and any of its Personnel (including Subcontractors) (including liability to the Department) for third party claims, fines, penalties and other costs,

arising from a loss of or failure to secure data (including through the theft of or unauthorised access to data by Personnel and third parties), disclosure of data (whether negligent or inadvertent), breach of duty in connection with the storage or use or handling of data, cyber extortion or the receipt or transmission of viruses.

- 54.2 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 entity delivering the Services, acting reasonably, would acquire, and any other insurance cover required by law.
- 54.3 Unless otherwise agreed by the Department in writing, all insurances required under this clause 54 (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.
- 54.4 Each of the insurances required by this clause 54 (other than statutory workers' compensation insurance and compulsory third party motor vehicle insurance) that insures more than one entity, must include:
 - (a) a cross-liability clause, whereby the insurer agrees that the policy will be construed as if a separate policy has been issued to each insured entity (but not so as to increase the overall limit of liability);
 - (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 entities 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 entity to observe and fulfil the terms of the policy, or to comply with the terms of the policy, or to comply with that insured entity's pre-contractual duty of disclosure does not prejudice the insurance of any other entity 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 entity for the purposes of determining rights to indemnity; and
 - (e) a clause whereby notices of a claim given to the insurer by any insured entity will be accepted by the insurer as notice of a claim given by all the entities insured under the policy.
- 54.5 Clauses 54.4(a), 54.4(c) and 54.4(e) do not apply to any personal accident insurance required by this clause 54, and clause 54.4(a) does not apply to any professional indemnity or errors and omissions insurance.
- 54.6 In relation to the insurances specified in this clause 54, 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.
- 54.7 The Provider must Notify the Department immediately if it:
- (a) becomes aware of any actual, threatened or likely claim under any of the insurances that 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 that would be insured under the insurance referred to in clause 54.1(d)); or
 - (b) receives a notice of cancellation in respect of any of the insurances that the Provider is obliged to effect and maintain.
- 54.8 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 54, 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

- 54.9 Subject to clause 54.10, the Provider must obtain written independent professional advice that the insurances obtained by it and any Subcontractors pursuant to this clause 54 meet the requirements of this Deed:
- (a) before commencing the performance of any Services and in any event within 20 Business Days after the Deed Commencement Date;
 - (b) within 10 Business Days after the date of commencement of a policy, when the Provider has changed any policy or its insurer(s); and
 - (c) within 10 Business Days after the date of renewal of each of the insurances required under this Deed.
- 54.10 If the advice referred to in clause 54.9 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.
- 54.11 Clause 54.9 does not apply to statutory workers' compensation insurance or compulsory third party motor vehicle insurance.
- 54.12 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 or the Guidelines.

- 54.13 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 (including all schedules and endorsements);
 - (b) a certificate of currency; and
 - (c) a copy of the independent professional advice required by clause 52.9,
- at any time that the Department requests.

Note: Clause 54.13 allows the Department to request information relating to the insurances of any Subcontractor of the Provider.

Assistance to the Department

- 54.14 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.
- 54.15 For the avoidance of doubt, the provisions of this clause 54 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 54 does not limit its liability under any other provision of this Deed.

55. Liability of the Provider to the Department

Proportionate liability

- 55.1 The Parties agree that, to the extent permitted by law, the proportionate liability legislation of any Australia jurisdiction is lawfully excluded by this Deed in relation to any and all rights, obligations or liabilities arising under, or in any way in connection with, this Deed.

Joint and several liability

- 55.2 To the extent permitted by law, if more than one entity is bound by this Deed as the Provider (including when the Provider is a Group Respondent or a partnership), each of those entities is jointly and severally liable for the performance of all of the Provider's obligations under this Deed.

56. Special rules about trustees

Trustee's warranties

- 56.1 If the Provider acts as trustee for a trust (the '**Trust**') in relation to this Deed, the Provider warrants to the Department that:
- (a) the Provider is the only trustee of the Trust;

- (b) the Provider has not been removed from, or ceased to act, or resigned or retired from the office of trustee of the Trust, nor has any decision or action been taken or proposed in respect of the removal, resignation or retirement of the Provider as trustee of the Trust, or to appoint an additional trustee of the Trust;
- (c) the Provider is not in default under the Trust deed;
- (d) the Provider has power under the Trust deed to enter into and observe the Provider's obligations under this Deed;
- (e) the Provider has entered in this Deed in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
- (f) the Provider has a right, and will at all times have a right, to be fully indemnified out of the assets of the Trust in respect of the obligations incurred by it under this Deed;
- (g) the assets of the Trust are sufficient to satisfy the right of indemnity referred to in clause 56.1(f) and all other obligations in respect of which the Provider has a right to be indemnified out of the trust fund; and
- (h) to the extent that the assets of the Trust are insufficient to satisfy any right of indemnity, the Provider holds professional indemnity insurance as required by clause 54 of this Deed.

Provider's indemnity as trustee

- 56.2 The Provider indemnifies the Department against any liability or loss arising from, and any expenses (including, without limitation, legal costs and expenses on a full indemnity basis) incurred in connection with the following situations:
- (a) if a warranty made by the Provider under this clause 56 is found to be incorrect or misleading when made or taken to be made; and
 - (b) the Provider ceases to be the trustee of the Trust or any step is taken to appoint another trustee of the Trust.

57. Special rules about Group Respondents

- 57.1 If the Provider is a Group Respondent, the Provider:
- (a) notwithstanding clause 57.2(c), if the Group Respondent nominated one of the Group Respondent Members to provide Services to a Specialist Services Group and that Group Respondent Member is listed at Item 0.2 of Schedule 1, the Provider must ensure that that Group Respondent Member continues to deliver the Services for the Deed Term, unless agreed in writing or otherwise Directed by the Department; and
 - (b) clause 57.1(a) is an essential term of the Deed.
- 57.2 If the Provider is a Group Respondent, the Provider:
- (a) agrees that its Group Respondent Members are as specified in Item 0.3 of Schedule 1;
 - (b) warrants that each of its Group Respondent Members has given their authority to the Group Respondent Member named in Item 00.2 of Schedule 1

as the Group Respondent's lead member to negotiate, bind and act on each Group Respondent Member's behalf in relation to this Deed and any variations to the Deed; and

- (c) agrees that it can only change:
 - (i) the Group Respondent Members; and/or
 - (ii) the Group Respondent lead member,

by entering into an appropriate deed(s) with the Department on terms acceptable to the Department, which must include, in relation to a change to the Group Respondent lead member, a term under which the Provider and the new Group Respondent lead member warrant that each of the Group Respondent Members have given their authority to the new Group Respondent lead member to negotiate, bind and act on each Group Respondent Member's behalf in relation to this Deed, and any variations to the Deed, and providing evidence, to the Department's complete satisfaction, that each of the Group Respondent Members have given that authority.

Note: A change in membership of a Group Respondent may require a deed of termination, a deed of variation or a deed of novation, depending on the circumstances.

Section 4B Changes in persons delivering Services

58. Corporate governance

Change in Constitution, structure, management or operations

- 58.1 The Provider must, and must ensure that any Material Subcontractor does:
- (a) provide a copy of its Constitution to the Department within five Business Days of a request to do so;
 - (b) Notify(ies) 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 the Provider's ability to comply with its obligations under this Deed; and
 - (ii) to the membership of its board of Directors, board of management or executive; and
 - (c) obtain(s) a completed credentials information form (as supplied by the Department or as specified in any Guidelines) 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.

Provider Personnel

- 58.2 Unless otherwise agreed by the Department in writing at its absolute discretion, the Provider must:
- (a) before employing, engaging or electing any individual who would have a role in its management, financial administration or the performance of the Services, actively enquire as to whether the individual:
 - (i) has previously been employed, engaged or elected by another employment service provider; and
 - (ii) if clause 58.2(a)(i) applies, had their:
 - (A) Access to the Department's IT Systems terminated; and/or
 - (B) employment, engagement or election terminated,because of their conduct in relation to employment services provided to the Commonwealth;
 - (b) make a written Record of the result of the enquiry described in clause 58.2(a); and
 - (c) if clause 58.2(a)(ii) applies to the individual, not employ, engage or elect them for a role in its management, financial administration or the performance of the Services.
- 58.3 Unless otherwise agreed by the Department in writing at its absolute discretion, the Provider must not employ, engage or elect any individual who would have a role in its management, financial administration or, if Notified by the Department, the performance of the Services, if:
- (a) the individual is an undischarged bankrupt;
 - (b) there is in operation a composition, deed of arrangement or deed of assignment with the individual's creditors under the law relating to bankruptcy;
 - (c) the individual 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 individual has been 'convicted' within the meaning of paragraph 85ZM(1) of that Act of an offence under the *Crimes Act 1914* (Cth), 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 individual was granted a free and absolute pardon because the individual was wrongly convicted of the offence; or
 - (iii) the individual's conviction for the offence has been quashed, in accordance with any relevant law;
 - (e) the individual is or was a Director or an individual 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;

- (f) the individual is otherwise prohibited from being a member or Director or employee or responsible officer of the organisation of the Provider; or
- (g) the individual:
 - (i) was the subject of action taken by the NDIS Commissioner (or other relevant agency), which may include, but is not limited to, being subject to a banning order under the *National Disability Insurance Scheme Act 2013*; or
 - (ii) occupied an influential position in the management or financial administration of an organisation that was the subject of action taken by the NDIS Commissioner (or other relevant agency),if that action resulted in adverse findings in respect of the individual or organisation.

58.4 Unless otherwise agreed by the Department in writing at its absolute discretion, if an individual falls, or is discovered as falling, within any of clauses 58.3(a) to 58.3(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 58.3, if the Provider does not:
 - (i) transfer the individual to a position that does not have a role in its management or financial administration; or
 - (ii) terminate the employment or engagement of the individual or remove the individual 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 individual falls or has been discovered as falling within any of clauses 58.3(a) to 58.3(f), and take any action in respect of that individual, that is Notified by the Department.

Note: For the avoidance of doubt, clause 58.4(b) will also apply where an individual is transferred in accordance with clause 58.4(a)(i), to a role in the performance of the Services.

Change in Control of the Provider or a Material Subcontractor

58.5 The Provider must not, without the Department's prior written consent, cause or permit to occur a Change in Control (other than in respect of a public listed entity) of:

- (a) the Provider; or
- (b) any Material Subcontractor.

58.6 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.

58.7 The Provider must, as soon as possible, and at the latest within five Business Days, after receiving a written request from the Department, provide such information and supporting evidence as the Department requests in relation to the Change in Control event of the Provider or any Material Subcontractor.

58.8 If the Provider does not:

- (a) obtain the Department's consent to a Change in Control as required by clause 58.5; or
- (b) provide the Department with any information required by the Department in accordance with clause 58.7,

the Department may do either or both of the following by Notice to the Provider:

- (c) take action under clause 65 [Remedies for breach]; or
- (d) immediately terminate this Deed under clause 68 [Termination or reduction in scope for default] by providing Notice to the Provider.

59. Provider Personnel

Removal of Provider Personnel

59.1 The Department may give Notice, on reasonable grounds related to the performance of the Services, requiring the Provider to remove Provider 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 arrange replacement Personnel acceptable to the Department.

Provision of replacement Personnel

59.2 For the purposes of clause 59.1, if the Provider is unable to provide replacement Personnel who are acceptable to the Department, the Department may terminate this Deed under clause 68 [Termination or reduction in scope for default].

Training

59.3 The Provider must, at its own expense, provide for, and ensure that its Personnel participate in, any training as directed by the Department from time to time.

60. External administration

60.1 Without limiting any other provisions of this Deed, the Provider must provide to 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 60.1(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; and
- (g) being an individual, any notice that the Provider has become bankrupt or has entered into a scheme of arrangement with their creditors.

60.2 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 60.1(b); or
- (b) is ceasing to carry on business.

61. Subcontracting

Application and Interpretation

61.1 Subject to this clause 61, the Provider may enter into a Subcontract with another entity for the purposes of providing the Services under this Deed.

61.2 In this clause 61.1, an 'entity' includes:

- (a) an association of legal persons, however constituted, governed by deed;
- (b) an incorporated body;
- (c) an unincorporated association;
- (d) a partnership; and
- (e) a trust.

Approval of Subcontracting

61.3 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.

61.4 In giving its approval under clause 61.3, the Department may impose, and the Provider must comply with, such terms and conditions as the Department thinks fit.

61.5 Notwithstanding clauses 61.1 to 61.4:

- (a) if the Provider nominated a Subcontractor to provide Services to a Specialist Services Group and the Subcontractor is listed at Item 00.2 of Schedule 1, the Subcontractor must continue to deliver the Services for that Specialist Services

Group for the Deed Term unless agreed or otherwise Directed by the Department; and

(b) clause 61.5(a) is an essential term of the Deed.

61.6 The Subcontractors that the Department has approved as at the Deed Commencement Date are specified in Item 00 of Schedule 1 – Deed Details.

61.7 The Provider must ensure that any arrangement it enters into with a Subcontractor is in writing.

Liability

61.8 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, engaged by it for the purposes of this Deed, whether or not the relevant entity is a current or former Subcontractor.

Obligations and payment of Subcontractors

61.9 The Provider acknowledges and agrees that the Department may publicly disclose the names of any Subcontractors engaged by the Provider in connection with the Services and the Provider will provide such details of Subcontractors as the Department may require. The Provider will inform any such Subcontractor accordingly.

61.10 The Provider must ensure that:

(a) every potential Subcontractor is aware, before entering into any Subcontract, of all terms and conditions of this Deed relevant to the Subcontractor's part in the provision of the Services; and

(b) every Subcontractor is aware of any variations to this Deed relevant to the Subcontractor's part in the provision of the Services.

61.11 The Provider must:

(a) ensure that any Subcontract requires the Provider to pay the Subcontractor within 20 Business Days or less after the Subcontractor gives the Provider a correctly rendered invoice under the Subcontract; and

(b) pay its Subcontractors in accordance with the terms of the relevant Subcontract.

61.12 The Provider must not invoice the Department for any payment in respect of Services that have been performed by a Subcontractor, if that Subcontractor has not been approved by the Department under this clause 61.

Suitability of Subcontractor

61.13 Despite any approval given by the Department under this clause 61, the Provider is responsible for ensuring the suitability of a Subcontractor for the work proposed to be carried out and for ensuring that the Subcontractor's work meets the requirements of this Deed.

Revocation of approval

61.14 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.

Terms of Subcontracts

- 61.15 The Provider must, in any Subcontract, reserve a right of termination to take account of the Department's right of termination under clauses 67 [Termination or reduction in scope with costs] and 68 [Termination or reduction in scope for default] and the Department's right of revocation of approval of a Subcontractor under clause 61.14, and the Provider must, if 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.
- 61.16 The Provider must ensure that any Subcontract includes a requirement that the Subcontractor must not subcontract to any entity any aspect of the provision of the Services that have been Subcontracted without the prior written approval of the Department. The Department may grant or withhold its approval at its absolute discretion and that consent, if given, may be subject to conditions.
- 61.17 The Provider must, in any Subcontract, bind the Subcontractor, with respect to the Department, to all relevant terms and conditions of this Deed including clauses:
- (a) 39 [General];
 - (b) 40 [Access and information security assurance];
 - (c) 43 [Personal and Protected Information];
 - (d) 44 [Confidential Information];
 - (e) 46.8 [Records the Provider must keep];
 - (f) 50 [Program Assurance Activities and audits];
 - (g) 52 [Access to premises and records];
 - (h) 54 [Insurance];
 - (i) 78 [Negation of employment, partnership and agency]; and
 - (j) 84 [Compliance with laws and government policies].

Prohibited Subcontractors

- 61.18 The Provider must not enter into a Subcontract under this Deed with a Subcontractor:
- (a) named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
 - (b) listed as a terrorist under section 15 of Charter of the *United Nations Act 1945* (Cth); or
 - (c) that does not have a Valid and Satisfactory Statement of Tax Record (if required in accordance with clause 90 [Shadow Economy Procurement Connected Policy]).
- 61.19 If the Provider does not comply with this clause 61 the Department may:
- (a) take action under clause 65 [Remedies for breach]; or

- (b) immediately terminate this Deed under clause 68 [Termination or reduction in scope for default] by providing Notice to the Provider.

62. Assignment and novation

- 62.1 The Provider must not assign any of its rights under this Deed without the Department's prior written approval.
- 62.2 The Provider must not enter into an arrangement that will require, or give effect to, the novation of this Deed, without the Department's prior written approval.
- 62.3 In determining whether to approve any proposed assignment or novation, the Department may take into account any matter, including whether the Department considers, at its absolute discretion, that the assignment or novation:
 - (a) presents a risk to the Commonwealth; or
 - (b) has an impact on the Services (including any actual or constructive change to the proportion of employment services being performed by any entity in a particular Employment Service Area, geographic region or nationally).

Section 4C Resolving Problems

63. Dispute Resolution

- 63.1 Each Party agrees that it will:
 - (a) only seek to rely on this clause in good faith, and only if 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 63, are genuinely in dispute; and
 - (b) cooperate fully with any process instigated in accordance with this clause 63, in order to achieve a prompt and efficient resolution of any dispute.

Informal resolution

- 63.2 The Parties agree that any dispute arising in relation to this Deed will be dealt with, in the first instance, through the process set out in the Charter of Contract Management issued by the Department.
- 63.3 If any dispute arising in relation to this Deed cannot be resolved using the process referred to in clause 63.2, 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 after receipt of the Notice under clause 63.3(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 after the date on which the last Party to do so nominates a representative under clause 63.3(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 after the date on which the dispute was referred to an independent third person in accordance with clause 63.3(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 63.3(d) or (e); or
 - (ii) the dispute is not resolved within 20 Business Days after referring the dispute to an independent third person pursuant to clause 63.3(e),either Party may commence legal proceedings.

Costs

- 63.4 Each Party will bear its own costs of complying with this clause 63, and the Parties must bear equally the cost of any independent third person engaged under clause 63.3(d) or clause 63.3(e).

Application of this clause

- 63.5 This clause 63 does not apply to the following circumstances:
- (a) either Party commences legal proceedings for urgent interlocutory relief;
 - (b) action is taken, or purportedly taken, by the Department under:
 - (i) clause 16 [Minimising delay];
 - (ii) clause 22 [General];
 - (iii) clause 23 [Evidence to support claims for payment];
 - (iv) clause 27 [Debts and offsetting];
 - (v) clause 48 [Access by Participants and Employers to their own Personal Information];
 - (vi) clause 52 [Access to premises and records];
 - (vii) clause 58 [Corporate governance];
 - (viii) clause 61 [Subcontracting];
 - (ix) clause 65 [Remedies for breach];
 - (x) clause 67 [Termination or reduction in scope with costs];
 - (xi) clause 68 [Termination or reduction in scope for default];
 - (xii) clause 110 [Service Guarantee];
 - (xiii) clause 111 [Code of Conduct]; or
 - (xiv) clause 166 [Performance assessments];

- (c) the Department is conducting its own breach of contract or Fraud investigation; or
- (d) 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.

Performance of obligations

63.6 Despite the existence of a dispute, the Provider must (unless requested in writing by the Department not to do so) continue to perform its obligations under this Deed.

64. Provider Suspension

64.1 Without limiting the Department's rights under this Deed, under statute, at law or in equity, 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 Key Performance Indicators, 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 dishonest or improper conduct, or Fraud, and while the Department investigates the matter,

the Department may, in addition to taking any other action under clause 65 [Remedies for breach], and prior to taking action under clause 68 [Termination or reduction in scope for default], take action under clause 65.2(a).

64.2 The Department will Notify the Provider if it exercises its rights under clause 64.1 and clause 65.2(a) within 10 Business Days after having exercised those rights.

64.3 Notwithstanding any action taken by the Department under clause 64.1, the Provider must continue to perform its obligations under this Deed that are not suspended, unless the Department agrees or directs otherwise in writing.

65. Remedies for breach

65.1 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 to the Department's satisfaction within 10 Business Days after receiving a Notice from the Department requiring it to do so, or within such other period as is specified in the Notice from 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; or
- (c) an event has occurred that the Deed states as entitling the Department to terminate, or reduce the scope of, this Deed under clause 68 [Termination or reduction in scope for default],

the Department may, by providing Notice to the Provider, immediately exercise one or more of the remedies set out in clause 65.2.

Options

65.2 The remedies that the Department may exercise are:

- (a) suspending any or all of the following until otherwise Notified by the Department:
 - (i) the Provider from delivering some or all Services under this Deed (including in respect of one or more ESAs or Sites);
 - (ii) Referrals in respect of some or all of the Services, including at some or all Sites;
 - (iii) Direct Registrations in respect of some or all of the Services, including at some or all Sites;
 - (iv) any payment under this Deed, in whole or in part;
 - (v) access to the Employment Assistance Fund; or
 - (vi) access to all or part of the Department's IT Systems for any Personnel of the Provider, Subcontractor, Third Party IT Vendor, External IT System or other entity;
- (b) terminating, or requiring the cessation of all Access to the Department's IT Systems for any Personnel of the Provider, Subcontractor, Third Party IT Vendor, External IT System or other entity;
- (c) requiring the Provider to obtain new logon IDs for any Personnel of the Provider, Subcontractor, Third Party IT Vendor, External IT System or other entity, and if so required, the Provider must promptly obtain such new logons;
- (d) applying bandwidth throttling measures in respect of all Access to the Department's IT Systems for any Personnel of the Provider, Subcontractor, Third Party IT Vendor, External IT System or other entity;
- (e) requiring the Provider to prepare and implement an IT security plan to the Department's complete satisfaction and, if so required, the Provider must do so within the timeframe required by the Department;
- (f) imposing additional conditions on:
 - (i) the manner of delivery of the Services;
 - (ii) the claiming or payment of any Fees, Funds, Reimbursements or Ancillary Payments;
 - (iii) the management of Records; or
 - (iv) the use of the Employment Assistance Fund;
- (g) reducing or not paying specific payments that would otherwise have been payable in respect of the relevant obligation;
- (h) reducing the total amount of any Payments or Reimbursements, permanently or temporarily;

- (i) if the Department has already made any Payments or Reimbursements, recovering, at the Department's absolute discretion, but taking into account the extent and nature of the breach, some or all of the Payments or Reimbursements, made as a debt in accordance with clause 27 [Debts and offsetting];
- (j) reducing the Provider's Market Share (including to zero in one or more ESAs, and by reducing Referrals to the Provider or transferring Participants to another Program Provider);
- (k) imposing additional financial or performance reporting requirements on the Provider;
- (l) withdrawing the Provider's entitlement to provide Services in one or more ESAs, permanently or temporarily;
- (m) requiring the Provider to develop for approval by the Department, within the timeframe required by the Department, a plan (**Remediation Plan**) that describes how the Provider will manage prompt resolution of the default or breach by the Provider and prevent its reoccurrence, taking into account any feedback provided by the Department in respect of the Remediation Plan. The Provider must implement and comply with any Remediation Plan approved by the Department, at no additional cost to the Department;
- (n) reducing the scope of this Deed; and
- (o) taking any other action set out in this Deed.

Good faith and proportionality

65.3 The Department will exercise its rights under this clause 65 reasonably and in good faith, taking into account the relevant breach.

Variation

65.4 If the Department takes any action under this clause 65, the Provider will not be relieved of any of its obligations under this Deed.

No compensation

65.5 For the avoidance of doubt, any reduction of Participant Referrals, Fees, Funds, Reimbursements, Ancillary Payments or the scope of this Deed under this clause 65 does not amount to a reduction of scope or termination for which compensation is payable.

Notice

65.6 If the Department takes any action under this clause 65, the Department will Notify the Provider of:

- (a) the reasons for the action; and
- (b) the duration of the action; and
- (c) the effect of the action.

66. Liquidated damages

- 66.1 Notwithstanding any other rights available to the Department under this Deed, under statute, at law, or in equity, if, after the Deed Commencement Date, 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 Program 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) submits in excess of 100 Invalid Claims under this Deed, as determined by the Department, which are identified in any 12 month period,
- the Provider must, if required by the Department, pay Liquidated Damages to the Department in the amount of:
- (c) if clause 66.1(a) applies, \$25,000 per limited approach to market and \$50,000 per open approach to market, used to secure an alternative Program Provider acceptable to the Department; and
 - (d) if clause 66.1(b) applies, \$5,000, and a further \$5,000 for each 100 Invalid Claims, in excess of the first 100 Invalid Claims, identified in that same 12 month period.
- 66.2 For the avoidance of doubt, clause 66.1(b) does not apply if the Provider self identifies Invalid Claims through its internal compliance practices and Notifies the Department of those Invalid Claims.
- 66.3 If clause 66.1(a) or 66.1(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 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 66.1(a), identifying, selecting and entering into contractual relations with an alternative Program Provider to provide services at the relevant Site(s), and transferring Participants, records, monies and relevant materials to the alternative Program Provider; and
 - (b) in the case of clause 66.1(b), administrative costs in processing and resolving Invalid Claims.
- 66.4 For the avoidance of doubt, the Liquidated Damages will become a debt due to the Commonwealth for the purposes of clause 27 [Debts and offsetting], if and when the Commonwealth Notifies the Provider that it elects to recover the Liquidated Damages as a debt under clause 27 [Debts and offsetting].

67. Termination or reduction in scope with costs

Termination or reduction in scope

- 67.1 The Department may, at any time by Notice to the Provider, terminate this Deed, or reduce the scope of this Deed, without prejudice to the rights, liabilities, or obligations of either Party accruing before the date on which the termination or reduction in scope takes effect.
- 67.2 If this Deed is terminated or reduced in scope by the Department under clause 67.1, the Department is only liable for:
- (a) payment of Fees that are properly due to the Provider before the date on which the termination or reduction in scope takes effect;
 - (b) payment in accordance with the Deed for any ongoing Services, in the case of a reduction in the scope of the Deed; and
 - (c) subject to clauses 67.6, 67.7, 67.8 and 67.9, any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination or a reduction in scope of this Deed.

Fees, Funds, Reimbursements and Ancillary Payments

- 67.3 If, under clause 67.1, the Department terminates this Agreement, or reduces the scope of this Agreement, in addition to the provisions of clause 67.2:
- (a) any Payments that would have been Payments in advance pursuant to clause 157 [Advance Payment] 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
 - (b) the Department will be entitled to recover from the Provider any Fees, Funds, Reimbursements or Ancillary 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.

Provider's obligations

- 67.4 Upon receipt of a Notice of termination or reduction in scope under this clause 67, the Provider must:
- (a) cease or reduce the performance of this Deed in accordance with the Notice;
 - (b) continue work on any part of the Services not affected by the Notice;
 - (c) promptly do everything possible to mitigate all losses, costs, and expenses, including in relation to Subcontracts, arising from the termination or reduction in scope as set out in the Notice; and
 - (d) comply with any directions given to the Provider by the Department.
- 67.5 The Provider must, in each Subcontract, secure a right, and terms for compensation, functionally equivalent to those of the Department under this clause 67.

Abatement of the Fees, Funds, Reimbursements and Ancillary Payments

- 67.6 If the Department reduces the scope of this Deed under clause 67.1, the Department's liability to pay any part of the Fees, Funds, Reimbursements or Ancillary Payments will,

unless otherwise agreed by the Department in writing, abate proportionately to the reduction in the scope of the Provider's obligations under this Deed.

Limit on compensation

- 67.7 The Department's liability to pay any compensation under, or in relation to, this clause 67 is subject to the Provider's:
- (a) strict compliance with this clause 67; and
 - (b) substantiation of any amounts claimed under clause 67.2(c).
- 67.8 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 67;
 - (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 67 not occurred; or
 - (c) for any amounts that would, in aggregate, exceed the maximum Fees, Funds, Reimbursements or Ancillary 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 67.
- 67.9 In addition, in relation to a reduction in scope under this clause 67, the Department will not be liable to pay the Provider, and the Provider agrees that its reasonable costs do not include:
- (a) any amounts owed by the Provider under any contract of employment or to any of its Subcontractors; and
 - (b) payment of any liabilities arising from commitments the Provider has made in relation to the provision of the Services beyond the end of the Financial Year in which the reduction in scope takes place.
- 67.10 If the Department terminates, or reduces the scope of, this Deed under this clause 67:
- (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 67 represent a reasonable pre-estimate of any loss that may be incurred by the Provider.

68. Termination or reduction in scope for default

Defaults

- 68.1 If any of the following events occur, the Department may (to the extent permitted by law) immediately terminate this Deed or reduce the scope of any part of this Deed, by giving Notice to the Provider:
- (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 does not rectify the breach within 10 Business

Days of receiving a Notice from the Department requiring it to do so, or such longer period as is specified by the Department in the Notice;

- (c) the Provider persistently or regularly fails to fulfil any of its obligations under this Deed;
- (d) the Provider fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (e) any event referred to in clause 60 [External administration] occurs, other than an event under clause 60.1(c);
- (f) the Department is otherwise satisfied that the Provider is unable to pay all of its debts as and when they become due and payable;
- (g) the Department is satisfied that, prior to entering into this Deed, the Provider:
 - (i) has engaged in misleading or deceptive conduct;
 - (ii) has made a statement that is incorrect or incomplete; or
 - (iii) has omitted to provide information to the Department,that may have affected the Department's decision to enter into this Deed, or any action taken by the Department under this Deed;
- (h) 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 68.1(h) does not apply if a Provider has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.

- (i) the Department becomes expressly entitled to terminate this Deed under any other provision of this Deed.

Parties' rights and obligations on termination

68.2 If the Department terminates this Deed under clause 68.1:

- (a) the Department is not liable to pay any further Fees, Funds, Reimbursements and Ancillary Payments;
- (b) the Department is entitled to recover any Fees, Funds, Reimbursements and Ancillary Payments previously paid by it for Services that have not been properly rendered
- (c) clause 67.4 will apply as if the Deed were terminated in accordance with clause 67.1,

and if the Department reduces the scope of this Deed under clause 68.1, clause 67.6 will apply as if the Deed were reduced in scope in accordance with clause 67.1.

Good faith and proportionality

68.3 The Department will exercise its rights under this clause 68 reasonably and in good faith, taking into account the relevant breach or other event.

Preservation of other rights

- 68.4 Clause 68.1 does not limit or exclude any of the Department's other rights or remedies, whether under this Deed, statute, at law or in equity, including:
- (a) the right to recover any other amounts from the Provider on termination of this Deed;
 - (b) the right to reduce payments due on termination on the basis of breach or poor performance; or
 - (c) any rights of offset.

Section 4D Other matters

69. Transition in

- 69.1 The Department will Notify the Provider of a Transition-In Period which will begin on the Deed Commencement Date and the Provider must, in accordance with the Deed and any Notice and applicable Guidelines, take all actions that are reasonably necessary to ensure that there is an efficient and effective transition from the Previous Providers to the Program Providers, so as to cause minimum disruption to Participants and Employers.

70. Transition out

Transition-Out Period

- 70.1 The Department may Notify the Provider of a Transition-Out Period, not less than 60 Business Days before the Transition-Out Period is to start.
- 70.2 The Transition-Out Period must not start more than six months before the end of the then current Deed Term.
- 70.3 If the Department Notifies the Provider of a Transition-Out Period under clause 70.1:
- (a) the Department must specify the start and end date of the Transition-Out Period in the Notice; and
 - (b) the Provider must continue to provide the Services during the Transition-Out Period, unless the Department Notifies the Provider otherwise in respect of any one or more of the following matters:
 - (i) whether all, or only some, of the Services required to be provided under this Deed (including in respect of certain ESAs, Sites or Participants) are to be provided to any Participants and, if only some, which Services are to be provided; and
 - (ii) whether any provisions of this Deed will not apply to the provision of the Services during the Transition-Out Period, and if so, which provisions will not apply.
- 70.4 Without limiting clause 70.3, a Notice issued under clause 70.1 may specify that:
- (a) the Department will cease Referrals to the Provider;
 - (b) the Provider must cease Direct Registrations; and

- (c) the Provider must transfer Participants to another Program Provider, or other Employment Service Provider.

71. Provider's obligation to assist and cooperate with the Department

- 71.1 If directed by the Department, the Provider must provide sufficient assistance and cooperation to any person nominated by the Department to enable the Services to continue to be provided to a Participant who is transferred to another Program Provider or employment service provider, for any reason including:
- (a) on the termination, or reduction in scope, of this Deed;
 - (b) on the expiry of this Deed;
 - (c) in accordance with the following clauses of this Deed:
 - (i) clause 146 [Transfers to and from the Provider];
 - (ii) clause 147 [Provider obligations on transfer] and
 - (iii) clause 70 [Transition out].
- 71.2 The assistance and cooperation that the Provider must provide under clause 71.1 will include, as a minimum, complying with the Department's directions in relation to:
- (a) the transfer of Deed Material and Commonwealth Material in the Provider's possession or control; and
 - (b) the redirection of Participants,
- to any person nominated by the Department, or to the Department.

72. Provider Recruitment and Training Strategy

- 72.1 In accordance with Guidelines, the Provider must produce, provide to the Department, implement and regularly update, a strategy that addresses:
- (a) the recruitment of staff who meet one or more of the following requirements:
 - (i) they have appropriate qualifications;
 - (ii) they are working towards obtaining appropriate qualifications;
 - (iii) they have relevant lived experience; and
 - (iv) they reflect broader diversity in their community;
 - (b) how the Provider will support the professional development of its staff; and
 - (c) proposed performance metrics that demonstrate to the Department, and to the extent applicable to Participants, the Provider's progress towards meeting its strategy.

Qualifications of Provider Personnel

- 72.2 All of the Provider Personnel must have (or be working towards obtaining) qualifications relevant to the delivery of the Services they are delivering under this Deed, as specified by the Department in Guidelines.

73. Disability Employment and Indigenous Employment Strategy

Disability Employment Strategy

- 73.1 The Provider must produce and implement, a Disability Employment Strategy, a copy of which must be made available to the Department on request.

Indigenous Employment Strategy

- 73.2 The Provider must produce and implement, an Indigenous Employment Strategy, a copy of which must be made available to the Department on request, unless this is a High Value Deed for the purposes of the Indigenous Procurement Policy in which case clauses 87.4 to 87.16 apply.

74. Acknowledgement and promotion

- 74.1 The Provider must, in all publications, and in all signage, branding, promotional, publicity and advertising Materials or activities of any type undertaken by, or on behalf of, the Provider relating to the Services or this Deed:

- (a) comply with any promotion and style guidelines issued by the Department from time to time;
- (b) use badging and signage;
- (c) acknowledge the financial and other support the Provider has received from the Commonwealth in a manner consistent with any applicable 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 the Provider has developed for the purposes of this Deed,

in accordance with any applicable Guidelines.

- 74.2 The Provider must market and promote the NSDEP as required by the Department, and deal with enquiries relating to its provision of Services, in accordance with any applicable Guidelines.

75. The Department's right to publicise the NSDEP and the Services

- 75.1 The Department may, by any means, publicise and report on the NSDEP and the Services and on the entry into this Deed with the Provider, including the name of the Provider, the amounts of Fees, Funds, Reimbursements and Ancillary Payments paid or payable to the Provider, and a brief description of the Services.

76. The Department's right to publicise best practice

- 76.1 If the Department identifies best practice on the part of the Provider, the Department may disseminate advice of such best practice to other Program Providers.

77. Conflict of interest

Warranty of no Conflict

- 77.1 The Provider warrants that, to the best of its knowledge and belief after making diligent inquiries, as at the Deed Commencement Date, no Conflict exists, or is likely to arise, in the performance of its obligations under this Deed.

Conflict that may arise

- 77.2 The Provider must not, during the Deed Term, enter into any arrangement, scheme or contract, however described, that may cause a Conflict in the performance of the Provider's obligations under this Deed.

Dealing with Conflict

- 77.3 If, during the Deed Term, a Conflict arises, or is likely to arise, the Provider must:
- (a) promptly 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.

Failure to deal with Conflict

- 77.4 If the Provider:
- (a) fails to Notify the Department in accordance with this clause 77; or
 - (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department,
- the Department may immediately terminate this Deed under clause 68 [Termination or reduction in scope for default] by giving Notice to the Provider.

78. Negation of employment, partnership and agency

Status

- 78.1 The Provider, its Personnel (including its partners, agents, Subcontractors and their Personnel) and Third Party IT Vendors are not, by virtue of this Deed or any Subcontract, or for any purpose, deemed to be, the Department's employees, partners, agents, Subcontractors or otherwise able to bind or represent the Commonwealth (except to the extent that is explicitly required in the proper performance of the Services).

Representatives

- 78.2 The Provider must not represent itself, and must ensure that its Personnel (including its partners, agents, Subcontractors and their Personnel) and Third Party IT Vendors do not represent themselves, as being the Department's employees, partners, agents or Subcontractors or as otherwise able to bind or represent the Commonwealth (except to the extent that is explicitly required in the proper performance of the Services).

79. Waiver

Exercise of rights

- 79.1 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.

Partial exercise of rights

- 79.2 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.

No deemed waiver

- 79.3 A waiver by either Party in respect of any breach of a condition or provision of this Deed will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision.

Means of waiver

- 79.4 Waiver of any provision of, or right under, this Deed:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right and expressed to be a waiver of rights; and
 - (b) is effective only to the extent set out in the written waiver.

Meaning of rights

- 79.5 In this clause 79, 'rights' means rights provided by this Deed, under statute, at law or in equity.

80. Severance

- 80.1 If a court or tribunal determines that any provision of this Deed has no effect, or interprets a provision to reduce an obligation or right under this Deed, such a determination does not invalidate or reduce any other provision of this Deed and this Deed must be read as if that provision had been severed to the extent that it has been determined to have no effect or to be reduced.

81. Entire agreement

- 81.1 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.
- 81.2 For the avoidance of doubt, if the Provider is a Previous Provider, all matters arising under or in respect of its previous grant agreement will be determined under that agreement and will not be amended by its entry into this Deed.

82. Variation of Deed

- 82.1 No variation of this Deed is binding unless it is agreed in writing and signed by the Parties.

83. Applicable law and jurisdiction

Applicable Law

- 83.1 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.

Jurisdiction

- 83.2 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.

84. Notices

Giving of Notice

- 84.1 A Party giving Notice under this Deed must do so in writing, which may be by email, addressed to the Relationship Manager or the Contact Person, as relevant, and must be:

- (a) hand delivered or sent by pre-paid post to the street address; or
- (b) sent by email to the email address,

of the Relationship Manager or the Contact Person, as applicable, as specified in Items 0 and 0 of Schedule 1 – Deed Details.

Receipt of Notice

- 84.2 A Notice given in accordance with clause 84.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, five 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.

85. Compliance with laws and government policies

Compliance with laws and policies

- 85.1 The Provider must, in carrying out its obligations under this Deed, comply with:

- (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local government entity, including relevant work, health and safety, industrial relations and anti-discrimination legislation, such as the *Disability Discrimination Act 1992* (Cth) and the *Workplace Gender Equality Act 2012* (Cth), and any legislation relating to the licensing of employment agents; 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 referred to in this Deed.

- 85.2 The Provider must, when using the Department's premises or facilities, comply with all reasonable directions and procedures relating to work health and 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.

No unlawful discrimination

- 85.3 Without limiting clause 85.1, the Provider must provide Services that are free of sexual harassment and any form of unlawful discrimination.

Workplace gender equality

- 85.4 Clauses 85.4(a) to (d) apply only to the extent that the Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**).
- (a) Without limiting clause 85.1, the Provider must comply with its obligations, if any, under the WGE Act.
 - (b) If the Provider becomes non-compliant with the WGE Act during the Deed Term, the Provider must notify the Relationship Manager.
 - (c) The Provider must provide a current letter of compliance to the Relationship Manager annually and by no later than each anniversary of the Deed Commencement Date.
 - (d) Compliance with the WGE Act does not relieve the Provider of its responsibility to comply with its other obligations under this Deed.

86. Work Health and Safety legislation

86.1 The Provider must at all times:

- (a) ensure that the Services are carried out in a safe manner;
- (b) comply with the WHS Laws;
- (c) comply with any reasonable instruction from the Department relating to work health and safety;
- (d) immediately comply with directions on health and safety issued by any person having authority under the WHS Laws to do so;
- (e) consult, cooperate 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);
- (f) communicate any issue or concern that the Provider has regarding work health and safety matters, as soon as practicable, with the Department;
- (g) when requested by the Department, provide evidence of the Provider's ongoing compliance of the WHS Laws;
- (h) 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 an 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;
- (i) inform the Department of the full details of:
 - (i) any suspected contravention of the WHS Laws relating to the Services, within 24 hours of becoming aware of any such suspected contravention;

- (ii) 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;
- (iii) any workplace entry by a WHS Entry Permit Holder, or an Inspector, to any place where the Services are being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and
- (j) any proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws, within 24 hours of becoming aware of any such proceedings, decision or request; and
- (k) 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.

86.2 If the Provider is required by the WHS Laws to:

- (a) prepare, submit, supply or obtain any document, including a WHS management plan, a risk assessment, a safe work method statement, a work method statement, an emergency plan, safety data sheets, a notice to the Regulator, or a register (together '**WHS Safety Documents**'), or review any existing WHS Safety Documents;
- (b) obtain or sight any licence, permit, or authorisation (together '**WHS Licences**'); or
- (c) display or install any sign, or barrier,

specific to the Services, the Provider must:

- (d) prepare or obtain any such WHS Safety Documents or WHS Licences tailored to the Services and in compliance with the WHS Laws;
 - (e) provide the Department with a copy of any such WHS Safety Documents or WHS Licences with sufficient time for the Department to review the same and consult as the Department considers appropriate, including with the Provider, regarding the same; and
 - (f) display or install any such sign or barrier,
- before commencing any, or undertaking further, Services.

86.3 The Department may monitor the Provider's compliance with the WHS Laws, including:

- (a) conducting audits of the Provider's work health and safety performance; and
- (b) requiring the Provider to provide the Department with whatever documents or other information the Department reasonably requires relating to work health and safety matters.

86.4 The Provider must cooperate with any investigation undertaken by the Department concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, arising out of or in respect of the Services.

86.5 If there is any inconsistency or ambiguity between this clause and the WHS Laws, the WHS Laws will prevail.

87. Indigenous Procurement Policy

87.1 In this clause 87, capitalised terms that are not defined in Annexure A (Definitions) have the meaning provided in the Indigenous Procurement Policy (as amended from time to time).

87.2 The Provider acknowledges and agrees that:

- (a) it is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the [Indigenous Procurement Policy](#) for further information); and
- (b) the Provider must use its reasonable endeavours to increase its:
 - (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians,in the delivery of the Services.

87.3 For the purposes of clause 87.2(b)(i), purchasing from Indigenous Enterprises may include engagement of an Indigenous Enterprise as a Subcontractor, and/or use of Indigenous suppliers in the Provider's supply chain.

High Value Deed

87.4 If this Deed is a High Value Deed, or the Department Notifies the Provider that this Deed is a High Value Deed, the Provider must comply with clauses 87.5 to 87.16.

87.5 If the Provider does not already have an Indigenous Participation Plan, the Provider must:

- (a) develop a draft Indigenous participation plan in the form required by the Department; and
- (b) submit the draft Indigenous participation plan to the Department for its review and approval,

within 20 Business Days of:

- (c) this Deed becoming a High Value Deed; or
- (d) the Department Notifying the Provider that this Deed is a High Value Deed, whichever is applicable.

87.6 The Department may, at its absolute discretion, direct the Provider to amend the draft Indigenous participation plan and resubmit the draft Indigenous participation 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.

87.7 The Parties agree that on Notice by the Department of its approval of the draft Indigenous participation plan, that plan becomes the Indigenous Participation Plan.

Indigenous Participation Plan and Reporting

87.8 The Provider must comply with, and report against, the Indigenous Participation Plan during the Deed Term.

- 87.9 The Provider may meet the Mandatory Minimum Requirements either directly and/or through Subcontracts under this Deed.
- 87.10 The Provider must submit written reports on its compliance with the Indigenous Participation Plan to the Department via the Indigenous Procurement Policy Reporting Solution (**IPPRS**), as follows:
- (a) at least once every quarter during the Term of this Deed; and
 - (b) within 10 Business Days after the end of the Deed Term.
- 87.11 The reports specified in clause 87.10 must:
- (a) identify whether the Provider has complied with the Indigenous Participation Plan;
 - (b) include the Provider's progress in meeting the Mandatory Minimum Requirements; and
 - (c) if the Provider identifies that it did not comply with the Indigenous Participation Plan or meet the Mandatory Minimum Requirements, provide an explanation for the non-compliance.
- 87.12 Notwithstanding any other clause of this Deed, the Provider acknowledges and agrees that all reports it submits under clause 87.10:
- (a) will be recorded in the IPPRS, may be accessed by the Department and other Commonwealth entities and may be made publicly available;
 - (b) will not be Confidential Information; and
 - (c) may be used by the Department and other Commonwealth entities for any purpose, including for evaluation of an offer to provide goods and/or services to a Commonwealth entity.
- 87.13 Throughout the Deed Term, the Provider is responsible for managing the Provider's access to the IPPRS, including enabling and/or disabling its authorised Personnel's access (as appropriate).
- 87.14 If at any time during the Deed Term, the Department considers, at its absolute discretion, that it has concerns in relation to the Provider's:
- (a) compliance with the Indigenous Participation Plan; or
 - (b) overall ability to meet the Mandatory Minimum Requirements,
- the Department may:
- (c) conduct an audit of the Provider's implementation of, and overall ability to meet, the Mandatory Minimum Requirements and/or compliance with the Indigenous Participation Plan; and
 - (d) require the Provider to provide additional detail in relation to its implementation of, and overall ability to meet, the Mandatory Minimum Requirements and/or compliance with the Indigenous Participation Plan.
- 87.15 The Provider must comply with all directions issued by the Department in relation to the Provider's implementation of the Indigenous Participation Plan.

87.16 The Department may terminate this Deed in accordance with clause 68 [Termination or reduction in scope for default], if the Provider fails to:

- (a) develop, implement, comply with, or report against the Indigenous Participation Plan; or
- (b) comply with a direction issued by the Department under clause 87.15.

88. Aboriginal and Torres Strait Islander peoples

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

89. Modern slavery

89.1 In this clause 89:

- (a) **‘Grievance Mechanism’** means a process for handling a complaint or grievance about Modern Slavery practices that is consistent with the criteria set out in the Guiding Principles on Business and Human Rights;
- (b) **‘Guiding Principles on Business and Human Rights’** means the United Nations’ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf; and
- (c) **‘Modern Slavery’** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

89.2 The Provider must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services.

89.3 The Provider must ensure that Provider Personnel responsible for managing the operations and supply chains used in the performance of this Deed have undertaken suitable training to be able to identify and report Modern Slavery.

89.4 Within one month of the Deed Commencement Date, the Provider must prepare and implement a Modern Slavery Risk Management Plan in relation to its performance of this Deed and, if requested by the Department, provide a copy of this plan to the Department. The Modern Slavery Risk Management Plan should, at a minimum, detail:

- (a) the Provider’s steps to identify and assess risks of Modern Slavery practices in its operations and supply chains used in the performance of this Deed;
- (b) the Provider’s processes for addressing any Modern Slavery practices of which it becomes aware in its operations and supply chains used in the performance of this Deed;
- (c) the content and timing for training for Personnel about Modern Slavery; and
- (d) the Grievance Mechanism(s) available to Personnel.

- 89.5 The Provider must comply with the Modern Slavery Risk Management Plan in its performance of this Deed. For the avoidance of doubt, nothing in this clause 89 derogates from the Provider's other obligations arising under this Deed or otherwise in relation to the provision of the Services.
- 89.6 If at any time the Provider becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Deed, the Provider must as soon as reasonably practicable:
- (a) take all reasonable action to address or remove these practices, including if relevant by addressing any practices of other entities in its supply chains; and
 - (b) take all reasonable steps to remediate any adverse impacts caused or contributed to by the Provider from these practices in accordance with the Guiding Principles on Business and Human Rights.
- 89.7 Without limiting clause 89.6, in performing this Deed, the Provider must:
- (a) not require Personnel to pay fees, charges, expenses or financial obligations incurred in order for the Personnel to secure their employment or placement (**Recruitment Fees**), regardless of the manner, timing or location of the imposition or collection of these Recruitment Fees;
 - (b) not destroy or exclusively possess, whether permanently or otherwise, the travel or identity documents of Personnel; and
 - (c) ensure Personnel can access a Grievance Mechanism to safely report any instances of Modern Slavery in its operations and supply chains.
- 89.8 The Provider acknowledges and agrees that the performance by the Provider of its obligations under this clause 89 will be at no additional cost to the Department.

90. Shadow Economy Procurement Connected Policy

90.1 In this clause 90:

Shadow Economy Policy

means the *Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at: <https://treasury.gov.au/publication/p2019-t369466>.

Satisfactory

means meets the conditions set out in Part 6.b of the Shadow Economy Policy or, if the circumstances in Part 6.c of the Shadow Economy Policy apply, the conditions set out in Part 8.b of the Shadow Economy Policy.

Statement of Tax Record

means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at: https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR.

Valid means valid in accordance with Part 7.e of the Shadow Economy Policy.

- 90.2 The Service Provider must hold a Valid and Satisfactory Statement of Tax Record at all times during the Deed Term and, on request by the Department, provide to the Department a copy of any such Statement of Tax Record.
- 90.3 Without limiting its other rights under this Deed or at law, any failure by the Provider to comply with the requirements set out in clause 90.2 will be a breach of this Deed.
- 90.4 If the Provider is a partnership, the Provider must ensure that, if a new partner joins the partnership, a Valid and Satisfactory Statement of Tax Record for the new partner is provided to the Department as soon as possible after they become a partner to the partnership.
- 90.5 The Provider must ensure that any partner of a partnership and/or first tier Subcontractor that it has engaged to provide the Services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the Deed Term.
- 90.6 The Provider must retain a copy of any Statement of Tax Record held by any partner of a partnership, and/or first tier Subcontractor, in accordance with clause 90.5 and must, on request by the Department, provide to the Department a copy of any such Statement of Tax Record.

91. Australian Industry Participation

Note: The Australian Industry Participation National Framework principles may apply to this Deed. More information on Australian Industry Participation can be found at www.industry.gov.au/aip. The Department of Industry, Science, and Resources, or any department, agency or authority of the Commonwealth which is from time to time responsible for administering the Australian Industry Participation National Framework, will confirm and make a determination as to whether an Australian Industry Participation plan will be required. This clause may then be updated to reflect that determination.

If it is determined that an Australian Industry Participation Plan is not required, this clause will be removed. If it is determined that an Australian Industry Participation Plan is required, the Department will incorporate the relevant requirements of the policy into this clause.

92. Payment Times Procurement Connected Policy

Interpretation

- 92.1 In this clause 92.1, capitalised terms that are not defined in Annexure A (Definitions) have the meaning provided in the *Payment Times Reporting Act 2020* (Cth) and the PT PCP (as amended from time to time).

General

- 92.2 The Provider must comply with the Payment Times Procurement Connected Policy (**PT PCP**).

- 92.3 If the Provider enters into a PT PCP Subcontract, the Provider must include in that Subcontract:
- (a) a requirement for the Provider to pay the PT PCP Subcontractor:
 - (i) subject to clause 92.5, within 20 calendar days after the acknowledgement of the satisfactory delivery of the Services and receipt of a Tax Invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
 - (ii) subject to clause 92.6, for payments made by the Provider after the payment is due, the unpaid amount plus Interest on the unpaid amount calculated in accordance with clause 92.7;
 - (b) a statement that the PT PCP applies to that Subcontract; and
 - (c) a statement that the Subcontractor may make a complaint to the PT PCP Policy Team or to the Department in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 92.
- 92.4 If the Provider enters into a Reporting Entity Subcontract in anticipation of (or after) entering this Deed, the Provider must include in that Subcontract:
- (a) obligations equivalent to those set out in clause 92.3; and
 - (b) a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that Subcontract will include:
 - (i) obligations equivalent to those set out in clause 92.3; and
 - (ii) obligations equivalent to this clause 92.4 (such that the obligations in this clause 92.4 are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 92.5 Clause 92.3(a)(i) does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 92.3(a)(i).
- 92.6 The Provider is not required to pay Interest in accordance with clause 92.3(a)(ii) if either:
- (a) the Department has failed to pay the Provider in accordance with the timeframes and requirements under this Deed; or
 - (b) the amount of the Interest payable is less than \$100 (GST inclusive).
- 92.7 Interest payable under this clause 92 will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Provider effects payment.

PT PCP Evaluation Questionnaire

- 92.8 If requested in writing by the Department, the Service Provider must properly complete and return a PT PCP Evaluation Questionnaire within 30 Days of the request.

Non-compliance and Remediation

- 92.9 If the Department considers or becomes aware that the Provider has not or may not have complied with:
- (a) the requirements of clause 92; or

(b) the payment requirements of a PT PCP Subcontract,

the Department may direct the Provider to provide to the Department either or both of the following within the timeframes specified by the Department:

(c) information to enable the Department to review the Provider's compliance; or

(d) a properly completed PT PCP Remediation Plan, submitted for the Department's approval.

92.10 The Provider must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 92.9(d).

92.11 If the Department considers that the Provider has failed to comply with any of its obligations under this clause 92, without limiting the Department's rights and remedies at law or otherwise under this Deed, the Department may do either or both of the following:

(a) take the failure or non-compliance into account as part of its monitoring of the Provider's performance under this Deed; or

(b) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.

92.12 The Provider agrees that, if it is the subject of a complaint in relation to its compliance with clause 92.2 or the associated payment provisions of a PT PCP Subcontract:

(a) it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and

(b) it will cooperate in good faith with the Department in connection with any investigation or inquiry and any attempt to resolve the complaint.

Consent

92.13 For any PT PCP purpose, the Provider consents to the Department:

(a) using and sharing with any other Commonwealth entity the information provided by the Provider as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Department in connection with this Deed or a PT PCP subcontract; and

(b) receiving information obtained under, or in accordance with, the *Payment Times Reporting Act 2020 (Cth)* (**Protected Information**) from an Entrusted Person and using such Protected Information.

92.14 By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other Document in connection with the PT PCP that includes any personal information within the meaning of *Privacy Act 1988 (Cth)*, the Provider warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by clauses 92.13 and 92.14. The Provider must provide evidence of such consents to the Department on request.

93. Notification of Significant Events

93.1 For the purposes of this clause 93 'Significant Event' means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Services or the Provider or its Personnel, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
 - (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Provider or its Personnel, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- 93.2 The Provider must immediately give the Department a notice on becoming aware of a Significant Event.
- 93.3 The notice issued under clause 93.3 must provide a summary of the Significant Event, including the date that it occurred and whether any Personnel or Subcontractors engaged in connection with the Services were involved.
- 93.4 The Department may notify the Provider in writing that an event is to be considered a Significant Event for the purposes of this clause, and if this occurs the Provider must issue a notice under clause 93.2 in relation to the event within three Business Days after being Notified by the Department.
- 93.5 When reasonably requested by the Department, the Provider must provide to the Department any additional information regarding the Significant Event within three Business Days after the request.
- 93.6 If requested by the Department, the Provider must prepare a draft Significant Event Plan and submit that draft Significant Event Plan.
- 93.7 A draft Significant Event Plan prepared by the Provider under clause 93.6 must include the following information:
 - (a) how the Provider will address the Significant Event in the context of the Services, including confirmation that the implementation of the Significant Event Plan will not have any adverse impact on the delivery of the Services or compliance by the Provider with its other obligations under this Deed;
 - (b) how the Provider will ensure that events similar to the Significant Event do not occur again; and
 - (c) any other matter reasonably requested by the Department.
- 93.8 Without limiting its other obligations under this Deed, the Provider must comply with the Significant Event Plan. The Provider agrees to provide reports and other information about the Provider's progress in implementing the Significant Event Plan as reasonably requested by the Department.
- 93.9 A failure by the Provider to comply with its obligations under this clause will be a material breach of this Deed, in respect of which the Department may immediately terminate this Deed by Notifying the Provider. The Department's rights under this clause are in addition to and do not otherwise limit any other rights the Department may have under this Deed.
- 93.10 The performance by the Provider of its obligations under this clause 93 will be at no additional cost to the Department.

94. National Anti-Corruption Commission Act 2022 (Cth) Requirements

- 94.1 In this clause 93, 'corrupt conduct' has the meaning given in the *National Anti-Corruption Commission Act 2022 (Cth) (NACC Act)*.
- 94.2 The Provider:
- (a) acknowledges that in performing the Services on behalf of the Department under this Deed, it, and its Personnel, are contracted service providers for the purposes of the NACC Act;
 - (b) acknowledges that its Personnel may be public officials for the purposes of the NACC Act; and
 - (c) agrees that the Provider must not engage in, and must ensure that its Personnel who perform the Services do not engage in, corrupt conduct.
- 94.3 The Provider must:
- (a) ensure that its arrangements with its Personnel include obligations that are consistent with this clause 93;
 - (b) take all reasonable steps to ensure it does not engage, or facilitate the engagement of, corrupt conduct;
 - (c) immediately report to the Department if it becomes aware of any corrupt conduct or any risk of corrupt conduct in connection with this Deed;
 - (d) cooperate in full in any action or investigation by the Department or as required under the NACC Act; and
 - (e) provide information as requested by the Department on the processes it has implemented to ensure compliance with this clause 93.
- 94.4 The Provider acknowledges that a finding of corrupt conduct by the National Anti-Corruption Commissioner is an event that would place the Department's information, assets or reputation at risk (and clause 94.6 would apply).
- 94.5 If an investigation finds that the Provider or its Personnel have engaged in, or are engaging in, corrupt conduct, or that the Provider has failed to take reasonable steps to prevent corrupt conduct, the Provider must reimburse or compensate the Department in full for any monies lost or other loss suffered as a result of the corrupt conduct.
- 94.6 Without limiting clause 68 [Termination or reduction in scope for default], if the Provider, by any act or omission, places the Department's information, assets or its reputation at risk, the Department may immediately terminate this Deed by Notifying the Provider.

95. Compliance with the Commonwealth Supplier Code of Conduct

- 95.1 For the purposes of this clause, 'Commonwealth Supplier Code of Conduct' or 'Code' means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024 and updated from time to time.
- 95.2 The Provider must comply with, and ensure that its Personnel, agents and Subcontractors comply with, the Code in connection with the performance of this Deed.

- 95.3 The Provider must:
- (a) periodically monitor and assess its, and its Personnel's, agents' and Subcontractors' compliance with the Code; and
 - (b) on request from the Department, promptly provide information regarding:
 - (i) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - (ii) the Provider's compliance with clause 95.2.
- 95.4 The Provider must immediately issue the Department a Notice on becoming aware of any breach of clause 95.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the Personnel, agent or Subcontractor involved.
- 95.5 If the Department identifies a possible breach of clause 95.2, it may issue the Provider a Notice, and the Provider must, within three (3) Business Days after receiving the Notice, either:
- (a) if the Provider considers a breach has not occurred, advise the Department that there has not been a breach and provide information supporting that determination; or
 - (b) if the Provider considers that a breach has occurred, issue a Notice under clause 95.4 and otherwise comply with its obligations under this clause 95.
- 95.6 Notwithstanding clause 95.5, Department may Notify the Provider that it considers that the Provider has breached clause 95.2, in which case the Provider must issue a Notice under clause 95.4 and otherwise comply with its obligations under this clause 95.
- 95.7 A failure by the Provider to comply with its obligations under any part of this clause 95 will be a material breach of this Deed, in respect of which the Department may immediately terminate this Deed by Notifying the Provider.
- 95.8 Nothing in this clause 95 or the Code limits, reduces, or derogates from the Provider's other obligations under this Deed. The Department's rights under this clause 95 are in addition to and do not otherwise limit any other rights the Department may have under this Deed. The performance by the Provider of its obligations under this clause 95 will be at no additional cost to the Department.
- 95.9 The Provider agrees that the Department or any other Commonwealth entity may take into account the Provider's compliance with the Code in any future approach to market or procurement process.

96. Illegal Workers

- 96.1 The Provider must not engage Illegal Workers in any capacity to carry out any work under or in connection with the Services or this Deed.
- 96.2 If it becomes aware of the involvement of an Illegal Worker, the Provider must:
- (a) promptly Notify the Department; and
 - (b) immediately remove, or cause to be removed, the Illegal Worker and promptly arrange for that person's replacement at no cost to the Department.

- 96.3 The Provider must, within 10 Business Days after a request by the Department, provide evidence that it has taken all reasonable steps to ensure that it has complied, and is complying, with its obligations in respect of Illegal Workers, including under this clause 96.

EXPOSURE DRAFT

CHAPTER 5 NEW SPECIALIST DISABILITY EMPLOYMENT PROGRAM

Information about Services

The NSDEP encompasses all of the **Services** set out in this Chapter 5.

The Services involve:

- **Pre-Employment Support Services** comprising:
 - **Intensive Services** with Providers delivering support to Participants who are able to regularly engage in a full range of services, supports and activities that will help them to prepare for and find work. The Intensive Services have 2 phases:
 - **Work Preparation** for Participants who need to address Vocational and Non-Vocational Barriers to build their work readiness; and
 - **Job Search** for Participants who are closer to gaining Employment.
 - **Flexible Services** for Participants engaged in work and/or approved activities or who are otherwise not able to participate in the Intensive Service due to their personal or family circumstances.
- **In-Employment Support Services** comprising:
 - **Post-Placement Support** following Pre-Employment Support, for Participants who have started a job or self-employment and are progressing towards an Employment Outcome.
 - **Ongoing Support** after 26 weeks in Post-Placement Support, for Participants who need extra assistance to fulfil the essential requirements of their role and are likely to continue to require support after their first 52-weeks in Employment.
 - **Ongoing Support (Work Assist)** for other employees who require assistance to maintain an ongoing job and are not in Post-Placement Support.

Providers must assist Participants to build their work capacity and actively look for work. The services and supports must be tailored to the needs, capacity and personal circumstances of individual Participants and promote meaningful engagement. For Participants with participation requirements, Providers must actively monitor and manage their participation, including, as necessary, applying the targeted compliance framework.

Providers must build strong relationships with Employers and broker Employment opportunities for Participants. This may include assistance with job design or job customisation. Providers must offer support and training to help Employers provide suitable, safe and productive workplaces for employees with disability. Providers must also help Employers to access available supports. This may include organising workplace modifications, workplace training, or on the job coaching and supports or wage subsidies.

Services will be offered by **Specialist and Generalist Providers**. A Specialist Provider is contracted to assist Participants in a Specialist Service Group only. Generalist Providers may assist any Participants, regardless of their disability, injury or health issue.

Participants accessing the NSDEP will have a choice of Provider, taking into account where they live and the Program Providers delivering Services in their area, including any relevant Specialist Providers (if applicable). If the Participant does not choose a Provider, one will be chosen for them. Program Providers' caseload capacity will be taken into account for Referrals from Services Australia. Direct Registration Participants may choose their Program Provider.

The Provider must provide the relevant Services to each eligible Participant who is Referred to (including Participants transferred or transitioned to the Provider), or Directly Registered with, the Provider in accordance with this Deed. Ongoing Support (Work Assist) Participants must directly

register with a Program Provider to receive Services and may only receive Ongoing Support (Work Assist) Services.

Participants may receive Services for the following periods:

- (a) for Pre-Employment Support – as required until the Participant moves to Post-Placement Support or Exits;
- (b) for Post Placement Support – while progressing towards an Outcome (unless the Participant is in Ongoing Support while working towards an Outcome); and
- (c) for Ongoing Support (including Ongoing Support (Work Assist)) – for as long as the Participant is eligible.

Together these phases make up a Period of Service. For clarity, the period of Ongoing Support for Ongoing Support (Work Assist) Participants is the period from Commencement in Services until they are Exited.

A Period of Service does not include any time that a Participant is not receiving Services within the NSDEP, for example, when the Services are Suspended because of the Participant's individual circumstances.

Section 5A Objective of the NSDEP

97. Objective of the NSDEP

- 97.1 The Objective of the NSDEP is to help individuals with disability, injury or a health condition to prepare for, secure, and maintain sustainable Employment in the open labour market. The NSDEP should increase the focus of Program Providers on participant-led services that achieve greater social and economic inclusion for people with disability. The delivery of Services should boost Employment participation and the productive capacity of the workforce, address Skills Shortage areas and better meet the workforce needs of Employers. The Department places an emphasis on Program Providers engaging with Employers to meet Employers' local workforce needs, and building Employer capability through tailored support and advice on inclusive recruitment and workplace practices to achieve sustainable Employment for Participants and employees with disability.

Section 5B Statutory Conditions

98. Statutory Conditions

- 98.1 Notwithstanding any other provision of this Deed, the Parties agree that:
- (a) the Provider must provide the Services in accordance with the:
 - (i) DSI Act;
 - (ii) Disability Services Guidelines; and
 - (iii) National Standards for Disability Services; and
 - (b) this Deed must be read subject to the DSI Act.
- 98.2 The Parties agree that:
- (a) payment of any Fees by the Department to the Provider are made by way of an arrangement under section 13 of the DSI Act; and

- (b) the NSDEP is a regulated activity in accordance with section 5c of the *Disability Services and Inclusion (Regulated Activities) Determination 2023*.

98.3 Without limiting the generality of clauses 98.1 and 98.2, the Provider must:

- (a) have a current Certificate of Compliance on the Deed Commencement Date; or
- (b) obtain a Certificate of Compliance for the provision of the Services as soon as reasonably possible, and in any case no later than 15 months from the date of the relevant Determination,

and, once obtained, maintain that certification during the Deed Term.

98.4 If the Provider breaches clause 98.3, that breach may be treated by the Department as a breach of an essential term of this Deed which is not capable of remedy.

Contribution towards Certificate of Compliance costs

98.5 The Provider must pay the costs associated with obtaining and maintaining a Certificate of Compliance.

98.6 The Department may make a Reimbursement payment to the Provider up to an amount determined by the Department, at its discretion, in accordance with this clause 98 and any applicable Guidelines, as a contribution towards the certification and surveillance costs associated with the Certificate of Compliance.

Section 5C Application

99. Provision of Services

99.1 The Provider must provide the Services, to all Participants who are Referred to, or who Directly Register with, the Provider, in accordance with this Deed and any applicable Guidelines.

100. Specialist Providers

100.1 A Provider that is specified as a Specialist Provider in relation to a particular Site, ESA or part of an ESA in Item 00 of Schedule 1 – Deed Details must provide Services at that Site or in that ESA or part of an ESA:

- (a) to any Participant who is:
 - (i) a member of the relevant Specialist Service Group specified in Item 00.4 of Schedule 1 – Deed Details; and
 - (ii) Referred to, or Directly Registered with, the Provider;
- (b) in accordance with this Deed and any applicable Guidelines;
- (c) if the Participant has a Current Assessment, in accordance with that Assessment, subject to:
 - (i) clause 145 [Change of Circumstances Reassessment during Period of Service];
 - (ii) clause 128 [Changing the Level of Ongoing Support for Participants], and

- (iii) clause 130 [Change of Circumstances Reassessment during Ongoing Support];
 - (d) in a manner that is designed to address, and is sensitive to, the individual needs of that Participant; and
 - (e) for the relevant Period of Registration.
- 100.2 A Provider that is a Specialist Provider, unless otherwise Notified by the Department, must:
- (a) not provide Services to a Participant who is not a member of the relevant Specialist Service Group; and
 - (b) direct any Participant:
 - (i) who is not a member of the relevant Specialist Service Group; and
 - (ii) who is Referred to, or who attempts to Directly Register with, the Provider,
 to:
 - (iii) Services Australia;
 - (iv) Services Australia Assessment Services; or
 - (v) another Program Provider that is authorised to provide Services to Participants who are members of the relevant Specialist Service Group,
 in accordance with this Deed and any applicable Guidelines.
- 100.3 A Specialist Provider must only provide Services in the ESAs and at the Sites specified in Item 00 of Schedule 1, respectively, which may include delivering Services across ESA boundaries through a Hub and Spoke Model, as specified in Item 00.3 of Schedule 1.

101. Generalist Provider

- 101.1 A Provider that is a Generalist Provider must provide Services to all eligible Participants Referred to, or Directly Registered with, the Provider in accordance with this Deed.
- 101.2 A Provider that is specified as a Generalist Provider in relation to a particular Site or ESA in Item 00 of Schedule 1 – Deed Details must provide Services at that Site or in that ESA:
- (a) to any Participant who is Referred to, or Directly Registered with, the Provider;
 - (b) in accordance with this Deed and any applicable Guidelines;
 - (c) if the Participant has a Current Assessment, in accordance with that Assessment subject to:
 - (i) clause 145 [Change of Circumstances Reassessment during Period of Service];
 - (ii) clause 128 [Changing the Level of Ongoing Support for Participants]; and
 - (iii) clause 130 [Change of Circumstances Reassessment during Ongoing Support];

- (d) in a manner that is designed to address, and is sensitive to, the needs of that Participant; and
- (e) for the relevant Period of Registration.

102. Geographic coverage and Sites

102.1 The Provider must deliver Services:

- (a) in all of the ESAs; and
- (b) subject to this clause 102.1 and clauses 103.2 and 103.3, at all of, the Sites, that are specified in Schedule 1 – Deed Details, unless otherwise directed by the Department.

102.2 Unless otherwise specified in Item 0 or 0 of Schedule 1 – Deed Details, the Provider must provide Services to the whole of each ESA specified in Item 0 or 0 of Schedule 1 – Deed Details.

Note: Generalist Providers must deliver Services across the whole of each of their ESAs, as specified in Schedule 1. Specialist Providers may deliver Services across whole ESAs and/or parts of ESAs, as specified in Schedule 1, which may include delivering across ESA boundaries through a Hub and Spoke Model that is specified in Item 0.3 of Schedule 1.

102.3 The Provider must only provide Services at a Site, unless otherwise specified in any Guidelines.

103. Identification of Services delivered at each Site

103.1 For each Site at which the Provider delivers Services, the Provider must identify on the Department's IT Systems:

- (a) whether the Provider is delivering the Services at that Site as a:
 - (i) Generalist Provider; or
 - (ii) Specialist Provider,

and such identification on the Department's IT Systems must be consistent with the information specified in Items 0 and 0 of Schedule 1 – Deed Details, unless:

- (b) clause 103.2 applies; or
- (c) the Provider is otherwise directed by the Department to deliver the Services at a Site not specified in Item 0 or 0 of Schedule 1 – Deed Details.

103.2 If the Provider Notifies the Department of a request to deliver Services at a Site not specified in in Item 0 or 0 of Schedule 1 – Deed Details, and the Department gives written approval for the provision of Services at that Site, the Provider may deliver Services at that Site notwithstanding that the relevant Site is not specified in Item 0 or 0 of Schedule 1 – Deed Details, provided that the Provider complies with clause 103.1 in respect of that Site.

103.3 For the avoidance of doubt, the Provider must not provide Services at any Site (including a Site approved by the Department pursuant to clause 103.2) that is not identified on the Department's IT Systems in accordance with clause 103.1, unless specified otherwise in any Guidelines or the Provider is otherwise directed by the Department in writing.

104. Market Share

- 104.1 A Provider that is a Generalist Provider, must only provide Services in the ESAs and at the Sites specified in Item 0 of Schedule 1 – Deed Details, respectively, within the Market Share specified in Item 0.2 of Schedule 1 – Deed Details subject to clause 104.2.
- 104.2 Subject to this Deed, the Department's IT Systems will allow a flow of Referrals of Participants to a Generalist Provider within a 30 per cent tolerance of the Generalist Provider's Market Share within each ESA.

105. Maximum Caseloads

- 105.1 If the Provider is a Specialist Provider:
- (a) its Maximum Caseload (which may be "unlimited") for each Site, is specified in Item 0.6 of Schedule 1 – Deed Details; and
 - (b) the Parties may agree in writing, in accordance with clause 82 [Variation of Deed], to vary the Specialist Provider's Maximum Caseload for a Site during the Deed Term.
- 105.2 The Provider must accept a Referral or Direct Registration of a Participant who wishes to receive Services from the Provider, unless:
- (a) the Specialist Provider has reached its Maximum Caseload for that Site and is unable to offer available appointments in excess of its Maximum Caseload; or
 - (b) the Participant is not part of the relevant Specialist Service Group.
- 105.3 If:
- (a) the Provider does not comply with its obligations under clause 105.2; or
 - (b) the Provider is not providing Services up to its Maximum Caseload at a particular Site and does not have available appointments,
- the Department may:
- (c) contact the Provider to discuss the circumstances of the non-compliance; and
 - (d) take action under clause 65 [Remedies for breach].

Section 5D Allocation of Participants to the Provider

106. Referrals

- 106.1 Subject to clause 108 [Direct Registration of Participants without a Referral], the Provider must only accept Referrals of Participants made through the Department's IT Systems.
- 106.2 The Department's IT Systems will alert the Provider to Referrals by recording an Appointment for Participants in the Electronic Calendar.
- 106.3 On receipt of a Referral, the Provider must promptly confirm whether the potential Participant meets the eligibility requirements for the NSDEP in accordance with the Deed and any applicable Guidelines and, if the potential Participant does not meet the eligibility requirements for the NSDEP, the Provider must dispute the Current Assessment in accordance with clause 107 [Disputed Assessments].

- 106.4 For the avoidance of doubt, a Specialist Provider must not accept Referrals of Participants who are not within their Specialist Service Group.
- 106.5 If a Participant is Referred to the Provider from an Other Service, the Provider must, in accordance with any Guidelines, cooperate with the relevant Other Service Provider to facilitate the Participant's move into the Services.
- 106.6 The Provider acknowledges and agrees that the Department does not guarantee the number or type of potential Participants that will be Referred to the Provider. The flow of Participants Referred to the Provider may depend on a number of variable factors, including:
- (a) the flow of Participants registering with Services Australia in each ESA;
 - (b) the result of ESATs or Job Capacity Assessments (JCAs);
 - (c) the number of Participants in any Specialist Service Group; and
 - (d) Participants' choices, including the number of Direct Registrations.

107. Disputed Assessments

- 107.1 The Provider may dispute a Current Assessment:
- (a) pursuant to clause 106.3 or clause 113 [Initial Interview];
 - (b) if the Provider considers that the Current Assessment does not specify the most appropriate employment services for the Participant, within 28 calendar days, or as otherwise specified in any Guidelines, after (as applicable):
 - (i) an Assessment conducted by Services Australia Assessment Services under clause 145.1; or
 - (ii) an Assessment conducted by an Ongoing Support Assessor under Section 5J [Ongoing Support].
- 107.2 If the Provider disputes a Current Assessment, the Provider must contact (as applicable):
- (a) Services Australia Assessment Services; or
 - (b) the relevant Ongoing Support Assessor who conducted the Participant's Current Assessment,
- in accordance with any applicable Guidelines, to discuss the reasons why it considers that the Current Assessment is not appropriate.
- 107.3 If Services Australia Assessment Services or the relevant Ongoing Support Assessor (as applicable) agrees that the Participant's previous Current Assessment is not appropriate, Services Australia Assessment Services or the relevant Ongoing Support Assessor (as applicable) will take appropriate action in relation to the Participant and, unless Services Australia Assessment Services or the relevant Ongoing Support Assessor (as applicable):
- (a) Exits the Participant; or
 - (b) provides a new Current Assessment of the Participant under which the Provider must provide Services to the Participant,

the Provider must perform a Provider Exit of the Participant.

- 107.4 If Services Australia Assessment Services or the relevant Ongoing Support Assessor (as applicable) does not agree that the Participant's Current Assessment is not appropriate, the Provider must provide Services to the Participant in accordance with that Current Assessment (but subject to clauses 145 [Change of Circumstances Reassessment during Period of Service] and 130 [Change of Circumstances Reassessment during Ongoing Support]).
- 107.5 For the avoidance of doubt, if a Current Assessment is in dispute prior to the Participant's Commencement, no Fees are payable with respect to the Participant until the Participant is Commenced.
- 107.6 If any Fees have been paid to the Provider in relation to the period during which a Current Assessment is in dispute, the Fees paid may be recoverable by the Department as a debt in accordance with clause 27 [Debts and offsetting].

108. Direct Registration of Participants without a Referral

- 108.1 Subject to clauses 108.2, 108.3 and 108.4, if a potential Participant presents to the Provider without a Referral, the Provider must promptly:
- (a) confirm that the potential Participant:
 - (i) is not currently being assisted by:
 - (A) the Provider or another Program Provider;
 - (B) an Other Service; or
 - (C) the Remote Jobs and Economic Development program, as identified on the Department's IT Systems; and
 - (ii) meets the eligibility requirements for the NSDEP in accordance with any applicable Guidelines,
- and, if this is confirmed:
- (b) Directly Register the potential Participant; and
 - (c) confirm that the potential Participant has a Valid ESAt or JCA that identifies the NSDEP as the recommended service, in accordance with the Guidelines,
- and, if the potential Participant:
- (d) has a Valid ESAt or JCA that identifies the NSDEP as the recommended service:
 - (i) conduct an Initial Interview with the potential Participant;
 - (ii) Commence the potential Participant as a Participant; and
 - (iii) provide the relevant Services to the Participant; or
 - (e) does not have a Valid ESAt or JCA that identifies the NSDEP as the recommended service, in accordance with any Guidelines:
 - (i) immediately refer the potential Participant to Services Australia Assessment Services for an Assessment; and

- (ii) if the potential Participant is Referred back to the Provider by the Services Australia Assessment Services, provide the relevant Services to the Participant.

Special Class Client

108.2 If a potential Special Class Client presents to the Provider without a Referral, the Provider must promptly:

- (a) confirm that the potential Special Class Client:
 - (i) is not currently being assisted by:
 - (A) the Provider or another Program Provider;
 - (B) an Other Service; or
 - (C) the Remote Jobs and Economic Development program, as identified on the Department's IT Systems; and
 - (ii) meets the eligibility requirements for a Special Class Client, in accordance with the Guidelines,

and, if this is confirmed:

- (b) Directly Register the Special Class Client;
- (c) conduct an Initial Interview and Commence the Special Class Client as a Participant; and
- (d) provide the relevant Services to the Special Class Client.

Eligible School Leavers

108.3 If a potential Eligible School Leaver presents to the Provider without a Referral, the Provider must promptly:

- (a) confirm that the potential Eligible School Leaver:
 - (i) is not currently being assisted by:
 - (A) the Provider or another Program Provider;
 - (B) an Other Service; or
 - (C) the Remote Jobs and Economic Development program, as identified on the Department's IT Systems; and
 - (ii) meets the eligibility requirements for an Eligible School Leaver in accordance with the Guidelines,

and, if this is confirmed:

- (b) Directly Register the Eligible School Leaver;
- (c) conduct an Initial Interview and Commence the Eligible School Leaver as a Participant; and
- (d) provide the relevant Services to the Eligible School Leaver.

Ongoing Support (Work Assist) Participant

- 108.4 If a potential Ongoing Support (Work Assist) Participant presents to the Provider without a Referral, the Provider must promptly:
- (a) confirm that the potential Ongoing Support (Work Assist) Participant:
 - (i) is not currently being assisted by:
 - (A) the Provider or another Program Provider;
 - (B) an Other Service; or
 - (C) the Remote Jobs and Economic Development program, as identified on the Department's IT Systems; and
 - (ii) meets the eligibility requirements for an Ongoing Support (Work Assist) Participant in accordance with clause 125 and any Guidelines,
- and, if this is confirmed:
- (b) Directly Register the Ongoing Support (Work Assist) Participant;
 - (c) conduct an Initial Interview and Commence the Ongoing Support (Work Assist) Participant as a Participant;
 - (d) refer the Participant for an initial Ongoing Support Assessment; and
 - (e) provide the relevant Services to the Ongoing Support (Work Assist) Participant.

General

- 108.5 The Provider must retain, and provide to the Department upon request, documentary evidence of the eligibility of all Directly Registered Participants that do not require an ESA or JCA, in accordance with any applicable Guidelines.
- 108.6 The Funding Level for a Directly Registered Participant (with the exception of Ongoing Support (Work Assist) Participants) will be determined by the Department's IT Systems using the Participant Investment Funding Model.

109. Transferred Participants

- 109.1 If directed by the Department, the Provider must provide the relevant Services to a Transferred Participant who transfers from another Program Provider to the Provider in accordance with this Deed and any applicable Guidelines.
- 109.2 For the purposes of clause 109.1, the Provider must assist, facilitate and cooperate with the Transferred Participant and the other Program Provider, including complying with any specific transition arrangements required by the Department, if Notified to the Provider by the Department, prior to the transfer of the Transferred Participant, in order to enable the relevant Services to continue to be provided to the Transferred Participant.
- 109.3 On commencement of the provision of the Services by the Provider pursuant to clause 109.1, a Transferred Participant is deemed to be a Participant, and not a Transferred Participant, for the purposes of this Deed.

Section 5E Service Guarantee and Code of Conduct

110. Service Guarantee

- 110.1 The Provider must prominently display in its offices and all Sites, and make available to potential Participants and Employers, promotional Material made available by the Department about the Service Guarantee.
- 110.2 The Provider must perform the Services at or above the minimum standards set out in the Service Guarantee in Annexure C2.

111. Code of Conduct

Compliance with the Code of Conduct

- 111.1 The Provider must:
- (a) comply with the Code of Conduct set out in Annexure C1;
 - (b) provide a copy of the Code of Conduct to all Participants; and
 - (c) explain the Code of Conduct to all Participants.
- 111.2 The Provider must prominently display in its offices and at all Sites, and make available to potential Participants and Employers, promotional Material made available by the Department about the Code of Conduct.

Breach of the Code of Conduct

- 111.3 The Provider will be in breach of the Code of Conduct if the Provider:
- (a) fails to deliver the Services in the manner specified in the Code of Conduct; or
 - (b) is the subject of a serious Complaint, or a series of similar Complaints, in relation to non-compliance with the Code of Conduct, which the Provider has not:
 - (i) actively taken steps to resolve in accordance with clause 34 [Customer feedback process]; or
 - (ii) if relevant, actively taken steps to ensure that the issue raised in the Complaint does not re-occur.
- 111.4 Non-compliance with the Code of Conduct will constitute a breach of the Deed and may result in the Department taking action under clause 65 [Remedies for breach].

Section 5F Servicing Participants and Employers

112. Appointments with Participants

General

- 112.1 Subject to the Provider's Maximum Caseload or Market Share, as applicable, and unless otherwise agreed by the Department in writing, the Provider must ensure that the Electronic Calendar has, at all times, capacity to receive an Appointment for a Participant within the next two Business Days, for the purposes of:
- (a) conducting an Initial Interview;
 - (b) Re-engagement; or

- (c) conducting a Contact with the Participant following a Change of Circumstances Reassessment.

112.2 If:

- (a) a Special Class Client, Eligible School Leaver or Ongoing Support (Work Assist) Participant Directly Registers with the Provider;
- (b) a Participant has had a Change of Circumstances Reassessment, and an Appointment for the purpose of conducting a Contact with the Participant is not already scheduled; 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.

Conducting Appointments

112.3 If a Participant has an Appointment with the Provider, the Provider must, in accordance with this Deed and any applicable Guidelines, meet with the Participant on the date and at the time of the Appointment as recorded in the Electronic Calendar.

Recording Engagements in the Electronic Calendar

112.4 Clause 112.5 applies to any:

- (a) Participant (Mutual Obligation); or
- (b) other Participant as specified in any applicable Guidelines.

112.5 The Provider must, in accordance with the requirements of the Department's IT Systems and any applicable Guidelines, record in each Participant's Electronic Calendar details of all:

- (a) Mutual Obligation Requirements; and
- (b) other:
 - (i) Contacts;
 - (ii) Activities;
 - (iii) job interviews;
 - (iv) Employment, if the hours are regular and can reasonably be scheduled by the Provider;
 - (v) Education and Training;
 - (vi) drug and/or alcohol treatment;
 - (vii) workshops, Training and other activities delivered by the Provider to the Participant; and
 - (viii) third party appointments,

in which the Participant is engaged to participate in relation to the Services.

112.6 Subject to the Guidelines, the Provider must also monitor and record the participation of each Participant (Mutual Obligation) against their Mutual Obligation Requirements, and respond to any non-compliance by the Participant (Mutual Obligation) with their

Mutual Obligation Requirements, in accordance with Section 5I [Compliance and the Targeted Compliance Framework] and activities.

112.7 When recording an Engagement, the Provider must also:

- (a) notify the Participant, in the manner required by the Department's IT Systems, of:
 - (i) the dates and times recorded by the Provider for the Engagement; and
 - (ii) if it is the first time that the Participant will participate in an Engagement of that kind, the evidence required (if any) to confirm their participation in the Engagement; and
- (b) if the Engagement forms a part of the Mutual Obligation Requirements of a Participant (Mutual Obligation):
 - (i) notify the Participant (Mutual Obligation), in the manner required by the Department's IT Systems, of whether the Engagement is:
 - (A) compulsory; or
 - (B) a Reconnection Requirement; and
 - (ii) ensure that the Participant (Mutual Obligation) understands how to meet the Mutual Obligation Requirement and the consequences of failing to meet the Mutual Obligation Requirement.

Confirming Personal Events

112.8 If a Participant has recorded a Personal Event, the Provider must, in accordance with any applicable Guidelines, consider the Personal Event in light of the Participant's personal circumstances, and confirm the Personal Event in the Participant's Electronic Calendar, unless the Provider considers that it is not appropriate to do so.

Engagements conflicting with Personal Events

112.9 If the Provider is considering recording an Engagement in the Participant's Electronic Calendar and the Engagement is scheduled to occur at a Personal Event Time, the Provider must, in accordance with any applicable Guidelines:

- (a) if the Engagement is not a Mutual Obligation Requirement, record the Engagement so that it is not scheduled to occur at the Personal Event Time and, instead, record the Engagement so that it is scheduled to occur at a more appropriate time; or
- (b) if the Engagement is a Mutual Obligation Requirement:
 - (i) advise the Participant that, even though the Participant has recorded a Personal Event, the Provider may still record the Mutual Obligation Requirement so that it is scheduled to occur at the Personal Event Time;
 - (ii) discuss with the Participant whether it is appropriate to record the Mutual Obligation Requirement, including whether the Participant has sufficient notice, and is able, to make other arrangements for the Personal Event;

- (iii) record the Mutual Obligation Requirement so that it is scheduled to occur at the Personal Event Time if the Provider assesses that it is appropriate to do so, and record the Provider's reasons for this assessment; and
- (iv) manage the conflicting events in the Electronic Calendar.

113. Initial Interview

Initial Interviews for Participants

113.1 During an Initial Interview for a Participant, the Provider must, in accordance with any applicable Guidelines:

- (a) endeavour to build a positive relationship with the Participant;
- (b) confirm the Participant's identity;
- (c) if necessary to enable the Participant to understand the Initial Interview, provide access to an interpreter;
- (d) explain the range of Services available to the Participant;
- (e) explain the obligations of the Provider in delivering the Services to the Participant, including the Service Guarantee and the Code of Conduct;
- (f) explain the types of activities the Participant may undertake;
- (g) start to develop an understanding of the unique circumstances of the Participant;
- (h) identify if the Participant is already engaged in any activities or Complementary Services;
- (i) if applicable, complete or update, or ask the Participant to complete or update, their Job Seeker Snapshot;
- (j) explain the purpose and contents of a Job Plan, based on the Provider's initial assessment of the Participant's skills, strengths, circumstances and aspirations;
- (k) prepare or update, and approve a Job Plan with the Participant in accordance with Section 5H - Job Plans; and
- (l) explain the rights and obligations of the Participant to engage meaningfully in the NSDEP, and the implications of not participating in accordance with their Job Plan, including:
 - (i) for each Participant (Mutual Obligation), explain their rights and obligations under the Social Security Law, the targeted compliance framework and the consequences of not meeting their Mutual Obligation Requirements;
 - (ii) for each Disability Support Pension Recipient (Compulsory Requirements), explain their rights and obligations under the Social Security Law; and
 - (iii) for each Participant undertaking a Program of Support, as identified in the Department's IT Systems, explain their rights and obligations under the Social Security Law.

113.2 Except in relation to an Ongoing Support (Work Assist) Participant, in addition to the requirements set out in clause 113.1, either during the Initial Interview or at such

other times as deemed appropriate by the Provider based on individual need, the Provider must provide:

- (a) an initial list of appropriate job vacancies;
- (b) advice about the best ways to look for and find work and about local Employment opportunities; and
- (c) information about Skills Shortage areas.

113.3 After an Initial Interview, the Provider must record completion of the Initial Interview in the Department's IT Systems in accordance with any applicable Guidelines.

113.4 If the Participant does not attend their Initial Interview, the Provider must attempt to contact the Participant within five Business Days to make another appointment.

Initial engagement period

113.5 In the first four weeks during which the Participant (other than an Ongoing Support (Work Assist) Participant) is receiving Services from the Provider, including in the Initial Interview, in addition to developing a Job Plan with the Participant, the Provider must, in accordance with any Guidelines:

- (a) if applicable, complete or update, or ask the Participant to complete or update, their Job Seeker Snapshot;
- (b) ascertain the Participant's individual circumstances, skills, strengths and aspirations, and any barriers or issues that may have an adverse impact on the their ability to effectively transition to sustainable Employment;
- (c) determine whether the Participant should be engaged in the Intensive Service or the Flexible Service;
- (d) identify the types of supports and Services that will assist the Participant to find and keep Employment;
- (e) assist the Participant to choose relevant activities as part of their Pre-Employment Support and refer the Participant to relevant support and other services if applicable; and
- (f) work with the Participant to update their initial Job Plan to include details of the activities and services referred to clause 113.5(e).

113.6 In the first four weeks during which an Ongoing Support (Work Assist) Participant is receiving Services from the Provider, including in the Initial Interview, in addition to developing a Job Plan with the Participant, the Provider must, in accordance with any Guidelines:

- (a) endeavour to build a positive relationship with the Participant;
- (b) identify the types of supports and Services that will assist the Participant to keep their job;
- (c) ascertain and tailor the Services to the Participant's individual circumstances, skills, strengths and aspirations, and any barriers or issues that may have an adverse impact on the Participant's ability to effectively maintain their job;
- (d) assist the Participant and their Employer to choose relevant Services according to the type of Ongoing Support (Work Assist) that they will be receiving; and

- (e) work with the Participant to update their initial Job Plan to include details of the agreed Services and any changes to participation requirements, if applicable.

Résumé preparation

113.7 Either during the Initial Interview or at such other times as deemed appropriate by the Provider based on individual need, the Provider:

- (a) must assist the Participant (excluding Ongoing Support (Work Assist) Participants) to prepare a résumé and load the completed résumé onto the Department's IT Systems in accordance with any applicable Guidelines; and
- (b) may choose to complete the résumé summary fields in the Department's IT Systems in accordance with any applicable Guidelines.

114. Contact services

Minimum number of Contacts

114.1 The Provider must provide each Participant with at least the minimum number of Contacts specified in Table 1 below, in accordance with any applicable Guidelines.

Table 1 Minimum Contacts

Participant	Minimum Contacts
Intensive Service Participants	Initial Interview
	Six (6) Contacts over each period of 3 months for Participants receiving Intensive Pre-Employment Support
Flexible Service Participants	Two (2) Contacts per 3 months for Participants receiving Flexible Pre-Employment Support, with expectation of more frequent Contacts as Participants build their capacity to step up to the Intensive Service.
Post Placement Support	Regular Contacts, as deemed appropriate by the Provider, during the Period of Service
Flexible Ongoing Support	Maximum of 6 Instances of Contact in any 26 week period
Moderate Ongoing Support	As specified in any Guidelines.
High Ongoing Support	As specified in any Guideline.
Ongoing Support (Work Assist) Participants	Initial Interview
	Must meet the Contacts requirements based on the level of Ongoing Support that the Participant is receiving (Flexible, Moderate or High), as specified in any Guideline.
Participant (Mutual Obligation)	Capability Interviews
	Any Contact that is a Reconnection Requirement.

Participant	Minimum Contacts
	Any other Contact required in accordance with Section 5F

Note 1: The timing and duration of Contacts is not specified but will depend on the individual circumstances of each Participant, as determined by the Provider.

Note 2: There is no minimum number of Contacts specified for Participants who are receiving Flexible Ongoing Support.

- 114.2 In addition to the requirements set out in clause 114.1, the Provider must, in accordance with any Guidelines:
- (a) tailor the Contacts according to the circumstances of the individual Participant; and
 - (b) provide each Participant with the number of Contacts required to engage meaningfully in the NSDEP and complete any activities being undertaken in relation their Job Plan.

- 114.3 The Department may require the Provider, by Notice, to increase the frequency of Contacts beyond that specified in Table 1:
- (a) if the Provider has failed to meet the minimum requirements set out in Table 1; or
 - (b) for any other reason specified by the Department.

Mode of Contact

- 114.4 The Provider must conduct the Initial Interview face-to-face with the Participant, in accordance with any Guidelines, unless otherwise agreed by the Provider and the Participant on a case by case basis which supports the specific needs of the Participant.
- 114.5 The Provider must conduct:
- (a) the first Contact following Re-engagement; and
 - (b) the first Contact following a Change in Circumstances Reassessment, face to face with the Participant, in accordance with any Guidelines.
- 114.6 Contacts may be conducted by the Provider via an alternative mode, as agreed between the Participant and the Provider in writing, and as specified in any applicable Guidelines.
- 114.7 The Provider must record the mode for each Contact (including the Initial Interview) in the Department's IT Systems.
- 114.8 The Provider must offer, and if requested by the Participant conduct, face to face Contacts.

115. Skills Assessment

- 115.1 The Provider must conduct Skills Assessments, using their own resources, and in accordance with any Guidelines:
- (a) to build their understanding of the Participant's individual needs, service requirements and progress; and

(b) to tailor the support offered to the Participant as part of the Services.

115.2 The Skills Assessment should identify:

- (a) the Participant's pathway towards employment, including appropriate Interventions, Training, Education and work experience activities; and
- (b) Vocational Barriers, including gaps in their skills, if relevant.

115.3 A Skills Assessment may include an assessment of:

- (a) the Participant's job readiness, current employment skills and experience, including an assessment of their existing skill-set and aptitude for various types of work;
- (b) the future skill needs of the Participant;
- (c) the Participant's current educational achievements, skills and experience in direct relation to the local labour market, including areas of skill shortage;
- (d) the Participant's job search experience, résumé and any written applications; and
- (e) Training or other Interventions needed to help the Participant obtain sustainable employment.

115.4 The Provider must, when relevant, amend each Participant's Job Plan to specify the outcomes of their Skills Assessment.

Early School Leavers

115.5 If a potential Participant who has been assessed as being an Early School Leaver advises the Provider that they have attained a year 12 or equivalent qualification, the Provider must:

- (a) request the potential Participant provide evidence of that qualification to the Provider;
- (b) retain Records of this request and a copy of any evidence provided by the potential Participant, in accordance with clause 46 [Records the Provider must keep]; and
- (c) if requested by the Department, provide a copy of the Record to the Department or Services Australia, in accordance with any applicable Guidelines.

116. Assistance for Participants

116.1 The Provider must provide assistance for Participants during their Period of Service, and any period of Ongoing Support, which is designed to:

- (a) develop the skills the Participant needs to improve their capacity to find, gain or remain in sustainable employment or self-employment; and
- (b) allow Participants to address identified Vocational Barriers and Non-Vocational Barriers,

and that assistance must be provided in accordance with this Deed and any applicable Guidelines.

- 116.2 The Provider must provide assistance for Participants in a flexible way which takes into account:
- (a) the results of any Assessments or evaluations;
 - (b) if relevant, the Funding Level of the Participant;
 - (c) whether the Participant is receiving Pre-Employment Support (in the Intensive Service or in the Flexible Service), or In-Employment Support (Post Placement Support or Ongoing Support, including Ongoing Support (Work Assist));
 - (d) the individual circumstances of the Participant; and
 - (e) any applicable Guidelines.
- 116.3 Subject to clauses 116.4, 119.1, 119.3 and 120.3 and any Guidelines, the types of assistance that may be provided by the Provider for Participants include:
- (a) providing, purchasing or assisting Participants to access:
 - (i) functional capacity evaluations, physical assessments or other assessments to determine a person's limits or abilities;
 - (ii) Interventions such as physiotherapy, occupational therapy, pain management or psychological counselling;
 - (iii) Training, work hardening or physical conditioning programs;
 - (iv) support on whole of life issues that impact on a Participant's Employment prospects, including the Services and support to address Non-Vocational Barriers to Employment, including:
 - (A) non-vocational training, such as parenting skills courses;
 - (B) drug and alcohol rehabilitation;
 - (C) self-help groups or support groups; and
 - (D) programs to address disability, injury or health concerns;
 - (v) relevant Commonwealth, State, Territory and local government, and non-government programs and activities;
 - (vi) vocational education or Training, higher education or non-accredited study;
 - (vii) other Training activities that match Employers' needs;
 - (viii) Self-Employment Assistance;
 - (b) job search assistance, including:
 - (i) advice on the availability, location and use of job search facilities in the local area;
 - (ii) advice on career options;
 - (iii) employment preparation assistance including advice on resumé writing, job applications and interview preparation; and
 - (iv) sourcing opportunities in paid or Observational Work Experience, Work Trials or social enterprises;

- (c) providing information on how Employment opportunities will be sourced, including details of how the Provider will canvass and approach Employers regarding Employment opportunities;
- (d) canvassing and approaching Employers for Vacancies for the Participant and actively participating in local area Employer networks and forums;
- (e) referring suitable Participants to Vacancies;
- (f) undertaking activities to promote and market the abilities of Participants to Employers;
- (g) supporting Employers to employ people with disability as outlined in clause 119.3;
- (h) supporting Participants in the workplace by providing workplace assessments and modifications, and liaison with the JobAccess Provider;
- (i) Job Placements, including Job Placements that provide the Participant with opportunities to build new skills and experiences, but would not meet the quality and sustainability criteria required for it to be an Outcome; and
- (j) providing tailored ongoing support to assist Participants to maintain their Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship once in Ongoing Support.

116.4 The Provider is not entitled to claim reimbursement for the costs of performing Services in accordance with clause 116.3.

116.5 The Provider may, in the course of supporting a Participant to gain or remain in sustainable Employment, pay to the Employer a subsidy or payment of any kind which is additional to a Wage Subsidy, provided that the subsidy or payment:

- (a) is paid by the Provider from its own funds;
- (b) does not make up the whole of a Participant's wage in relation to the Employment;
- (c) does not, in combination with the Wage Subsidy, equate to or exceed the whole of a Participant's wage in relation to the Employment;
- (d) is not paid for a period that is greater than three months in duration after the 26-Week Outcome is achieved by a Participant; and
- (e) is otherwise paid in accordance with any applicable Guidelines.

116.6 The Provider is not entitled to claim reimbursement for any payment made in accordance with clause 116.5.

116.7 The Provider may only provide one of the following types of Services to a Participant at any one time:

- (a) Pre-Employment Support, either:
 - (i) Intensive Service; or
 - (ii) Flexible Service
- (b) In-Employment Support, either:

- (i) Post Placement Support; or
 - (ii) Ongoing Support or Ongoing Support (Work Assist),
- such Services being mutually exclusive.

117. Intensive Service

- 117.1 The Intensive Service is designed to support Participants who are ready to engage fully in activities and assist them to:
- (a) prepare for Employment;
 - (b) participate in Pre-Employment Support; or
 - (c) otherwise look for Employment.
- 117.2 The majority of Participants in Pre-Employment Support are expected to participate in the Intensive Service.
- 117.3 The Provider must deliver the Intensive Service in accordance with any Guidelines and, in consultation with each Participant, develop a package of Intensive Services that is customised to the Participant, unless the Department agrees otherwise in writing.
- 117.4 The Provider must work with Employers to:
- (a) understand their recruitment needs;
 - (b) identify Employment opportunities; and
 - (c) support Employers to Employ Participants in quality and sustainable jobs.
- 117.5 The Provider must assist Participants participating in the Intensive Service in one of two distinct phases at any point in time:
- (a) the Job Search phase, for Participants who are considered closer to gaining Employment; or
 - (b) the Work Preparation phase, for Participants who are not yet considered by the Provider to be suitable for the Job Search phase.
- 117.6 The Provider must ensure that the Job Search phase focusses intensively on job search activities, and activities that will continue to build the Participant's work readiness. For example, this may include work experience opportunities and paid opportunities including with social enterprises.
- 117.7 The Provider must ensure that the Work Preparation phase enables relevant Participants to receive more intensive support through the provision of Services to address both vocational and Non-Vocational Barriers to employment, and more intensive help to build the necessary skills to find quality and sustainable Employment.
- 117.8 The Provider may, in accordance with any Guidelines:
- (a) move a Participant from the Work Preparation phase to the Job Search phase of the Intensive Service, as the Participant becomes more job ready; or
 - (b) from the Job Search phase to the Work Preparation phase in the event that they have a change in circumstances that means they require a greater focus on preparing for employment.

- 117.9 The Provider may, in accordance with any Guidelines and with agreement from the Participant, move a Participant from the Intensive Service to the Flexible Service in the event that the Participant has a change in circumstances that means they are unable to continue to participate in the Intensive Service.

118. Flexible Service

- 118.1 The Flexible Service is designed to support Participants who are temporarily unable to participate in the Intensive Service.
- 118.2 The Provider may provide the Flexible Service to Participants who:
- (a) are partially meeting their Mutual Obligation Requirements through approved activities such as education, Training, caring, voluntary work or some paid work and have limited remaining capacity to engage in the Intensive Service;
 - (b) are not able to participate in the Intensive Service or are not ready to engage in the labour market and are undertaking other supports such as vocational or non-vocational activities to address their disability or injury needs or episodic or unstable health conditions; or
 - (c) have an Exemption from their Mutual Obligation Requirements, are currently Suspended and volunteer to participate in the NSDEP.
- 118.3 The Provider must, in accordance with any Guidelines, work with Participants receiving the Flexible Service to connect them with the best type of Services that reflect their:
- (a) individual circumstances;
 - (b) Employment capacity; and
 - (c) any vocational or non-vocational activities which they are undertaking,
- to help them to build their capacity to participate more intensively in the NSDEP.
- 118.4 The Provider must monitor the Flexible Services received by Participants, and the duration of the Flexible Services provided to Participants, and ensure that Participants are not kept in the Flexible Service long-term without appropriate evidence.
- 118.5 The Provider may move a Participant from the Flexible Service to the Intensive Service when the Provider considers that the Participant's circumstances reflect a capacity to engage more fully in the NSDEP.

119. Employer engagement

- 119.1 In order to achieve sustainable Employment for Participants, the Provider must:
- (a) engage with, and support, Employers in the ESAs in which the Provider is delivering Services; and
 - (b) provide Services to Employers:
- to meet the Objectives specified in clause 9, Chapter 5 and in accordance with this Deed, including any Guidelines, and any direction given by the Department.
- 119.2 The Provider must undertake activities to promote and market the abilities of individual Participants to Employers.

- 119.3 The Provider must, in accordance with any Guidelines, engage with a range of Employers to:
- (a) source suitable Vacancies for Participants;
 - (b) provide guidance on job design and job carving to facilitate the creation of employment opportunities for Participants;
 - (c) refer the most suitable Participants to Vacancies;
 - (d) identify Employers' skill needs and arrange activities that provide development opportunities or arrange activities to prepare Participants to meet those needs;
 - (e) as appropriate, arrange Work Trials and Observational Work Experience with potential Employers as part of preparing Participants for work;
 - (f) as appropriate, in accordance with clause 116 [Assistance for Participants], help the Employer to access financial assistance through the Employment Assistance Fund for work-related modifications and services, or Wage Subsidies to reduce the costs of hiring a Participant;
 - (g) as appropriate, help an Employer to make an application in respect of the Supported Wage System in accordance with clause 116 [Assistance for Participants];
 - (h) provide guidance on employee retention strategies to assist Employers to effectively onboard people with disability and reduce turnover;
 - (i) provide guidance on creating accessible and inclusive workplaces to assist Employers to manage employees with disability and access information and disability training for their workplace;
 - (j) link Employers to relevant Commonwealth, State, Territory and local government, and non-government programs and to communities of practice;
 - (k) provide Post-Placement Support to Employers and Participants to support Participants to settle into the workplace and progress towards sustainable Employment; and
 - (l) as applicable, provide Ongoing Support to Employers, Participants and Ongoing Support (Work Assist) Participants in accordance with Section 5J.

119.4 The Provider must deliver Post Placement Support in accordance with this Deed, and any Guidelines, to all Participants who have commenced a Job Placement which is progressing towards an Employment Outcome, unless the Participant is Exited or returns to Pre-Employment Support or starts receiving Ongoing Support.

120. Wage Subsidy and Employment Assistance Fund

Wage Subsidy

- 120.1 The Provider may pay a Wage Subsidy to an Employer with respect to a Participant (other than an Ongoing Support (Work Assist) Participant) that is eligible for the Wage Subsidy, in accordance with any applicable Guidelines.
- 120.2 If the Provider pays a Wage Subsidy in accordance with clause 120.1, the Provider must:

- (a) ensure that the payment is made in accordance with any applicable Guidelines, including any limitations on payments;
 - (b) arrange for payment, from its own funds, of the Wage Subsidy to the Employer for that Participant; and
 - (c) submit a claim to the Department for Reimbursement of the Wage Subsidy.
- 120.3 The Provider must not pay a Wage Subsidy to the Provider's Own Organisation or a Related Entity, unless permitted to do so in accordance with any applicable Guidelines.
- 120.4 The Department will Reimburse the Wage Subsidy to the Provider in accordance with, and subject to, the requirements for payment set out in the Guidelines.

Transferred Wage Subsidy Participants

- 120.5 If the Department Notifies the Provider that it is required to provide Services to a Transferred Wage Subsidy Participant, the Provider must do so in accordance with clause 120.6, notwithstanding that the Transferred Wage Subsidy Participant may have been Exited.
- 120.6 The Provider must, in relation to a Transferred Wage Subsidy Participant referred to in clause 120.5:
- (a) promptly contact the Transferred Wage Subsidy Participant's Employer and use the Provider's best endeavours to enter into an agreement with the Employer:
 - (i) in relation to the relevant Wage Subsidy;
 - (ii) for the period advised by the Department; and
 - (iii) in accordance with any applicable Guidelines; and
 - (b) comply with clauses 120.1 to 120.3, and any direction by the Department, with regard to the relevant Wage Subsidy.

Employment Assistance Fund

- 120.7 The Provider may apply for assistance, or assist or act on behalf of an Employer to apply for assistance, under the Employment Assistance Fund with respect to a Participant.
- 120.8 If the Provider makes an application for assistance in accordance with clause 120.7, the Provider must, in accordance with the Employment Assistance Fund Guidelines:
- (a) submit the application to the JobAccess Provider;
 - (b) upon notification from the JobAccess Provider that the application has been approved, arrange for the purchase, from its own funds, of the Approved Assistance for the Participant who is the subject of the application; and
 - (c) submit a claim for Reimbursement of the Approved Assistance Amount through the Department's IT Systems.
- 120.9 The Department will Reimburse Approved Assistance Amounts to the Provider in accordance with, and subject to, the requirements for payment under the Employment Assistance Fund Guidelines.

Monitoring by the Department

120.10 Without limiting any other rights that the Department might have, the Department will monitor:

- (a) in relation to a Wage Subsidy, the Provider's payment and claims for Reimbursement of amounts paid; and
- (b) in relation to the Employment Assistance Fund, the Provider's claims for Reimbursement of Approved Assistance Amounts,

in accordance with this Deed and any applicable Guidelines.

120.11 In particular, the Department will monitor the Provider's use and Reimbursement of Approved Assistance Amounts under the Employment Assistance Fund in respect of any services, activities, facilities or products that have been purchased from the Provider's Own Organisation or a Related Entity.

120.12 The Provider acknowledges and agrees that:

- (a) an unethical manner for the purposes of clause 6.2(a) of this Deed includes any practice that:
 - (i) involves inappropriately:
 - (A) paying a Wage Subsidy; or
 - (B) applying for an amount under the Employment Assistance Fund; or
 - (ii) misuses or misappropriates:
 - (A) a Wage Subsidy; or
 - (B) an Approved Assistance Amount under the Employment Assistance Fund; and
- (b) the practices described in clause 120.12(a) may result in the Department taking action under clause 65 [Remedies for breach].

120.13 The Provider must do all things necessary to ensure that:

- (a) all payments to third parties with monies:
 - (i) paid for a Wage Subsidy; or
 - (ii) approved for expenditure under the Employment Assistance Fund,are authorised and made in accordance with this Deed and any applicable Guidelines, including the Employment Assistance Fund Guidelines; and
- (b) it maintains proper and diligent control over the incurring of all liabilities.

121. Supported Wage System

121.1 The Provider may assist or act on behalf of an Employer to make an online application in respect of the Supported Wage System, in accordance with the requirements at www.jobaccess.gov.au and any applicable Guidelines.

122. National Disability Recruitment Coordinator

122.1 The Provider must work cooperatively with the National Disability Recruitment Coordinator in order to:

- (a) refer Participants to Vacancies identified by the National Disability Recruitment Coordinator; and
- (b) identify and match the employment needs of the Participants.

Section 5G Ongoing Support

Information about Ongoing Support

Ongoing Support may be provided to Participants who:

- (a) have achieved a 26-week Employment Outcome; or
- (b) are existing employees who are eligible to receive Ongoing Support (Work Assist) to assist them to maintain their Employment.

There are three types of Ongoing Support:

- Flexible Ongoing Support – designed as a safety net for Participants who have been placed in Employment, and who require irregular or less predictable access to support to maintain their Employment;
- Moderate Ongoing Support – available for Participants who require regular access to support to maintain their employment; and
- High Ongoing Support – available for Participants who require significant support to maintain their Employment, either in hours of support or intensity.

The types of assistance the Program Provider will provide to Participants during Ongoing Support will depend on their individual circumstances and requirements.

Provided that the Participant satisfies the eligibility requirements, including an initial Ongoing Support Assessment, a Participant may continue to receive Ongoing Support subject to Ongoing Support Assessment reviews being conducted as described in the Guidelines.

If, at any time, a Participant requests to no longer receive Ongoing Support or the Program Provider considers that a Participant no longer requires Ongoing Support to retain their Employment, the Program Provider may:

- if the Participant is working toward a 52-week Outcome, move the Participant into Post Placement Support; or
- Exit the Participant

123. Entry into Ongoing Support

123.1 The Provider must assess the Participant, in accordance with clause 123.2 any applicable Guidelines, to determine whether the Participant:

- (a) requires Flexible Ongoing Support;
- (b) requires Moderate Ongoing Support;
- (c) requires High Ongoing Support; or
- (d) does not require Ongoing Support.

- 123.2 The Provider must assess the Post Placement Support Participant's need for Ongoing Support as the Participant is approaching a 26 week Employment Outcome, and between the 26 week and 52 week Employment Outcomes, if the Participant remains in Post Placement Support rather than moving to Ongoing Support after the 26 week Outcome.

Note: A Participant in Post Placement Support who is Exited from the NSDEP after achieving a 52 week Outcome, may re-enter the NSDEP as an Ongoing Support (Work Assist) Participant if in the future they have a need for Ongoing Support to maintain their employment.

- 123.3 If the Provider determines in accordance with clause 123.1 that the Participant requires Ongoing Support:
- (a) the Provider must arrange an Ongoing Support Assessment to verify the Provider's determination of the Participant's Ongoing Support needs as soon as possible; and
 - (b) if the Participant's Employment Outcome has an Anchor Date on or after 1 July 2025, the Provider may commence providing Flexible, Moderate or High Ongoing Support in accordance with any Guidelines:
- 123.4 If the Provider Directly Registers an employee as an Ongoing Support (Work Assist) Participant in accordance with clause 108.4 and clause 125.1, the Provider:
- (a) must arrange for an Ongoing Support Assessment of the Ongoing Support (Work Assist) Participant's need for Ongoing Support within eight weeks of the Registration; and
 - (b) may provide immediate support at the Moderate Ongoing Support level in the interim until the outcome of the Ongoing Support Assessment is finalised.
- 123.5 The assessment of:
- (a) the Provider under clause 123.1; or
 - (b) the Ongoing Support Assessor under clause 123.2 or 123.4,
- is the Participant's Current Assessment until any further Assessment is undertaken.
- 123.6 If an Ongoing Support Assessment confirms that the Participant or Ongoing Support (Work Assist) Participant:
- (a) needs Ongoing Support, the Provider will be entitled to claim Ongoing Support Fees when they fall due, in accordance with any applicable Guidelines; or
 - (b) does not require Ongoing Support, the Provider will only be entitled to claim for the first four weeks of Ongoing Support Fees in accordance with any applicable Guidelines.

124. Participant eligibility to receive Ongoing Support

- 124.1 Subject to clause 125 [Participant eligibility to receive Ongoing Support (Work Assist)] and any applicable Guidelines:
- (a) a Participant must remain in Employment to maintain their entitlement to receive Ongoing Support; and

- (b) if a Participant does not remain in Employment, the Provider must Exit the Participant from Ongoing Support in accordance with clause 152.11.

125. Participant eligibility to receive Ongoing Support (Work Assist)

- 125.1 To be eligible to receive Ongoing Support (Work Assist), a Participant must, in accordance with any Guidelines:
- (a) be currently employed;
 - (b) be assessed by the Provider as requiring Ongoing Support to maintain their job;
 - (c) have been working in that job over a consecutive period of 12 weeks, or there is an expectation that the job will last for at least 12 weeks;
 - (d) be aged at least 14 years of age but not have attained Age Pension qualifying age;
 - (e) be an Australian resident or a Temporary Protection Visa / Safe Haven Enterprise Visa holder;
 - (f) not be studying full time; and
 - (g) not be receiving assistance from another Program Provider.
- 125.2 Employees who are eligible for Ongoing Support (Work Assist) are not required to have an ESAt or JCA. The Provider must establish the eligibility of a Participant to receive Ongoing Support (Work Assist) and keep Documentary Evidence of the Participant's eligibility for Ongoing Support (Work Assist).

126. Obligation to provide Ongoing Support

- 126.1 Subject to:
- (a) clause 128 [Changing the Level of Ongoing Support for Participants]; and
 - (b) clause 124 [Participant eligibility to receive Ongoing Support],
- the Provider must provide Ongoing Support to each Participant who is eligible to receive Ongoing Support, in accordance with the Participant's Current Assessment, and any applicable Guidelines, until the Participant is Exited or resumes Pre-Employment Support or Post Placement Support.

127. Reviews of Ongoing Support

General

- 127.1 A Participant must receive an Ongoing Support Assessment review according to the interval determined by the Ongoing Support Assessor to provide an updated assessment of their need for Ongoing Support before they are provided further Ongoing Support, as detailed in the relevant Guidelines.

Flexible Ongoing Support

- 127.2 A Provider may only provide a maximum of six Instances of Contact to a Participant in any 26 calendar week period.

- 127.3 An Instance can cover an accumulated number of smaller Contacts that equate to performing the Services for a total of four hours (for example, telephone calls or emails), or a single Instance of more intensive support (for example, visiting the workplace to provide support).

128. Changing the Level of Ongoing Support for Participants

- 128.1 Subject to clause 128.2, the Provider:
- (a) may lower the Level of Ongoing Support provided to a Participant at any time; but
 - (b) must not increase the Level of Ongoing Support provided to a Participant above the level specified in the Current Assessment except as recommended by a Change of Circumstances Reassessment arranged in accordance with clause 130 [Change of Circumstances Reassessment during Ongoing Support].
- 128.2 The Provider may change the Level of Ongoing Support provided to a Participant before the first Ongoing Support Assessment is finalised.
- 128.3 The Provider may only change the Level of Ongoing Support provided to a Participant under this clause 128 after considering the Participant's circumstances and support requirements and in accordance with any Guidelines.

Note: Clause 128.2 applies only to Participants who enter Ongoing Support after completing a 26-week Employment Outcome and not to Participants who are entering Ongoing Support (Work Assist).

129. Updating the Department's IT Systems

- 129.1 The Provider must ensure that any decision made by the Provider under:
- (a) clause 123 [Entry into Ongoing Support];
 - (b) clause 127 [Reviews of Ongoing Support]; and
 - (c) clause 128 [Changing the Level of Ongoing Support for Participants],
- and the reasons for making the decision, are promptly recorded on the Department's IT Systems.

130. Change of Circumstances Reassessment during Ongoing Support

General

- 130.1 If during Ongoing Support:
- (a) a Participant's individual circumstances change; or
 - (b) the Participant discloses information,
- such that the Services recommended in the Participant's Current Assessment are no longer appropriate, the Provider:
- (c) must, if permitted under clause 128 [Changing the Level of Ongoing Support for Participants], provide the more appropriate Services to the Participant;
 - (d) must arrange for a Change of Circumstances Reassessment for the Participant to be conducted by an Ongoing Support Assessor; or

- (e) if the Participant no longer requires Ongoing Support, must perform a Provider Exit unless the Participant is moved back to Post Placement Support because they are progressing to a 52 week Employment Outcome.

130.2 If a Change of Circumstances Reassessment under clause 130.1 indicates that a Participant should not change Services, the Provider must continue providing the Services provided to the Participant prior to the Change of Circumstances Reassessment.

131. General rules about Assessments conducted by Ongoing Support Assessors

Restrictions on providing Ongoing Support Assessments to the Program Provider's Participants

131.1 If the Provider is appointed to the National Panel of Assessors, the Provider must not conduct an Ongoing Support Assessment or Change of Circumstances Reassessment for a Participant who is receiving Services from the Provider or a Related Entity.

131.2 If the Provider breaches clause 131.1, that breach may be treated by the Department as a breach of an essential term of this Deed which is not capable of remedy.

Note: Clause 77 [Conflict of interest] of the Deed also includes provisions relating to the prohibition and management of conflicts.

Program Provider to provide assistance to Ongoing Support Assessor

131.3 If reasonably requested by an Ongoing Support Assessor, the Provider must provide all necessary documentation and assistance to the Ongoing Support Assessor to assist in the conduct of an Ongoing Support Assessment or Change of Circumstances Reassessment.

131.4 The Department may, at any time, arrange for an Ongoing Support Assessment of a Participant, in which case that Ongoing Support Assessment becomes the Current Assessment.

Section 5H Job Plans

Information about Job Plans

The Job Plan underpins the provision of Services to a Participant. The Job Plan must be recorded on the Department's IT Systems and sets out an individualised pathway to sustainable Employment for each Participant who is required to have a Job Plan.

All Participants receiving Services are required to have a Job Plan, regardless of whether they have Mutual Obligation Requirements or Compulsory Requirements or are participating voluntarily.

Participants will gain the most from the NSDEP when they engage meaningfully with the Services and their Program Provider. Providers are encouraged to use case management strategies to support engagement, including goal setting and planning tools, rather than to rely on mandatory requirements in the Job Plan.

Each Job Plan must:

- be tailored to the needs of the individual Participant;
- set out the agreed activities to be undertaken to gain or maintain sustainable Employment; and
- include details of:

- the frequency of Contact agreed between the Provider and Participant;
- the timing and details of vocational and non-vocational activities that the Participant has agreed to undertake with the objective of the Participant gaining or maintaining Employment, such as Education, Training, counselling and work experience; and
- details of the Participant's obligations, if applicable, including meaningful engagement or detailed requirements outlining participation in Activities and Job Search Requirements.

For Participants (Mutual Obligation) and Disability Support Pension Recipients (Compulsory Requirements), their initial Job Plan will include the mandatory requirement to 'participate meaningfully in the NSDEP, by engaging with the Provider to prepare for, seek or maintain employment'. All other engagements (i.e. Contacts, Activities and Job Search) agreed to in the Job Plan will be voluntary, to the extent the engagements are not required in order to fulfill the meaningful engagement requirement.

For Participants (Mutual Obligation) and Disability Support Pension Recipients (Compulsory Requirements) who have not successfully achieved meaningful engagement will have a Job Plan with detailed requirements, the mandatory requirement to meaningfully engage in the NSDEP is replaced with a detailed range of mandatory requirements. A Job Plan with detailed mandatory requirements may also include voluntary activities.

For all other Participants, their Job Plan will contain only voluntary activities which would include meaningfully engaging in the NSDEP.

Program Providers must update each Job Plan regularly throughout the Participant's Period of Service and while the Participant is in Ongoing Support. The Provider must retain a copy of the Job Plan signed by Participants receiving the Services.

132. General requirements for a Job Plan

- 132.1 The Provider must ensure that, at all times, each Participant has a current Job Plan that is approved by a Delegate and signed by the Participant.
- 132.2 The Provider must ensure that the relevant Delegate complies with the Social Security Law and the rules set out in any Guidelines when entering into or updating a Job Plan.
- 132.3 The Provider must ensure that Job Plans for Participants with Mutual Obligation Requirements and Disability Support Pension Recipients (Compulsory Requirements) enable those Participants to meet their obligations under Social Security Law.
- 132.4 The Provider must provide assistance, and arrange and monitor the activities specified in each Participant's Job Plan.

Entering into a Job Plan

- 132.5 If, at the Initial Interview, a Participant does not have a Job Plan, the Provider must arrange for a Delegate to enter into a Job Plan with the Participant and explain the Job Plan to the Participant.
- 132.6 Without limiting the other requirements of this clause 132, the Delegate may require a Participant to enter into a new Job Plan instead of the existing agreed Job Plan.
- 132.7 The Provider must ensure that a Delegate reviews, and, if appropriate, amends, a Participant's existing Job Plan and explains the amended Job Plan to the Participant:
 - (a) at the Initial Interview;

- (b) by the end of the initial engagement period specified in clauses 113.5 and 113.6];
- (c) as required by clause 150 [Effect of Suspensions] and clause 151 [Management during Suspension];
- (d) when a Comprehensive Compliance Assessment is conducted;
- (e) after an Assessment;
- (f) during or after a Contact;
- (g) when the relevant Mutual Obligation Requirements for activities set out in the Job Plan for a Participant (Mutual Obligation) are completed or expire;
- (h) if a Participant's circumstances change such that the Job Plan becomes out of date, including in respect of activities that have been completed or have expired;
- (i) when the relevant Disability Support Pension Recipient (Compulsory Requirements) activities set out in the Job Plan for a Disability Support Pension Recipient (Compulsory Requirements) are completed or have expired; and
- (j) as otherwise Notified by the Department.

Contents of a Job Plan

132.8 The Provider must ensure that the Job Plan for a Participant (Mutual Obligation):

- (a) contains the terms with which the Participant (Mutual Obligation) must comply in order to satisfy their Mutual Obligation Requirements, including:
 - (i) the requirement to meaningfully engage in the NSDEP, by engaging with the Provider to prepare for, seek or maintain Employment; and
 - (ii) the Participant's personal responsibility for self-reporting participation against their Mutual Obligation Requirements, unless the Provider has assessed that the Participant is not capable of self-reporting in accordance with clause 134.1(a);
- (b) includes details of voluntary activities against which the Provider will assess the Participant's meaningful engagement in the NSDEP;
- (c) is amended to include details of any additional voluntary activities, if the Participant is:
 - (i) subject to an Exemption or fully meeting their Mutual Obligation Requirements; and
 - (ii) volunteers to participate in additional activities; and
- (d) is updated, within the timeframe specified in any Guidelines, when any event occurs that results in the need to change the Participant's Mutual Obligation Requirements or servicing (including to take into account the outcome of any Capability Interview or Capability Assessment).

132.9 If a Provider determines that a Participant (Mutual Obligation) is not meaningfully engaging in the NSDEP, in accordance with clause 132.8(a)(i), then the requirements set out in clauses 132.8(a)(i) and 132.8(b) must be removed from the Participant's Job

Plan and replaced by compulsory activities (such as Job Search Requirements and Attend Appointments) as outlined in Guidelines.

- 132.10 The Provider must ensure that the Job Plan for a Disability Support Pension Recipient (Compulsory Requirements):
- (a) contains at least one or more terms with which the Disability Support Pension Recipient (Compulsory Requirements) must comply in order to satisfy their compulsory requirements, including:
 - (i) the requirement to meaningfully engage in the NSDEP, by engaging with the Provider to prepare for, seek or maintain Employment; and
 - (ii) any other requirements as specified by Services Australia;
 - (b) includes a list of additional voluntary activities against which the Provider will assess meaningful engagement in the NSDEP; and
 - (c) is amended to include details of additional voluntary activities, if the Participant is:
 - (i) subject to an Exemption or fully meeting their compulsory requirements; and
 - (ii) volunteers to participate in additional activities.
- 132.11 If the Provider determines that a Disability Support Pension Recipient (Compulsory Requirements) is not engaging meaningfully in the NSDEP, in accordance with clause 132.10(a), then the requirements set out in clauses 132.10(a) and 132.10(b) must be removed and replaced by compulsory activities (such as Job Search Requirements and Attend Appointments) as outlined in Guidelines.
- 132.12 If a Participant is not a Participant (Mutual Obligation) or Disability Support Pension Recipient (Compulsory Requirements), the Provider must ensure that the Participant's Job Plan:
- (a) contains one or more activities that are voluntary; and
 - (b) includes, as a minimum, the Participant's agreement to meaningfully engage in the NSDEP, by engaging with the Provider to prepare for, seek or maintain Employment.
- 132.13 Each Job Plan must:
- (a) be negotiated and agreed with the Participant;
 - (b) be in a form approved by the Department in writing or set out in the Guidelines;
 - (c) contain terms that are specifically tailored to the Participant that take into account:
 - (i) the results of any Assessments, including assessed current and future work capacity;
 - (ii) the Participant's strengths, skills, experience and aspirations;
 - (iii) the Participant's type and nature of disability, illness, or health condition;

- (iv) the Participant's vocational and non-vocational barriers to Employment; and
- (v) the Services the Participant is receiving, including their current phase (i.e. Work Preparation, Job Search, Post Placement Support or Ongoing Support) and service offer (i.e. Intensive or Flexible Service);
- (d) specify:
 - (i) when each activity specified in the Job Plan will start and finish; and
 - (ii) the assistance the Participant will receive, including the assistance required to be provided by the Provider, during the Participant's Period of Service and during any period of Ongoing Support;
- (e) draw from a mix of vocational and non-vocational activities that the Participant agrees to undertake during the Participant's Period of Registration or, if relevant, while the Participant is receiving Ongoing Support, with a particular focus on developing the skills the Participant needs to improve their chances of obtaining or maintaining sustainable Employment or self-employment; and
- (f) specify the frequency and types of contact that the Participant agrees to have with the Provider during the Participant's Period of Registration or while the Participant is receiving Ongoing Support, as relevant.

132.14 The relevant Delegate must perform the following functions, and must comply with any applicable Guidelines, in relation to:

- (a) notifying the Participant of the:
 - (i) requirement to enter into a Job Plan; and
 - (ii) place and time at which a Job Plan is to be completed;
- (b) providing the Participant with information about their rights and obligations, including Job Search Requirements;
- (c) entering into a Job Plan;
- (d) the terms to be included in each Job Plan;
- (e) if a paper copy of a Job Plan is used:
 - (i) printing and physically signing the Job Plan;
 - (ii) providing a copy of that Job Plan to the Participant; and
 - (iii) retaining a copy of the signed Job Plan; and
- (f) if an electronic copy of a Job Plan is used, submitting the Job Plan on the Department's IT Systems for acceptance by the Participant;
- (g) taking steps to ensure the Participant complies with the terms of their Job Plan;
- (h) reviewing and amending an existing Job Plan;
- (i) cancelling or suspending a Job Plan;
- (j) creating and maintaining documentation in relation to a Job Plan;

- (k) entering information into the Department's IT Systems; and
- (l) undertaking any other function that is required to carry out the process of entering into, and implementing, a Job Plan.

Note: If a Job Plan is accepted online by a Participant, the Department's IT Systems will automatically retain a copy of the Job Plan.

132.15 To the extent that the Provider's performance of its obligations under this Deed requires a Delegate to comply with an obligation under the Social Security Law, the Provider must ensure that the Delegate complies with that statutory obligation.

Section 5I Compliance and the Targeted Compliance Framework

Information about Compliance

Program Providers must actively monitor and manage Mutual Obligation Requirements for each Participant (Mutual Obligation) and compulsory participation requirements for each Disability Support Pension Recipient (Compulsory Requirements), to assist the Participant to meet their obligation to actively look for work while in receipt of an Income Support Payment.

If the Provider determines that the Participant is not meeting their participation requirements (i.e. is non-compliant) the Provider must respond with the appropriate compliance action/s, in accordance with this Deed and any Guidelines.

Each Participant, including (Mutual Obligation) and Disability Support Pension Recipients (Compulsory Requirements) must enter to a Job Plan.

The Job Plan is a tool for monitoring whether a Participant is meeting the requirement of meaningfully engaging in the NSDEP. If the Participant is not meeting this requirement, the Provider should first seek to discuss with the Participant that they have identified a pattern of disengagement and take steps to try and increase overall engagement levels. If the Provider considers, and has evidence demonstrating, that a Participant has failed to meaningfully engage in the NSDEP and continues to not engage without valid reasons, then the Participant's Job Plan would need to change to include more detailed requirements as outlined in Section 5H [Job Plans].

For Participants (Mutual Obligation), instances of non-compliance must be actioned by the Provider under the targeted compliance framework. Under the targeted compliance framework, an Income Support Payment to a Participant (Mutual Obligation) may be suspended, reduced and/or cancelled. The targeted compliance framework will apply in the event that a Participant (Mutual Obligation):

- completely disengages from the Program Provider, having failed to meet the meaningful engagement requirement in the NSDEP, and does not respond to the attempts for contact by Provider;
- has a Job Plan with detailed requirements and fails to comply with mandatory requirements such as attending appointments, undertaking activities or taking action to gain Employment;
- refuses to accept an offer of suitable Employment; or
- becomes unemployed because of a voluntary act (except a reasonable act) or misconduct,

and the appropriate action has been taken by the Provider.

If a Mutual Obligation Failure or a Work Refusal Failure occurs, the Income Support Payments to the Participant (Mutual Obligation) will be suspended until a Reconnection Requirement is met by the Participant (Mutual Obligation). The Income Support Payment may then be back paid to the Participant (Mutual Obligation). Additionally, if the Participant (Mutual Obligation):

- does not meet their Reconnection Requirement within 4 weeks, Services Australia may cancel the Income Support Payment to the Participant (Mutual Obligation);
- has persistently committed Mutual Obligation Failures (determined largely by the accrual of Demerits) and does not have a Reasonable Excuse, Services Australia may also reduce their Income Support Payment (by either 50% or 100% for a period) or cancel their Income Support Payment; and
- does not have a Reasonable Excuse for a Work Refusal Failure, Services Australia may also cancel their Income Support Payment.

Participants can also receive a demerit for each Mutual Obligation Failure if they do not have an Acceptable Reason or Valid Reason for being unable to meet the requirement. Accrual of demerits identifies if a Participant has persistently committed Mutual Obligation Failures. Participants (Mutual Obligation) progress through three zones of the targeted compliance framework as they incur Demerits:

- Green Zone (no Demerits);
- Warning Zone (1 to 5 Demerits) – the Participant’s Income Support may be suspended; and
- Penalty Zone (more than 5 Demerits) – the Participant’s Income Support may be cancelled.

A ‘Fast-track’ failure moves the Participant’s Demerit count straight to three or five demerits. Fast-track failures include not attending a job interview or not acting on a Job Referral.

Participants are able to view their status as they progress through zones in the targeted compliance framework. Demerits expire after six months. If a Participant meets their requirements for 3 months while in the Penalty Zone, they return to the Green Zone.

If a Participant accrues three Demerits, the Provider must schedule and hold a Capability Interview with the Participant.

If a Participant accrues five Demerits, the Participant must attend a Capability Assessment with Services Australia.

For an Unemployment Failure, no Income Support Payment may be paid to the Participant (Mutual Obligation) for 4 weeks.

An incident of non-compliance by a Disability Support Pension Recipients (Compulsory Requirements) is not subject to the targeted compliance framework. Instead, the Provider must determine if they will inform Service Australia about any failure to meet a mandatory requirement. This includes where a Disability Support Pension Recipient (Compulsory Requirements):

completely disengages from the Provider, having failed to meet the requirement to meaningfully engage in the NSDEP, and does not respond to the attempts for contact by the Provider;

- has a Job Plan with detailed mandatory requirements and fails to comply with compulsory requirements such as attending appointments, undertaking activities or taking action to gain Employment,
- and the appropriate action has been taken by the Provider.

Services Australia will consider any non-compliance reported by Providers, and may impose financial sanctions in respect of the relevant Participant.

133. Mutual Obligation Requirements

133.1 For each Participant (Mutual Obligation), the Provider must, in accordance with any Guidelines:

- (a) ensure that the Participant understands:

- (i) their Mutual Obligation Requirements and what they must do to meet their Mutual Obligation Requirements, particularly prior to and during their participation in the NSDEP, if non-attendance will potentially result in the suspension or cancellation of Income Support;
- (ii) their personal responsibility to self-report participation against their Mutual Obligation Requirements (unless the Participant is assessed as not being capable of self-reporting under clause 134.1(a));
- (iii) the circumstances in which a:
 - (A) Mutual Obligation Failure;
 - (B) Work Refusal Failure;
 - (C) Unemployment Failure; and
 - (D) failure to meet a Reconnection Requirement,
 can occur, including in circumstances in which the Participant does not communicate an Acceptable Reason prior to failing to meet a Mutual Obligation Requirement; and
- (iv) the consequences for the Participant's Income Support Payment in the event that the Participant:
 - (A) persistently commits Mutual Obligation Failures without a Reasonable Excuse;
 - (B) commits a Work Refusal Failure without a Reasonable Excuse;
 - (C) commits an Unemployment Failure; or
 - (D) fails to meet a Reconnection Requirement;
- (b) assess the Participant's capability to take personal responsibility for self-reporting in accordance with clause 134.1;
- (c) actively monitor and record the participation of each Participant (Mutual Obligation) against their Mutual Obligation Requirements in accordance with clause 134 [Personal Responsibility and Monitoring] and clause 136 [Job Search Requirements];
- (d) respond to any non-compliance by a Participant with their Mutual Obligation Requirements in accordance with clause 138 [Compliance Action – Work Refusal Failures]; and
- (e) confirm, at least once every six months following the Commencement of each Participant (Mutual Obligation), that all relevant contact details are accurately reflected in the Department's IT Systems, including the phone number(s), email address and postal address of the Participant (Mutual Obligation).

134. Personal Responsibility and Monitoring

134.1 The Provider must:

- (a) when creating or updating a Job Plan for a Participant (Mutual Obligation), assess their capability to take personal responsibility for self-reporting participation against the Mutual Obligation Requirements set out in their Job

Plan, in accordance with any applicable Guidelines, and record the result of this assessment in the Department's IT Systems;

- (b) actively monitor the compliance of each Participant (Mutual Obligation) with the Mutual Obligation Requirements set out in their Job Plan, including as specified in:
 - (i) clause 134.2 for Mutual Obligation Requirements other than Job Search Requirements; and
 - (ii) clause 136 [Job Search Requirements] for Job Search requirements; and
- (c) actively monitor, and enter into the Department's IT Systems, the participation of Disability Support Pension Recipients (Compulsory Requirements), including their:
 - (i) attendance at Appointments;
 - (ii) entering into a current Job Plan; and
 - (iii) participation in Activities,

in accordance with any applicable Guidelines.

134.2 For each Participant (Mutual Obligation), the Provider must:

- (a) if the Provider assesses that the Participant is capable of self-reporting, confirm the Participant's self-reporting of; or
- (b) if the Provider assesses that the Participant is not capable of self-reporting, record for the Participant,

their participation against each of the Mutual Obligation Requirements scheduled in their Electronic Calendar:

- (c) no later than 5:00 pm on the day that the Engagement is scheduled to occur in the Participant's Electronic Calendar; or
- (d) as otherwise specified in any applicable Guidelines.

135. Active Management of Mutual Obligation Requirements

135.1 If the Provider is satisfied that a Participant (Mutual Obligation) has an Acceptable Reason for being unable to comply with a Mutual Obligation Requirement on the date or at the time the Mutual Obligation Requirement is scheduled to occur in their Electronic Calendar, the Provider must reschedule or remove the Mutual Obligation Requirement from the Electronic Calendar in accordance with any Guidelines.

135.2 A Participant (Mutual Obligation) will not commit a Mutual Obligation Failure if the relevant Mutual Obligation Requirement is rescheduled or removed by the Provider in accordance with clause 135.1.

135.3 For the avoidance of doubt, a Participant (Mutual Obligation) will not commit a Mutual Obligation Failure if clause 135.1 applies.

136. Job Search Requirements

- 136.1 The Provider must ensure that a Delegate:
- (a) specifies the Job Search Requirement for each Participant (Mutual Obligation) in their Job Plan; and
 - (b) ensures that the Job Search Requirement is appropriately and accurately recorded in the Job Plan for the Participant (Mutual Obligation) at all times during their Period of Service.
- 136.2 The Provider must ensure that each Participant (Mutual Obligation) is aware at all times:
- (a) of their current Job Search Requirement;
 - (b) that they must report details of their Job Searches through the Workforce Australia website, or directly to the Provider and the frequency of such provision; and
 - (c) how they can record their Job Searches for the purposes of clause 136.2(b).
- 136.3 The Provider must determine, as specified in any Guidelines, whether the Job Search efforts of each Participant (Mutual Obligation) or Disability Support Pension Recipient (Compulsory Requirements) satisfactorily meets their Job Search Requirement for each Job Search Period by:
- (a) if the Participant does not report details of their Job Searches through the Workforce Australia website, recording:
 - (i) in the Department's IT Systems; and
 - (ii) no later than 5:00 pm on the same day that each Job Search is reported, the number of Job Searches reported by the Participant directly to the Provider; and
 - (b) reviewing and confirming the quality of the Job Search effort reported by the Participant (whether through the Workforce Australia website or directly to the Provider) no later than five Business Days after the end of each Job Search Period.
- 136.4 The Department's IT Systems will identify if the number of Job Searches reported (whether through the Workforce Australia website or directly to the Provider) meets the Participant's Job Search Requirement for each Job Search Period.
- 136.5 Clause 137 [Compliance Action - Mutual Obligation Failures] will apply if the number or quality of Job Search efforts reported by a Participant with a Job Plan with detailed requirements fails to satisfy their Job Search Requirement for a Job Search Period.

137. Compliance Action - Mutual Obligation Failures

Same Business Day response to Mutual Obligation Failures

- 137.1 Subject to clause 137.2, if the Provider becomes aware that a Participant (Mutual Obligation) has apparently committed a Mutual Obligation Failure, the Provider must:
- (a) attempt to contact the Participant on the same Business Day on which the Provider becomes aware of the apparent Mutual Obligation Failure; and

- (b) if:
 - (i) there is contact between the Provider and the Participant on that day, comply with clause 137.4 immediately during that contact; or
 - (ii) clause 137.1(b)(i) does not apply, comply with clause 137.6.

Note: Details of a failure to comply with the Mutual Obligation Requirements are set out in the Guidelines.

137.2 If a Mutual Obligation Failure has occurred because:

- (a) the Participant has failed to self-report the required number of Job Searches by the end of a Job Search Period, then:
 - (i) clause 137.1 does not apply;
 - (ii) if the Participant's Reconnection Requirement is a Capability Interview or a Capability Assessment, the Provider must impose a Reconnection Requirement and schedule a date and time for the Reconnection Requirement to occur within the timeframe specified in any applicable Guidelines;
 - (iii) if the Participant does not have SMS or e-mail details recorded in the Department's IT Systems for automated notification, the Provider must send the notice prepared by the Department's IT Systems in response to the Mutual Obligation Failure to the Participant's postal address; and
 - (iv) if the Participant later contacts the Provider to discuss the Mutual Obligation Failure, the Provider must comply with clause 137.7 immediately during that contact; or
- (b) the Participant refused to enter into a Job Plan, then:
 - (i) clause 137.1 does not apply; and
 - (ii) the Provider must immediately comply with clause 137.6.

137.3 Clause 137.2(a) only applies in relation to the relevant number of Job Searches. Clause 141.1 applies if the Participant self-reports the required number of Job Searches but the quality of the Participant's Job Search effort is not adequate.

Successful same Business Day contact

137.4 For the purposes of clause 137.1(b)(i), the Provider must:

- (a) discuss with the Participant the circumstances of the apparent Mutual Obligation Failure; and
- (b) if the Provider considers that a Mutual Obligation Failure has been committed, comply with clause 137.5.

137.5 For the purposes of clause 137.4, the Provider must:

- (a) discuss the Participant's reasons for the Mutual Obligation Failure and assess if the Participant has a Valid Reason;
- (b) impose a Reconnection Requirement;

- (c) schedule a date and time for the Reconnection Requirement to occur within the timeframe specified in any Guidelines;
- (d) advise the Participant:
 - (i) of the action taken by the Provider under clauses 137.5(b), (c) and (f);
 - (ii) that their Income Support Payment will, as a minimum, remain suspended until they comply with their Reconnection Requirement;
 - (iii) of the effect of not complying with the Reconnection Requirement; and
 - (iv) if the Participant is identified as being in the penalty zone on the Department's IT Systems, that the Mutual Obligation Failure will be automatically referred to Services Australia;
- (e) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 137.5; and
- (f) take any other action specified in any Guidelines, including (if relevant):
 - (i) suspending the Participant's Income Support Payment; and
 - (ii) confirming a Demerit.

Unsuccessful or unrequired same Business Day contact

137.6 For the purposes of clause 137.1(b)(ii) and 137.2(b)(ii), the Provider must:

- (a) immediately:
 - (i) impose a Reconnection Requirement;
 - (ii) if the Participant does not have SMS or e-mail details recorded in the Department's IT Systems for automated notification, send the notice prepared by the Department's IT Systems in response to the Mutual Obligation Failure to the Participant's postal address;
 - (iii) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 137.6; and
 - (iv) take any other action specified in any Guidelines, including (if relevant), suspending the Participant's Income Support Payment; and
- (b) if the Participant later contacts the Provider to discuss the Mutual Obligation Failure, comply with clause 137.7 immediately during that contact.

137.7 For the purposes of clause 137.6(b), the Provider must:

- (a) discuss the circumstances of the apparent Mutual Obligation Failure and, if the Provider considers that a Mutual Obligation Failure has been committed:
 - (i) discuss the Participant's reasons for the Mutual Obligation Failure and assess if the Participant has a Valid Reason;
 - (ii) schedule a date and time for the Reconnection Requirement to occur within the timeframe specified in any Guidelines; and
 - (iii) advise the Participant of the action taken by the Provider under clause 137.7(a)(ii);

- (b) report the apparent Mutual Obligation Failure to Services Australia in the event that the Participant did not have a Valid Reason, including details of the apparent Mutual Obligation Failure;
- (c) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 137.7; and
- (d) take any other action specified in any Guidelines (including confirming or removing a Demerit where relevant).

Capability Interview

137.8 The Provider must conduct a Capability Interview in accordance with clauses 137.9 and 137.10 if a Participant (Mutual Obligation):

- (a) incurs, in any 6 Active Months:
 - (i) three or more confirmed Demerits; or
 - (ii) a confirmed Demerit for failing to attend a job interview, failing to behave appropriately at a job interview or failing to act on a Job Referral; and
- (b) has not been found incapable of meeting their Mutual Obligation Requirements during a Capability Interview or a Capability Assessment conducted within the preceding 60 days, calculated in accordance with the Guidelines.

137.9 During each Capability Interview, the Provider must:

- (a) ensure the Participant understands the purpose and potential outcomes of the Capability Interview;
- (b) review the Participant's Job Seeker Snapshot and:
 - (i) confirm that the Job Seeker Snapshot accurately reflects their current circumstances; or
 - (ii) if the Participant's Job Seeker Snapshot does not accurately reflect their current circumstances, conduct a Change of Circumstances Reassessment;
- (c) using the Capability Management Tool, identify and consider all known personal circumstances against the Participant's Mutual Obligation Requirements;
- (d) assess if the Participant's Mutual Obligation Requirements are appropriate to their circumstances and update the Participant's Job Plan if required; and
- (e) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 137.9.

137.10 Each Capability Interview must be:

- (a) conducted within two Business Days after the Participant incurring the Demerits referred to in clause 137.8(a); and
- (b) face to face,

except in allowable circumstances as specified in any applicable Guidelines.

Capability Assessment

- 137.11 If Services Australia has conducted a Capability Assessment for a Participant (Mutual Obligation), the Provider must:
- (a) review the outcome of the Capability Assessment and consider actioning any recommendations arising from the outcome; and
 - (b) if the Capability Assessment found that the Participant is not capable of meeting the Mutual Obligation Requirements in their Job Plan, ensure that a Delegate updates the Participant's Job Plan within the timeframe and as specified in the findings of the Capability Assessment and any applicable Guidelines.

Removing Demerits

- 137.12 If a Participant (Mutual Obligation) has incurred a Demerit for a Mutual Obligation Failure and the Provider subsequently becomes aware that:
- (a) the Mutual Obligation Failure relates to a Mutual Obligation Requirement that the Provider or Services Australia considers was not appropriate to the Participant's circumstances at the time;
 - (b) the Mutual Obligation Failure was:
 - (i) caused or substantially contributed to by previously undisclosed circumstances for which the Participant is now seeking treatment; and
 - (ii) the Provider is satisfied that a Valid Reason would have existed for the Mutual Obligation Failure had the relevant circumstances been disclosed at the time;
 - (c) the Mutual Obligation Failure occurred because the Participant failed to self-report the required number of Job Searches by the end of a Job Search Period or failed to enter into a Job Plan, and the Provider is satisfied that the Participant had a Valid Reason for the Mutual Obligation Failure; or
 - (d) the Mutual Obligation Failure or Demerit was recorded in error,
- the Provider must remove the Demerit, change the related Reconnection Requirement (if required), and record the reasons for removal on the Department's IT Systems, within one Business Day of becoming aware of the relevant matter, in accordance with any Guidelines.

- 137.13 If requested by:
- (a) a Participant (Mutual Obligation);
 - (b) the Department; or
 - (c) Services Australia,

the Provider must consider if clause 137.12 applies to a Demerit, and remove the Demerit if it does.

138. Compliance Action – Work Refusal Failures

- 138.1 If the Provider becomes aware that a Participant (Mutual Obligation) has apparently committed a Work Refusal Failure, the Provider must:
- (a) attempt to contact the Participant on the same Business Day on which the Provider becomes aware of the apparent Work Refusal Failure; and
 - (b) if:
 - (i) there is contact between the Provider and the Participant on that day, comply with clause 138.2 immediately during that contact; or
 - (ii) clause 138.1(b)(i) does not apply, comply with clause 138.4.
- 138.2 For the purposes of clause 138.1(b)(i), the Provider must:
- (a) discuss the circumstances of the apparent Work Refusal Failure (including any reason why the employment offered may not be suitable for the Participant); and
 - (b) if the Provider considers that a Work Refusal Failure has been committed, comply with clause 138.3.
- 138.3 For the purposes of clause 138.2(b), the Provider must:
- (a) discuss the Participant's reasons for the Work Refusal Failure and assess if the Participant has a Valid Reason;
 - (b) create a Work Refusal Failure Report and record the details and outcomes required in the Department's IT Systems; and
 - (c) take any other action specified in any applicable Guidelines.
- 138.4 For the purposes of clause 138.1(b)(ii), the Provider must:
- (a) no later than 10 Business Days after the Provider becomes aware of the apparent Work Refusal Failure:
 - (i) create a Work Refusal Failure Report and record the details and outcomes required in the Department's IT Systems; and
 - (ii) if the Participant does not have SMS or e-mail details recorded in the Department's IT Systems for automated notification, send the notice prepared by the Department's IT Systems in response to the Work Refusal Failure Report to the Participant's postal address;
 - (b) take any other action specified in any applicable Guidelines; and
 - (c) if the Participant contacts the Provider to discuss the apparent Work Refusal Failure, comply with clause 138.6 immediately during that contact.
- 138.5 If the Provider creates a Work Refusal Failure Report, the Participant's Income Support Payment will be suspended and a Reconnection Requirement must be set to make contact with the Provider. If the Participant does not contact the Provider within 4 weeks, the Participant's Income Support Payment will be cancelled.
- 138.6 For the purposes of clause 138.4(c), the Provider must:

- (a) discuss the circumstances of the apparent Work Refusal Failure (including any reason why the employment offered may not be suitable for the Participant);
- (b) if the Provider considers that a Work Refusal Failure has been committed, discuss the Participant's reasons for the Work Refusal Failure and assess if the Participant has a Valid Reason;
- (c) update the Work Refusal Failure Report (including by closing the Report if the Provider considers that no Work Refusal Failure has been committed) and record the details and outcomes required in the Department's IT Systems; and
- (d) take any other action specified in any Guidelines.

139. Compliance Action – Unemployment Failures

139.1 If the Provider becomes aware that a Participant (Mutual Obligation) has become unemployed apparently as:

- (a) a direct or indirect result of a voluntary act of the Participant; or
- (b) a result of the Participant's misconduct as an employee,

the Provider must:

- (c) attempt to contact the Participant on the same Business Day on which the Provider becomes aware of the unemployment; and
- (d) if:
 - (i) there is contact between the Provider and the Participant on that day, comply with clause 139.2 during that contact; or
 - (ii) clause 139.1(d)(i) does not apply, comply with clause 139.3.

139.2 For the purposes of clause 139.1(d)(i), the Provider must:

- (a) discuss the circumstances of the Participant becoming unemployed (including the Participant's reasons);
- (b) if the Provider considers it likely that the Participant became unemployed for a reason specified at clause 139.1(a) or 139.1(b), create an Unemployment Failure Report and record the details and outcomes required in the Department's IT Systems; and
- (c) take any other action specified in any applicable Guidelines.

139.3 For the purposes of clause 139.1(d)(ii) the Provider must:

- (a) immediately create an Appointment to occur within 20 Business Days after the Provider becomes aware of the apparent Unemployment Failure, if an Appointment is not already scheduled to occur within that time;
- (b) no later than 20 Business Days after the Provider becomes aware of the apparent Unemployment Failure, create an Unemployment Failure Report and record the details and outcomes required in the Department's IT Systems;
- (c) take any other action specified in any applicable Guidelines; and

- (d) during the next contact, or if the Participant contacts the Provider to discuss the apparent Unemployment Failure, comply with clause 139.4 during that contact.

139.4 For the purposes of clause 139.3(d), the Provider must:

- (a) discuss the circumstances of the apparent Unemployment Failure (including the Participant's reasons);
- (b) update the Unemployment Failure Report (including by closing the Report if the Provider considers that the Participant did not become unemployed for a reason specified at clause 139.1(a) or 139.1(b) and record the details and outcomes required in the Department's IT Systems; and
- (c) take any other action specified in any applicable Guidelines.

140. Non-compliance action for Disability Support Pension Recipients (Compulsory Requirements)

140.1 If the Provider becomes aware that any Disability Support Pension Recipient (Compulsory Requirements) has failed to comply with one or more of their Mutual Obligation Requirements by failing to:

- (a) attend an Appointment;
- (b) enter into a current Job Plan; or
- (c) appropriately participate in any Activities as specified in any Guidelines,

the Provider must attempt to contact the Disability Support Pension Recipient (Compulsory Requirements) on the same Business Day that the Provider becomes aware of the failure to comply.

140.2 For the avoidance of doubt, a Disability Support Pension Recipient (Compulsory Requirements) will not commit a Mutual Obligation Failure if clause 135.1 applies.

140.3 If the Provider has been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within ten Business Days after becoming aware of the failure to comply referred to in clause 140.1 and in accordance with any applicable Guidelines:

- (a) determine whether the failure to comply should be reported to Services Australia, considering whether reporting to Services Australia the non-compliance of the Disability Support Pension Recipient (Compulsory Requirements) with their Compulsory Requirements is likely to cause the Disability Support Pension Recipient (Compulsory Requirements) to engage with their Compulsory Requirements. The Provider may decide that the non-compliance of the Disability Support Pension Recipient (Compulsory Requirements) with their Compulsory Requirements does not need to be reported to Services Australia;
- (b) if the Provider determines that the failure of a Disability Support Pension Recipient (Compulsory Requirements) to comply with their Compulsory Requirements should be reported to Services Australia, record a comprehensive account of that failure in the Department's IT Systems and report that failure to Services Australia via the Department's IT Systems; and

- (c) if the Provider determines that the failure of the Disability Support Pension Recipient (Compulsory Requirements) to comply with their Compulsory Requirements should not be reported to Services Australia, use its best endeavours to ensure that the Disability Support Pension Recipient (Compulsory Requirements) complies with their Compulsory Requirements at the next available opportunity.

140.4 If the Provider has not been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within ten Business Days after becoming aware of the failure to comply referred to in clause 140.1:

- (a) determine whether any action should be taken under arrangements in relation to the failure of the Disability Support Pension Recipient (Compulsory Requirements) to comply with their Compulsory Requirements as specified in any applicable Guidelines; and
- (b) if the Provider determines that such action should be taken, document any information relevant to that failure in the Department's IT Systems and report that failure to Services Australia via the Department's IT Systems.

141. Delegate obligations

141.1 The Provider must ensure that Delegates:

- (a) are aware of, fully understand, and receive training on, the powers and functions that have been delegated to them under the Social Security Law including in relation to:
 - (i) preparation, approval and variation of Job Plans, including specifying Mutual Obligation Requirements in Job Plans;
 - (ii) setting the date, time and manner of participation (including by recording Engagements in the Electronic Calendar) for the requirements specified in the Job Plan for a Participant (Mutual Obligation);
 - (iii) identifying Mutual Obligation Failures and Work Refusal Failures; and
 - (iv) determining suspension of a Participant's Income Support Payment following a Mutual Obligation Failure or Work Refusal Failure, imposing Reconnection Requirements and giving appropriate notice of those requirements and the effect of not complying with them;
- (b) have, prior to taking action under this Section 5I in relation to any Participant (Mutual Obligation), successfully completed all mandatory targeted compliance framework training identified in the online Learning Centre; and
- (c) comply with the Social Security Law.

Section 5J Activities

142. Workplace safety in respect of Specified Activities

142.1 Prior to the commencement of a Specified Activity, and throughout the Specified Activity, the Provider must satisfy itself that there is a safe system of work in place, including that the relevant Activity Host Organisation is complying with:

- (a) work health and safety requirements applicable in the jurisdiction in which the Specified Activity occurs; and
- (b) relevant statutory workers' compensation requirements.

142.2 The Provider must:

- (a) prior to the commencement of a Participant in any Specified Activity undertake a risk assessment in accordance with the Guidelines and undertake any action identified in the risk assessment;
- (b) retain Records of each risk assessment referred to in clause 142.2(a) and any action taken in accordance with the risk assessment, and provide the relevant Records to the Department upon request; and
- (c) ensure that, in respect of any Specified Activity, each Activity Host Organisation is obliged to immediately advise the Provider of any proposed or actual changes to the tasks being undertaken by a Participant in respect of the Specified Activity or the circumstances in which those tasks are being undertaken.

142.3 If the Provider does not itself employ a Competent Person relevant to meeting the obligations in clauses 142.1 and 142.2, it must engage a relevant Competent Person, as required, for this purpose.

142.4 Prior to the commencement of a Participant in a Specified Activity, and at all times during each Specified Activity, the Provider must, in accordance with any Guidelines:

- (a) examine the relevant risk assessment to ensure that the Specified Activity is appropriate for the Participant being considered for placement, with regard to their health and safety, taking into consideration any relevant circumstances including the Participants' disability, injury or health condition and work restrictions and having regard, among other things, to the risk assessments undertaken by the Provider in accordance with clause 142.2 or any relevant risk assessment undertaken by an Employment Service Provider;
- (b) ensure that any required actions, identified in the relevant risk assessment, have been undertaken;
- (c) identify any training, including work health and safety training, that will be required to ensure that the 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 Specified Activities;
- (d) ensure that all appropriate facilities (such as toilets and access to drinking water) are available to all Participants for the duration of the Specified Activities;
- (e) identify if any specific equipment, clothing or materials are required for Participants to participate safely in the relevant activities, and ensure that such materials are provided to Participants;
- (f) ensure that the Participant being considered for placement in the Specified Activity has been advised of the process for reporting any work health and safety issues regarding the Specified Activities; and

- (g) purchase or fund additional insurance for the Specified Activity if required.

Incidents

142.5 The Provider must Notify the Department as soon as possible, and at the latest within 24 hours, following any incident relating to any Specified Activity, including:

- (a) any accident, injury or death occurring during, or as a result of, the Specified Activities, including in relation to a Participant or a member of the public;
- (b) any incident that relates to a work, health and safety issue; and
- (c) any incident that may have a negative impact upon the NSDEP or bring the Specified Activities into disrepute.

142.6 If the incident referred to in clause 142.5 is an accident, or involves injury or death, irrespective of whether the injured party makes a claim at the time of the incident, the Provider must also, as soon as possible, and at the latest within 24 hours, following the incident:

- (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 incident; and
- (c) provide a copy of the incident Report to the Relationship Manager.

143. Supervision of Specified Activities

Note: Supervisors may be engaged or employed by the Provider or a Subcontractor to supervise Activities or may be engaged or employed by Activity Host Organisations to supervise Activities that they provide. Providers are responsible for organising Supervision in relation to Activities they provide and for conducting relevant checks on their Personnel and Supervisors prior to their involvement.

143.1 The Provider must, subject to and in accordance with any applicable Guidelines, ensure that:

- (a) it or, if relevant, each Activity Host Organisation, provides adequate and appropriate Supervision so that relevant Participants are undertaking appropriate tasks and operating in a healthy and safe environment;
- (b) the Supervision provided is continuous over the entire duration of the Activity, if any Activity involves:
 - (i) people who are elderly, who have a disability (or are otherwise vulnerable (excluding other Participants));
 - (ii) Children (excluding other Participants); or
 - (iii) the Provider otherwise considers that Supervision should be continuous having regard to the nature of the tasks to be undertaken, the potential Participants in the Activity and any risks identified in the relevant risk assessment.

143.2 The Provider must conduct relevant checks on all Participants and all relevant Personnel and Supervisors in accordance with clause 20.

- 143.3 The Provider must ensure that any:
- (a) Provider Personnel or Activity Host Organisation Personnel who has direct involvement in (including if they have close contact with Participants); and
 - (b) Supervisor for,
- any Specified Activity has an appropriate level of skill/knowledge, training and/or experience in:
- (c) each part of the Activity in which they are involved; and
 - (d) working with, training and supervising individuals in such activities.
- 143.4 The Department may give Notice, on reasonable grounds related to the conduct of any Activity, requiring the Provider to remove or arrange for the removal, from work on the Activity, of any:
- (a) Provider Personnel or Activity Host Organisation Personnel that has direct involvement in the Activity (including if they have close contact with Participants); and/or
 - (b) Supervisor, whether they are engaged by the Provider, any Subcontractor or any Activity Host Organisation.
- 143.5 If the Department gives a Notice under clause 143.4, the Provider must, at its own cost, promptly remove or arrange for the removal of the relevant Personnel or Supervisor from work on the Activity and their replacement with one or more Personnel or Supervisors acceptable to the Department.
- 143.6 The Provider must ensure that each Supervisor, whether engaged by the Provider, a Subcontractor or an Activity Host Organisation, is aware of the requirement to notify the Provider of:
- (a) the non-attendance at any relevant Activities; and
 - (b) any other non-compliance in connection with the Activities,
- of a Participant as soon as practicable, in accordance with any applicable Guidelines.
- 143.7 All Supervisors who:
- (a) are contracted by the Provider to provide Supervision for any Specified Activity; and
 - (b) are not employees of the Provider,
- are deemed to be approved Subcontractors for the purposes of clause 61.

Section 5K Review and Reassessment

144. Change of Funding Level

- 144.1 The Provider may request a review of the Participant's Funding Level, in accordance with any applicable Guidelines.

145. Change of Circumstances Reassessment during Period of Service

- 145.1 If, during a Participant's Period of Service:

- (a) the Participant's individual circumstances change; or
- (b) the Participant discloses information,

such that the Services recommended in the Participant's Current Assessment are no longer appropriate, the Provider must arrange for a Change of Circumstances Reassessment for the Participant to be conducted by Services Australia Assessment Services.

Note 1: The Services recommended in a Participant's Current Assessment may no longer be appropriate because, for example, the Participant no longer requires Services or an Other Service is recommended.

Note 2: Clause 145 does not apply to Participants in Ongoing Support (including Ongoing Support (Work Assist) Participants), and these Participants are subject to separate Change of Circumstances Reassessments under clause 130 [Change of Circumstances Reassessment during Ongoing Support].

- 145.2 If a Change of Circumstances Reassessment under clause 145.1 indicates that a Participant should have no change of Services, the Provider must continue providing the Services provided to the Participant prior to the Change of Circumstances Reassessment.

Note: Clause 152.13 provides that a Participant must be Exited if an ESAt or JCA recommends that Services are no longer appropriate.

Section 5L Participant Relocation and Transfer

146. Transfers to and from the Provider

- 146.1 The Department or Services Australia may transfer a Participant between the Provider and another Program Provider, in accordance with any applicable Guidelines, if, at any time:
- (a) after moving to a new location, the Participant's new location is not within a reasonable distance of a Site of the Provider or a site of the other Program Provider (as applicable), and the Participant requests a transfer;
 - (b) the Participant requests a transfer;
 - (c) the Department is satisfied that:
 - (i) the Participant will receive better services from the Provider or the other Program Provider (as applicable), that could enhance their employment prospects; or
 - (ii) the Provider or the other Program Provider (as applicable) and the Participant are unable to achieve or maintain a reasonable and constructive service relationship;
 - (d) the Provider, the Participant, and the other Program Provider agree to the Participant transferring to the Provider or the other Program Provider (as applicable);
 - (e) the Department decides to transfer a Participant for any other reason at its absolute discretion; or
 - (f) as otherwise specified in any Guidelines.

146.2 For clarity, any transfer of a Participant from another Program Provider to the Provider that occurs pursuant to this clause 146 constitutes a Referral for the purposes of this Deed. For further clarity, this clause 146 does not apply in respect of the relocation of a Participant pursuant to clause 148 [Relocation of Participant].

147. Provider obligations on transfer

147.1 If a Participant is transferred by the Department or Services Australia to or from the Provider pursuant to clause 146 [Transfers to and from the Provider], the Provider must in accordance with any Guidelines:

- (a) immediately facilitate and cooperate with the transfer so as to enable Services to continue to be provided to the Participant;
- (b) comply with any directions by the Department regarding the transfer or destruction of Deed Material and Commonwealth Material, including Records stored in External IT Systems;
- (c) otherwise maintain all Records relating to the Participant in accordance with clause 46 [Records the Provider must keep]; and
- (d) comply with the Department's directions in relation to the redirection of Participants.

148. Relocation of Participant

148.1 If a Participant moves to a new location and the Participant's new location is within a reasonable distance of a Site of the Provider, the Provider must continue to provide Services to the Participant at no additional cost to the Department.

Section 5M Participant Suspension and Exit from Services

149. Suspensions

149.1 A Participant may, at any time, become subject to a Suspension:

- (a) by Services Australia or the Department, in which case the Department's IT System will identify that the Participant has been Suspended; or
- (b) by the Provider if required to Suspend the Participant in accordance with any Guidelines.

149.2 The Provider must, in accordance with any Guidelines, record in the Department's IT Systems any changes in the Participant's circumstances that may result in a Participant being Suspended or no longer being Suspended.

150. Effect of Suspensions

150.1 If a Participant is Suspended:

- (a) the Period of Service, Period of Registration or Ongoing Support, as the case may be for the Participant, is paused and recommences, subject to this Deed, at the end of the Suspension; and
- (b) the Department's IT Systems will identify if a Participant is Suspended.

- 150.2 Following the date on which the Provider has been notified that the Suspension has been lifted, the Provider must immediately resume providing Services to the Participant, review the Participant's servicing needs, and review the Participant's Job Plan and update it with the Participant as required.

151. Management during Suspension

- 151.1 If the Provider identifies, or is notified by Services Australia, that a Participant that is Suspended due to fully meeting their Mutual Obligation Requirements then ceases to fully meet their Mutual Obligation Requirements, the Provider must take action in accordance with any Guidelines.
- 151.2 If the Provider identifies, or is notified by Services Australia, that a Participant has decided to voluntarily participate in NSDEP while they are Suspended, the Provider must, taking into account the reason for the Suspension and in accordance with any Guidelines:
- (a) discuss and agree with the Participant on what voluntary activities they will participate in;
 - (b) record on the Department's IT Systems that the Participant is participating as a Volunteer (Mutual Obligation) or Volunteer (Non-Mutual Obligation) as applicable; and
 - (c) provide Services to the Participant in accordance with their updated Job Plan for the period of the agreed voluntary activity.
- 151.3 If a Participant is Suspended and does not volunteer to participate in Services, the Provider may cease providing Services to the Participant until the cessation of the Suspension, in accordance with any Guidelines.
- 151.4 If the Provider identifies, or the Provider is notified by Services Australia, that a Volunteer (Mutual Obligation) or Volunteer (Non-Mutual Obligation) has experienced a situation that means they are unable to continue participating voluntarily in the Services while Suspended, the Provider must immediately record this on the Department's IT Systems.
- 151.5 A Volunteer (Non-Mutual Obligation) who has been suspended for six months must be automatically Exited from the Services.

152. Effect of Exits

- 152.1 A Participant is Exited when:
- (a) an Effective Exit occurs;
 - (b) a Departmental Exit occurs;
 - (c) a Provider Exit occurs; or
 - (d) any other event that the Department may advise the Provider of from time to time or specified in any Guidelines occurs.
- 152.2 If an event under clause 152.1 occurs, the Provider must cease providing Services to a Participant unless clause 152.4 or clause 120.5 applies.

- 152.3 Subject to clauses 152.3 and 120.5, when a Participant is Exited in accordance with this Section 5L [Participant Suspension and Exit from Services], the Period of Service for the Participant ends.
- 152.4 Subject to clause 152.5, if a Participant is Exited and returns to the Services less than 13 Consecutive Weeks after the date of the Exit, the Participant's previous Period of Service is deemed to continue from the date of the return and the Provider must, as soon as it becomes aware of the return:
- (a) resume providing Services to the Participant; and
 - (b) record the resumption of Services on the Department's IT Systems, in accordance with any Guidelines.
- 152.5 A Participant who returns to the Services after Exiting, unless they are returning as an Ongoing Support (Work Assist) Participant, must have a Valid ESAt or JCA, except if:
- (a) the Exit occurred while the Participant was receiving Ongoing Support;
 - (b) the Participant Exited as an Independent Worker; or
 - (c) the Participant achieved a 26-week Employment Outcome, following which the Participant ceased Employment and Exited,

in which case the Participant must receive a New ESAt and, subject to that ESAt, begin a new Period of Service.

- 152.6 If an Exit occurs and the Participant subsequently returns to the Services at 13 Consecutive Weeks or more after the date of the Exit, the Participant must have a Valid ESAt or JCA and, subject to that ESAt or JCA, begin a new Period of Service, unless the Participant is returning as an Ongoing Support (Work Assist) Participant (in which case the Participant does not require a Valid ESAt or JCA).

Note: Clause 152.6 does not preclude the Participant from returning to the Provider.

- 152.7 If Services Australia notifies the Provider that a Participant (Mutual Obligation):
- (a) stops receiving Income Support Payments; or
 - (b) commences Education or Training that changes their income support status to Austudy, Abstudy or Youth Allowance (Student); and
 - (c) the Participant advises the Provider that they do not wish to receive Services,
- the Provider must, subject to clause 152.8, perform a Provider Exit for the Participant.
- 152.8 If a Participant (Mutual Obligation) advises the Provider that they wish to continue to receive Services, the Provider must update the Participant's record on the Department's IT Systems, specify that the Participant is a Volunteer (Non-mutual Obligation) and update the Participant's Job Plan with the Participant.

Volunteers (Mutual Obligation)

- 152.9 If a Volunteer (Mutual Obligation):
- (a) ceases to participate in voluntary activities;
 - (b) no longer wishes to participate in voluntary activities; and

- (c) the Provider has confirmed that the Volunteer (Mutual Obligation) is:
 - (i) either fully meeting their Mutual Obligation Requirements or is the subject of an Exemption; and
 - (ii) the Volunteer (Mutual Obligation) is eligible for a Provider Exit in accordance with any Guidelines,

the Provider may perform a Provider Exit for the Volunteer (Mutual Obligation).

Volunteers (Non-mutual Obligation)

152.10 If a Volunteer (Non-mutual Obligation) advises the Provider that they do not wish to continue to participate in voluntary activities, the Provider must perform a Provider Exit for the Volunteer (Non-mutual Obligation).

Ongoing Support

152.11 The Provider must perform a Provider Exit, in accordance with any Guidelines, of a Participant receiving Ongoing Support if:

- (a) the Provider considers that a Participant no longer requires Ongoing Support;
- (b) the Provider considers that a Participant that has achieved a 52-week Outcome no longer requires Ongoing Support;
- (c) the Provider considers that a Participant that is an Ongoing Support (Work Assist) Participant no longer requires Ongoing Support;
- (d) an Ongoing Support Assessor recommends that a Participant that has achieved a 52-week Outcome or is an Ongoing Support (Work Assist) Participant no longer requires Ongoing Support;
- (e) the Participant has achieved a 52 week Employment Outcome and requests to leave Ongoing Support;
- (f) the Participant is an Ongoing Support (Work Assist) Participant and requests to leave Ongoing Support; or
- (g) the Participant ceases to be in Employment, Unsubsidised Self-Employment, Traineeship or Apprenticeship (excluding any time during a Voluntary Change in Employment).

152.12 If a Participant receiving Moderate Ongoing Support or High Ongoing Support is Suspended for more than 12 months, the Provider must perform a Provider Exit of the Participant, in accordance with any Guidelines.

Note: A Participant who is Exited may again commence or resume Services, if specified in this Deed or any Guidelines.

Services no longer appropriate

152.13 If an Ongoing Support Assessment, ESA or JCA recommends that Services are no longer an appropriate service for a Participant, the Provider must perform a Provider Exit of the Participant in accordance with any Guidelines.

Program Summaries

152.14 The Provider must complete a Program Summary on the Department's IT Systems for each Participant within the following timeframes:

- (a) within 20 Business Days after the Exit if:
 - (i) Services Australia Exits the Participant for any reason; or
 - (ii) the Participant is transferred to another Program Provider or to Supported Employment Services; or
- (b) within five Business Days after an Exit for any other reason.

Participant Exit notifications

152.15 If a Participant is Exited for any reason, the Provider must provide the Participant with an Exit notification within 14 calendar days of the Exit, in accordance with the Guidelines.

153. Other Suspensions and Exits

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

154. Information about access to records after Exit

154.1 Providers should note that the Department's IT Systems will automatically notify Services Australia when a Participant Exits for any reason. Providers will only be granted access to the Participant's records in the Department's IT Systems for 28 calendar days from the date of the Participant's Exit.

Section 5N Fees and Ancillary Payments

Information about Fees

The Fees the Department may pay the Provider consist of:

- Service Fees;
- Progress Fees
- Outcome Fees (Full and/or Partial);
- Flexible Ongoing Support Fees, Moderate Ongoing Support Fees and High Ongoing Support Fees;
- the Moderate Intellectual Disability Payment.

The amounts of the Fees listed above are set out in tables in Annexure B1 to this Deed.

155. General

155.1 A Provider will only be entitled to receive a Fee from the Department if the requirements for payment of that Fee have been met in accordance with this Deed and any Guidelines.

155.2 Without limiting the Department's rights to take action under clause 65 [Remedies for breach], if the Department pays the Provider any Fee, and if the Department then determines that, in the case of:

- (a) a Service Fee;
- (b) a Progress Fee;

- (c) an Outcome Fee;
- (d) an Ongoing Support Fee;
- (e) a Moderate Intellectual Disability Payment; or
- (f) any other Fee,

the requirements which must be satisfied to qualify for payment of that Fee have not been met, the Department may, taking into account the extent and nature of the failure, at its absolute discretion and without limiting any of the Department's rights under this Deed or at law, recover some or all of the Fees paid for the relevant Service, or for other Services for which a Fee is payable, and the amount of the Fees is a debt due to the Department in accordance with clause 27 [Debts and offsetting].

155.3 The Provider acknowledges that if:

- (a) a Participant moves from a Complementary Service into an Employment related activity that satisfies the requirements for an Outcome; and
- (b) the service provided under the Complementary Service provides the same or a similar service to a Service provided under this Deed,

the Provider may only claim an amount equal to the difference between:

- (c) the Outcome Fee, plus any Moderate Intellectual Disability Payment, payable under this Deed in relation to the Employment related activity; and
- (d) the fee, if any, payable to the relevant Complementary Services provider in relation to the same Employment related activity under any contract with the Commonwealth, or any State or Territory Government.

155.4 The Provider must:

- (a) ensure that any of its Personnel that are required to submit claims for Payment, have successfully completed Claims Processing Training prior to submission of any claim for Payment to the Department by them; and
- (b) when requested by the Department, provide evidence that the relevant Personnel have successfully completed Claims Processing Training.

156. Adjustment of Fees

156.1 The Department will adjust the Fees, if appropriate:

- (a) on 1 July each year during the Deed Term, to reflect changes to inflation during the preceding Financial Year. The applicable inflation index will be determined by the Department in its absolute discretion; and
- (b) at any time during the Deed Term at the Department's discretion, to reflect the impact of any recalibration of the Participant Investment Funding Model that assigns Participants into Funding Levels and Fees associated with those Funding Levels, which occurs to reflect changes in likelihoods of obtaining employment.

156.2 The adjusted Fees will be given effect by the Department issuing a Notice to Providers that includes a replacement Annexure B1 [Fees] setting out the adjusted Fees applicable to the relevant Financial Year.

157. Advance Payment

- 157.1 The Department may, in its sole discretion, from time to time Notify the Provider that the Provider may claim a Payment in advance, the amount that may be claimed, and any related conditions.
- 157.2 Subject to this Deed, if the Provider claims a Payment in advance in accordance with a Notice from the Department under clause 157.1, and any other requirements Notified to the Provider by the Department prior to the claim, the Department will pay the Provider the amount of the relevant advance Payment specified in the relevant Notice(s).

Offsetting of advance Payments

- 157.3 On and from the date on which the Department pays a Payment in advance under this clause 157, the Department will, in such amounts and at such times as it determines, offset any valid claims for Payment against the advance Payment of Fees, until the total of the offset valid claims equals the total amount of the all Payments made in advance.
- 157.4 If on the expiry or termination of this Deed the total amount of all advance Payments paid under this clause 157 have not been offset under clause 157.3, the difference between:
- (a) the total amount of the advance payments of Fees; and
 - (b) the total amount of the offset valid claims for payment,
- is an overpayment for the purposes of clause 25.1.

158. Funding Levels for Participants

- 158.1 When specified in this Deed, Service Fees and Outcome Fees in relation to a Participant will be payable at the following Funding Levels according to the Participant Investment Funding Model:
- (a) Funding Level 1;
 - (b) Funding Level 2;
 - (c) Funding Level 3;
 - (d) Funding Level 4;
 - (e) Funding Level 5.

Eligible School Leaver Directly Registered

- 158.2 If a Provider Commences an Eligible School Leaver in accordance with clause 108 [Direct Registration of Participants without a Referral], the Participant will be deemed to have an employment benchmark of 8 hours and the Funding Level for that Participant will be determined by the Department's IT Systems using the Participant Investment Funding Model, or by reference to any Guidelines.

159. Service Fees

- 159.1 Subject to this Deed and any Guidelines, , the Department will pay the Provider a Service Fee in relation to a Participant in the amount specified in Annexure B1:

- (a) as applicable, for services delivered when a Participant receives Pre-Employment Support;
- (b) in arrears for 28 calendar days of servicing;
- (c) which will be pro-rated and calculated on a daily basis; and
- (d) based on the Participant's Funding Level and whether the Participant is in the Flexible Service or the Intensive Service.

159.2 The Service Fee:

- (a) will be payable while the Participant is receiving Pre-Employment Support from the Provider; and
- (b) will not be payable for any calendar day that the Participant is Suspended.

159.3 If a Participant transfers between Program Providers for any reason, the Department will:

- (a) pay any applicable Service Fee to the Gaining Provider from the date on which the transferred Participant's Period of Registration begins with the Gaining Provider; and
- (b) pay the Relinquishing Provider the applicable pro-rata amount of the Service Fee for the number of days commencing on the start of the relevant 28 day period until the date on which the transfer occurs.

160. Progress Fees

160.1 The Department will pay the Provider a Progress Fee as specified in Annexure B1 for a Participant if, while in Pre-Employment Support, there is an improvement in the Participant's work readiness and progress towards Employment as determined in accordance with any Guidelines provided that:

- (a) a maximum of two Progress Payments may be claimed for a Participant by the Program Provider within a 12 month period; and
- (b) the Provider has complied with any Guidelines relating to Progress Payments.

161. Outcome Fees

161.1 Subject to this Deed and clauses 161.2 to 161.3, the Department will pay the Provider the applicable Outcome Fee specified in Table 3 of Annexure B1 for an Employment Outcome provided that:

- (a) the Job Placement Start Date and/or Anchor Date for the Outcome:
 - (i) is entered on the Department's IT Systems in accordance with this Deed and any Guidelines; and
 - (ii) occurs after Commencement,
- (b) the Employment Outcome satisfies the requirements specified in Row 1 or Row 2 (as applicable) of Table 1 in Annexure B2; and
- (c) the Provider has adhered to any requirements for claiming an Outcome Fee as specified in any Guidelines.

161.2 The Department will not pay, and the Provider must not claim, an Outcome Fee under clause 161.1:

- (a) on a pro rata basis;
- (b) in relation to a Non-Payable Outcome (except as specified in any Guidelines);
- (c) for a Partial Outcome in relation to a Participant who:
 - (i) upon Commencement, is working at a level that would meet the requirements set out in paragraphs (d)(i-iv) in Column C of Row 1 in Table 1 in Annexure B2; and
 - (ii) remains at that same level in the same Pre-Existing employment related activity, in accordance with any Guidelines; or
- (d) in any other circumstances specified in any Guidelines.

161.3 The Provider must not claim:

- (a) a 26-week Partial Outcome Fee or a 26-week Full Outcome Fee in relation to a Participant during a Period of Service unless a 12-week Partial Outcome Fee or a 12-week Full Outcome Fee has been paid in relation to that Participant during that same Period of Service; or
- (b) a 52-week Outcome Fee in relation to a Participant during a Period of Service unless a 26-week Partial Outcome Fee or a 26-week Full Outcome Fee has been paid in relation to that Participant during the same Period of Service.

162. Moderate Intellectual Disability Payment

162.1 Subject to this Deed and in accordance with this clause and any Guidelines, the Department will pay the Provider a Moderate Intellectual Disability Payment in relation to each Moderate Intellectual Disability Participant.

162.2 A Moderate Intellectual Disability Payment is payable by the Department:

- (a) in the amount specified in Annexure B1, as applicable to the Moderate Intellectual Disability Participant;
- (b) for a Full Outcome, if, for the duration of a 12-week Period or a 26-week Period, or 52-week Period the Moderate Intellectual Disability Participant works a minimum of 195 hours in 12 Consecutive Weeks (for the 12-week Period) or 390 hours in 26 Consecutive Weeks (for the 26-week Period or 52-week Period); and
- (c) when, in each instance, the Moderate Intellectual Disability Participant also meets the requirements for payment of an Outcome Fee under paragraph (e)(i), (ii) or (iii) of the definition of Full Outcome in Row 2 of Table 1 of Annexure B2, in accordance with clause 161 [Outcome Fees], respectively.

162.3 The Provider must submit a claim for payment of a Moderate Intellectual Disability Payment in accordance with any Guidelines.

163. Ongoing Support Fees

Flexible Ongoing Support Fees

- 163.1 A Flexible Ongoing Support Fee will be payable in relation to an Instance of Flexible Ongoing Support.
- 163.2 Subject to this Deed, including clause 127 [Reviews of Ongoing Support] and clause 163.4, the Department will pay the Provider a Flexible Ongoing Support Fee in relation to a Participant in the amount specified in Annexure B1 as applicable to the Participant.
- 163.3 The Provider must only claim a Flexible Ongoing Support Fee for Instances of Flexible Ongoing Support provided for a Participant in accordance with this Deed and any Guidelines.
- 163.4 Subject to this Deed, including clause 127.2 and clause 163.3 if a Participant who is receiving Flexible Ongoing Support transfers from another Program Provider to the Provider for any reason, the Department will pay the Gaining Provider a Flexible Ongoing Support Fee for Instances of Flexible Ongoing Support provided to the Participant from the date of transfer, irrespective of any Flexible Ongoing Support Fees paid to the Relinquishing Provider in relation to the Participant, prior to the date of transfer.

Moderate Ongoing Support Fees

- 163.5 A Moderate Ongoing Support Fee will be payable in relation to the period when a Participant receives Moderate Ongoing Support and requirements for the payment, including any minimum number of Contacts, are met as specified in any Guidelines.
- 163.6 Subject to this Deed, including clauses 163.7 to 163.11, the Department will pay the Provider a Moderate Ongoing Support Fee in relation to Participant for each four-week period (excluding any time during a Voluntary Change in Employment), in the amount which applies to the Participant, as specified in Annexure B1.
- 163.7 Subject to clauses 163.5 to 163.11, the first Moderate Ongoing Support Fee for a Participant will be payable four weeks (excluding any time during a Voluntary Change in Employment) after commencement in Moderate Ongoing Support.
- 163.8 Subject to clauses 163.5 to 163.11, and if the Department agrees, the Provider may claim a Moderate Ongoing Support Fee quarterly, and the quarterly amount payable will be calculated in accordance with clause 163.6.
- 163.9 When a Moderate Ongoing Support Fee is claimed quarterly, clause 163.7 is to be read as if the first Moderate Ongoing Support Fee will be payable 13 weeks after the Participant's commencement in Moderate Ongoing Support.
- 163.10 If a Participant who is receiving Moderate Ongoing Support transfers from another Program Provider to Provider for any reason, the Department will pay both the Relinquishing Provider and the Gaining Disability Employment Services – Employment Support Service Provider a pro-rata amount of the Moderate Ongoing Support Fee payable in accordance with clauses 163.5 to 163.7 for the four-week period in which the date of transfer occurs.
- 163.11 The pro-rata amount of the Moderate Support Fee payable in accordance with clause 163.10 will be calculated:

- (a) for the Relinquishing Provider, based on the period of time from the commencement of the four-week period in which the date of the transfer occurs to the date of the transfer recorded on the Department's IT Systems; and
- (b) for the Gaining Provider, based on the period of time from the date of the initial Contact with the Participant by that Provider to the end of the four-week period in which the date of transfer occurs.

High Ongoing Support Fees

- 163.12 A High Ongoing Support Fee will be payable in relation to the period when a Participant receives High Ongoing Support, the minimum number of Contacts specified in clause 114.1 have been delivered and requirements for the Payment are met as specified in any Guidelines.
- 163.13 Subject to this Deed, including clauses 163.14 to 163.18, the Department will pay the Provider a High Ongoing Support Fee in relation to a Participant for each four-week period of High Ongoing Support (excluding any time during a Voluntary Change in Employment), in the amount which applies to the Participant, as specified in Annexure B1.
- 163.14 Subject to clauses 163.12 to 163.18, the first High Ongoing Support Fee for a Participant will be payable four weeks (excluding any time during a Voluntary Change in Employment) after commencement in High Ongoing Support.
- 163.15 Subject to clauses 163.12 to 163.18, and if the Department agrees, the Provider may claim a High Ongoing Support Fee quarterly, and the quarterly amount payable will be calculated in accordance with clause 163.13.
- 163.16 When a High Ongoing Support Fee is claimed quarterly, clause 163.14 is to be read as if the first High Ongoing Support Fee will be payable 13 weeks after commencement of High Ongoing Support.
- 163.17 If a Participant who is receiving High Ongoing Support transfers from another Program Provider to the Provider for any reason, the Department will pay both the Relinquishing Provider and the Gaining Provider a pro-rata amount of the High Ongoing Support Fee payable in accordance with clauses 163.12 to 163.14 **Error! Reference source not found.** for the four-week period in which the date of transfer occurs.
- 163.18 The pro-rata amount payable in accordance with clause 163.17 will be calculated:
- (a) for the Relinquishing Provider, based on the period of time from the commencement of the four-week period in which the date of the transfer occurs to the date of the transfer recorded on the Department's IT Systems; and
 - (b) for the Gaining Provider, based on the period of time from the date of the initial Contact with the Participant by the Gaining Provider to the end of the four-week period in which the date of transfer occurs.

Fees for Changes to the Levels of Ongoing Support

163.19 If the Level of Ongoing Support for a Participant is changed in accordance with clause 128 [Changing the Level of Ongoing Support for Participants], the Department will pay the Provider:

- (a) when applicable, in relation to an instance of Flexible Ongoing Support, a Flexible Ongoing Support Fee in accordance with clauses 163.1 and 163.2; and/or
- (b) when applicable, a pro-rata amount of the:
 - (i) Moderate Ongoing Support Fee in accordance with clauses 163.6 to 163.9; and/or
 - (ii) High Ongoing Support Fee in accordance with clauses 163.12 to 163.16,for the four-week period in which the date of change occurs.

163.20 The pro-rata amount of the Moderate Ongoing Support Fee and High Ongoing Support Fee payable in accordance with clause 163.19(b) will be calculated based on the period of time the Participant received the relevant Level of Ongoing Support during the four-week Period, as recorded on the Department's IT Systems.

163.21 The Provider must not:

- (a) claim a Flexible Ongoing Support Fee, a Moderate Ongoing Support Fee or a High Ongoing Support Fee for any period of Ongoing Support in respect of a Participant for any period during which that Participant is in Employment that meets the definition of a Non-Payable Outcome; and
- (b) for the purpose of clause 163.21(a) a Non-Payable Outcome does not include Recurring Employment.

164. Ancillary Payments

164.1 The Department may pay the Provider Ancillary Payments at the Department's absolute discretion.

Section 50 The Department may cease Referrals

165. The Department may cease Referrals to the Provider

165.1 Unless otherwise provided for in this Deed, if after the Deed Commencement Date, there is any form of procurement or other process for the delivery of part or all of the Services or any other disability employment services, and the Provider:

- (a) does not submit a response to that process;
- (b) refuses an offer to provide further services;
- (c) is not successful in obtaining a further contract; or
- (d) is successful in obtaining a subsequent contract from any future selection process, but the subsequent contract does not require the Provider to provide the Services, or services similar to the Services, at any, or all, of the Sites, at which it is contracted to deliver Services under this Deed,

the Department may in its absolute discretion cease Referrals of Participants to the Provider from the date of the announcement of the allocation of contracts or business to new providers of disability employment or similar services, or earlier if both Parties agree.

Section 5P Assessment and management of Program Providers' performance

166. Performance assessments

- 166.1 The Department will monitor, measure and evaluate the Provider's performance in accordance with clause 33 [Evaluation activities] and this clause 166 [Performance assessments].
- 166.2 The Department will assess the Provider's performance against the requirements of the Deed, including by reference to the Provider Performance Framework (including the Quality Framework), the Service Guarantee and any representations in the Provider's response to any request for tender for this Deed.
- 166.3 For the purposes of clause 166.2, the Department may rely on information and data collected from any source, including feedback from Participants, Employers, Host Organisations and other Employment Service Providers and intelligence from the Employment Services Tip Off Line.

Key Performance Indicators

- 166.4 The Key Performance Indicators are as follows:
- (a) KPI 1: Quality: measures the quality of the services delivered by the Provider. Providers are required to be certified against the National Standards for Disability Services.
 - (b) KPI 2: Effectiveness: measures the Provider's performance in assisting Participants to achieve employment Outcomes, sustain employment and to complete education and training.
 - (c) KPI 3: Efficiency: measures the time taken for a Participant to commence with a Provider and compares the time taken from Referral date to Commencement with a Provider to an estimated benchmark over the past year.

Note: Further detail on the Key Performance Indicators is provided in the Provider Performance Framework.

Regular performance assessments

- 166.5 The Department:
- (a) may review the Provider's performance overall and for each Employment Service Area and for each Site where the Provider delivers Services including, if applicable, reviewing the performance of Group Respondent Members and Subcontractors; and
 - (b) may subsequently provide feedback to the Provider on the Department's assessment of its performance including through Participant Scorecards and Provider Scorecards.

Formal performance assessments

- 166.6 During the Deed Term, the Department will undertake formal performance assessments of the Provider at such times as the Department determines, following which the Department may, without limitation of any of the Department's rights under this Deed or at law, take action in accordance with clause 167 [Action about performance], depending on the Provider's assessed performance.

167. Action about performance

- 167.1 If, at any time, the Department considers the performance of the Provider at the ESA or Site level warrants it, the Department may, with the agreement of the Provider:
- (a) if the Provider is a Generalist Provider, increase the Provider's Market Share for a period of time specified by the Department; or
 - (b) if the Provider is a Specialist Provider, increase the Maximum Caseload at one or more of the Provider's Sites.
- 167.2 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 Service Area or Site level is less than satisfactory (including as assessed against the Provider Performance Framework and the outcomes of any Program Assurance Activities), the Department may, at its absolute discretion, and without limitation of any of the Department's rights under this Deed or at law:
- (a) for any ESA:
 - (i) by Notice, reduce the Provider's Market Share in that ESA;
 - (ii) reduce the number of Referrals to the provider for that ESA; and/or
 - (iii) transfer relevant Participants from the Provider to another Program provider.
 - (b) for any Site:
 - (i) Notify the Provider that the Provider must discontinue providing the Services at the Site;
 - (ii) cease all referrals for the Site from the date of the Notice; and/or
 - (iii) transfer relevant Participants from the Provider to another Program Provider.
- 167.3 References in this clause 167 to decreasing the Provider's Market Share in an ESA, include decreasing the Market Share in the ESA to zero.
- 167.4 If, in accordance with this clause 167, the Department decreases the Provider's Market Share to zero in any ESA, the Department may Notify the Provider that it must discontinue providing Services in the ESA.
- 167.5 If the Department issues a Notice under clause 167.2(b)(i) or 167.4, from the date specified in the Notice, the Provider must discontinue providing the Services in the ESA or Site, as applicable, in accordance with the Notice.
- 167.6 If Participants are transferred in accordance with this clause 167, the Provider must provide assistance and cooperation in accordance with clauses 71.1 and 71.2 to

ensure that Participants affected by the discontinuation of the Provider's Services in that ESA are transferred to other Program Providers or another Site of the Provider as specified by the Department.

- 167.7 The Department may, at its absolute discretion, publish the Provider's Participant Scorecard/s.
- 167.8 For the avoidance of doubt, any action taken by the Department under this clause 167 is not a reduction of scope or termination for which compensation is payable.

Good faith and proportionality

- 167.9 The Department will exercise its rights under this clause 167 reasonably and in good faith, taking into account the relevant performance.
- 167.10 Prior to taking action following a formal performance assessment, the Department will consider any mitigating circumstances relating to the Provider's performance. The Provider's Performance assessment may be amended at the Department's discretion, based on the information provided by the Provider in relation to the mitigating circumstances and taking into account any performance guidelines. Failure to provide, or inability to secure, adequate resources to perform the Services will not be considered a mitigating circumstance.

Variation

- 167.11 If the Department takes any action under this clause 167:
- (a) if relevant, this Deed will be deemed to be varied accordingly; and
 - (b) the Provider is not relieved of any of its obligations under this Deed as varied.

Notice

- 167.12 If the Department takes any action under this clause 167, the Department will Notify the Provider of:
- (a) the reasons for the action;
 - (b) the duration of the action; and
 - (c) any corresponding variation to this Deed.
- 167.13 This clause 167 is without prejudice to any other right which the Commonwealth has or which may accrue to the Commonwealth.

Section 5Q Self-Employment Assistance

168. Self-Employment Assistance

- 168.1 If the Provider and a Participant who has been identified on the Department's IT Systems as eligible for Self-Employment Assistance have agreed that it may be appropriate for the Participant to receive Self-Employment Assistance, the Provider must:
- (a) advise the Participant of the matters which they must satisfy before they can receive Self-Employment Assistance, as specified in any Guidelines or any guidelines issued by DEWR;

- (b) identify prospective Self-Employment Assistance Providers in the location in which the Participant proposes to undertake Self-Employment Assistance, and:
 - (i) if the relevant location is within an ESA in which the Provider is a Self-Employment Assistance Provider, the Provider may choose to provide the relevant Self-Employment Assistance Services itself or, subject to clause 168.1(c), assist the Participant to contact another Self-Employment Assistance Provider in the relevant ESA; or
 - (ii) if the relevant location is not within an ESA in which the Provider is a Self-Employment Assistance Provider, subject to clause 168.1(c), refer or assist the Participant to contact a Self-Employment Assistance Provider in that location;
- (c) if the Participant has expressed an interest in participating in an Exploring Self-Employment Workshop, use reasonable endeavours to refer the Participant to a Self-Employment Assistance Provider who is an Exploring Self-Employment Workshop Provider with an available Exploring Self-Employment Workshop placement;
- (d) if the Participant is assessed as eligible for Self-Employment Assistance by the relevant Self-Employment Assistance Provider, comply with any record keeping requirements specified in any Guidelines; and
- (e) if a Self-Employment Assistance Provider:
 - (i) assesses a Participant as not eligible for Self-Employment Assistance; or
 - (ii) ends the Self-Employment Assistance because the Participant has:
 - (A) completed the relevant parts of Self-Employment Assistance; or
 - (B) failed to participate appropriately, or otherwise required exit from Self-Employment Assistance and advises the Provider, immediately:
 - (iii) update the Participant's Job Plan; and
 - (iv) provide the Participant with alternative Services in accordance with this Deed.

168.2 If the Self-Employment Assistance helps a Participant to create their own business, the Provider may support the Participant and claim any resulting Outcomes.

ANNEXURE A DEFINITIONS

'12-week Employment Outcome' means:

- (a) a Full Outcome for a 12-week Period; or
- (b) a Partial Outcome for a 12-week Period.

'12-week Period' means the period specified in paragraph (a) of Row 1, Column C of Table 1 in Annexure B2.

'26-week Employment Outcome' means:

- (a) a Full Outcome for a 26-week Period; or
- (b) a Partial Outcome for a 26-week Period.

'26-week Period' means the period specified in paragraph (b) of Row 1, Column C of Table 1 in Annexure B2.

'52-week Employment Outcome' means:

- (a) a Full Outcome for a 52-week Period; or
- (b) a Partial Outcome for a 52-week Period.

'52-week Outcome' means a Full Outcome or Partial Outcome for a 52-week Period.

'52-week Period' means the period specified in paragraph (c) of Row 1, Column C of Table 1 in Annexure B2.

'6 Active Months' has the meaning given to it, in its decapitalised form, in an instrument made under section 42AR of the *Social Security (Administration) Act 1999* (Cth) dealing with Mutual Obligation Failures.

'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) a person who is identified as such on the Department's IT Systems; or
- (b) a person who:
 - (i) is of Aboriginal and/or Torres Strait Islander descent;
 - (ii) identifies as an Aboriginal and/or Torres Strait Islander person; and
 - (iii) is accepted as such in the community in which the person lives or has lived,

and **'Aboriginal and Torres Strait Islander peoples'** has a corresponding meaning when the reference is to more than one person.

'Abstudy' has the meaning given to the term 'ABSTUDY' under the ABSTUDY Scheme administered by the Department.

'Acceptable Reason' means that a Participant (Mutual Obligation):

- (a) has notified the Provider, before the start time scheduled for a Mutual Obligation Requirement, that the Participant is unable to satisfy the Mutual Obligation Requirement; and
- (b) the Provider is satisfied that the Participant has a Valid Reason for being unable to satisfy the Mutual Obligation Requirement.

'Access' includes access or facilitation of access (whether directly or indirectly), traverse, view, use, or interface with, Records or the Department's IT Systems, and **'Accessing'** has a corresponding meaning.

'Act' (or **'DSI Act'**) means the *Disability Services and Inclusion Act 2023* (Cth).

'Activity' means an activity approved by the Department and specified in 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.

'AMEP' means the Adult Migrant English Program administered by the Commonwealth Department of Home Affairs (or such other government agency or department as is responsible for administering that program from time to time).

'Anchor Date' means the day recorded on the Department's IT Systems in accordance with this Deed, and any Guidelines, on which a Participant started an Employment Outcome.

'Ancillary Payment' means a payment, in addition to the Fees, that the Department may at its discretion pay the Provider subject to the Provider satisfying the conditions of any Guidelines relating to the Ancillary Payment.

'Annexure' means any annexure to this Deed.

'Appointment' means a date and time for a Contact recorded in the Electronic Calendar.

'Apprenticeship' means a course combining formal and on the job training and paid work undertaken by a Participant (being a trainee or an apprentice):

- (a) under an industrial instrument, which must:
 - (i) be covered by a registered validated training agreement (through the relevant training authority in the State or Territory);
 - (ii) involve paid work and structured training; and
 - (iii) lead to a nationally recognised qualification; or
- (b) described as such in any Guidelines.

'Approved Assistance' means the assistance for which the Approved Assistance Amount may be expended.

'Approved Assistance Amount' means the amount approved by a JobAccess Provider for expenditure under the Employment Assistance Fund.

'Assessment' means a formal assessment of a Participant's level of disability by:

- (a) a Provider, for the purpose of clause 123 [Entry into Ongoing Support], and includes the specification of the Services for which a Special Class Client, Eligible School Leaver or Ongoing Support (Work Assist) Participant is eligible;
- (b) Services Australia Assessment Services, through an ESAt or JCA; or
- (c) an Ongoing Support Assessor, through an OSA,

and includes specification of the Services for which the Participant is eligible.

'Auditor-General' means the office established under the *Auditor-General Act 1997* (Cth) and includes any other entity that may, from time to time, perform the functions of that office.

'Australian Disability Enterprises' means an employer and National Disability Insurance Scheme (NDIS) provider that provides Supported Employment Services to people with moderate to severe disability who need substantial ongoing support to maintain their employment.

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

'Australian Government Skills for Education and Employment Program' means the program of that name (or as changed from time to time) that aims to improve Participants' language, literacy and/or numeracy skills, to enable them to participate more effectively in training or in the labour force.

'Austudy' has the meaning given to the term 'austudy payment' by the *Social Security Act 1991* (Cth).

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

'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.

'Capability Assessment' means an assessment by Services Australia to ensure that the Mutual Obligation Requirements specified in the Participant's Job Plan are appropriate to their circumstances and the Participant is capable of meeting them.

'Capability Interview' means a contact between a Program Provider and a Participant to ensure that the Mutual Obligation Requirements specified in the Participant's Job Plan are appropriate to their circumstances and the Participant is capable of meeting them.

'Capability Management Tool' means the tool used by Program Providers to review a Participant's barriers and vulnerability indicators, and to recommend interventions and services.

'Capital City' means an Australian capital city, with boundaries as specified in any Guidelines.

'Central Employment Services Area' means the ESA at the centre of a Specialist Provider's Hub and Spoke Model.

'Certificate of Compliance' means a certificate issued by an accredited certification body in accordance with the DSI Act which certifies the Provider's compliance with the National Standards for Disability Services.

'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, if the Corporation does not have any shareholders;
- (b) in relation to a Corporation that 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) the change in any of the partners; or

- (iii) the retirement, death, removal or resignation of any of the partners; and
- (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.

'Change of Circumstances Reassessment' means a formal reassessment of the level of disability of a Participant that is conducted in accordance with clause 145 [Change of Circumstances Reassessment during Period of Service] or clause 130 [Change of Circumstances Reassessment during Ongoing Support]:

- (a) by Services Australia Assessment Services through an ESAt; or
 - (b) by an Ongoing Support Assessor through an Ongoing Support Assessment,
- and includes specification of the Services for which the Participant is eligible.

'Charter of Contract Management' means the charter that embodies the commitment by the Department to work cooperatively with Program Providers in achieving shared goals and outcomes in the delivery of the Services.

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

'Child-Related Personnel' means any Provider Personnel or Supervisor involved, or who may be involved, with the Services, including any Activity (except any Activity specified to be excluded in any Guidelines or Notified as such by the Department) who, as part of that involvement, may interact with Children.

'Child Safety Obligations' means those obligations relating to the protection of the safety of Children that are set out in clauses 20.4 and 20.5 of this Deed.

'Claims Processing Training' means the online training provided by the Department for Providers in relation to the processing of claims for payment.

'Code of Conduct' means the Employment Services Code of Conduct set out at Annexure C1.

'Combination of Education and Employment Outcome' means a Full Outcome as specified in paragraphs (c)(ii), (f) and (h) of the definition of Full Outcome.

'Commence' or **'Commencement'** means the date on which all of the following requirements have been met:

- (a) the Provider has recorded the completion of the Initial Interview on the Department's IT Systems; and
- (b) the Provider has met any other requirements specified in the Guidelines.

'Commonwealth' means the Commonwealth of Australia and, when the context requires or permits, includes the officers, delegates, employees and agents of the Commonwealth of Australia.

'Commonwealth Coat of Arms' means the Commonwealth Coat of Arms as set out at <https://www.pmc.gov.au/honours-and-symbols/commonwealth-coat-arms>.

'Commonwealth Material' means any Material provided by the Department to the Provider for the purposes of this Deed and Material that 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 that 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 complaint lodged by a Customer with:

- (a) the Provider;
- (b) the Department using the National Customer Service Line; or
- (c) the Complaints Resolution and Referral Service,

expressing dissatisfaction with the Provider’s policies, procedures, employees or the quality of the Services that the Provider offers or provides, but does not include:

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

‘Complaints Resolution and Referral Service’ or **‘CRRS’** means a service by that name available to Participants and potential Participants, available directly or through the National Customer Service Line.

‘Complementary Service’ means an employment or training program:

- (a) administered by the Commonwealth, including the Department (but not including Services provided under this Deed); or
- (b) provided by a State or Territory Government (including by State or Territory Government funded providers),

as advised by the Department from time to time, that the Provider may access to provide additional or alternative specialised assistance to a Participant.

‘Compliance Activities’ means an activity or combination of activities that a Participant may undertake, at the Participant’s assessed work capacity and in accordance with any Guidelines, which may include any one or more of the following:

- (a) skills training;
- (b) activities intended to address Vocational Barriers and Non-Vocational Barriers;
- (c) work experience activities;
- (d) work in a social or community enterprise;
- (e) participation in the Australian Government Skills for Education and Employment Program or AMEP (if the Participant has registered, and is eligible, for AMEP); or
- (f) training in job search techniques.

‘Compliance Review’ means a review of claims for payment submitted by the Provider undertaken by the Department from time to time.

‘Comprehensive Compliance Assessment’ means an assessment conducted by Services Australia to determine whether:

- (a) a penalty should be applied to a Participant (Mutual Obligation) who wilfully and persistently fails to meet their obligations under their Job Plan; or
- (b) the Participant (Mutual Obligation) requires additional assistance in order to comply with their Job Plan.

‘Confidential Information’ means all information that:

- (a) is by its nature capable of being protected in law or equity as confidential;
- (b) the Parties agree in writing to treat as confidential after the Deed Commencement Date; or
- (c) a Party knows, or ought reasonably to know, is confidential to the other Party,

but does not include information that:

- (d) is or becomes public knowledge other than by breach of this Deed or any other confidentiality obligation; or
- (e) has been independently developed or acquired without reference to the other Party's Confidential Information, as demonstrated with substantiating evidence.

‘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, or may be perceived to, interfere with or restrict the Provider in performing the Services on behalf of the Department fairly and independently.

‘Consecutive Weeks’ means a continuous period of weeks broken only by:

- (a) one or more Permissible Breaks; or
- (b) one or more Voluntary Changes in Employment.

‘Constitution’ means (depending on the context):

- (a) a company's constitution, which (if 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 114 [Contact services].

‘Contact Person’ means the person specified in Item 00 of Schedule 1 – Deed Details who has authority to receive and sign Notices and written communications for the Provider under this Deed and to 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).

‘Current Assessment’ means at any time, the Assessment, whether completed by Services Australia Assessment Services through an ESAt or a JCA, or by an Ongoing Support Assessor through an Ongoing Support Assessment, that specifies the Services for which the Participant is eligible at that time.

Note: If an Ongoing Support Assessment is the Current Assessment, it will not invalidate the most recent ESAt or JCA.

‘Customer’ includes a Participant, potential Participant, Employer and any other user of the Services.

‘Customer Feedback Register’ means the list of Customer feedback kept by each Provider, and includes, for the purposes of Chapter 5, the list kept for each Site.

‘Deed’ means this document, as varied or extended by the Parties from time to time in accordance with this Deed, and includes all Annexures, Schedules and other documents incorporated by reference, including any Guidelines, but excluding any attachments.

‘Deed Commencement Date’ means the later of:

- (a) 1 July 2025; or
- (b) the date on which this Deed is signed by both Parties.

‘Deed Material’ means all Material:

- (a) created for the purpose of performing this Deed;
- (b) incorporated in, or supplied or required to be supplied with, the Material referred to in paragraph (a) above; or
- (c) copied or derived from Material referred to in paragraphs (a) or (b); and
- (d) includes all Deed Records.

‘Deed Records’ means all Records:

- (a) created for the purpose of performing this Deed;
- (b) incorporated in, or supplied or required to be supplied with, the Records referred to in paragraph (a) above; or
- (c) copied or derived from Records referred to in paragraphs (a) or (b); and
- (d) includes all Reports.

‘Deed Term’ means the Initial Deed Term plus any extensions agreed in accordance with clause 4 [Extension of this Deed].

‘Delegate’ means a person engaged by the Provider who is a Delegate of the Secretary under the Social Security Law, and in all other cases, means the Provider.

‘Demerit’ has the meaning given to it, in its decapitalised form, in an instrument made under section 42AR of *the Social Security (Administration) Act 1999* (Cth) dealing with Mutual Obligation Failures.

‘Department’ means the Commonwealth Department of Social Services (or such other agency or department as may administer this Deed on behalf of the Commonwealth from time to time) and, if the context so permits or requires, includes the Department’s relevant officers, delegates, employees and agents.

‘Department Employee’ means:

- (a) an employee of the Commonwealth working for the Department;
- (b) any person authorised by the Department; and
- (c) any person authorised by law to undertake acts on behalf of the Department.

‘Department’s IT Systems’ means the IT system managed by the Department of Employment and Workplace Relations, that is accessible by a Provider, through which information is exchanged between the Provider, Subcontractors, Services Australia, Services Australia Assessment Services, Ongoing Support Assessors and the Department in relation to the Services.

‘Department of Employment and Workplace Relations’ or **‘DEWR’** means the Commonwealth Department of Employment and Workplace Relations (or such other agency or department as may administer employment matters on behalf of the Commonwealth from time to time) and, if the context so permits or requires, includes that Department’s relevant officers, delegates, employees and agents.

‘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 *Security Policy for External Service Providers and Users* and any other security policies Notified by the Department from time to time. Relevant policies are available on the Department’s IT Systems through the following path: Provider Portal > DES > Key Provider Information > IT Security & Access, or at such other location as advised by the Department from time to time.

‘Departmental Exit’ means the exiting of a Participant from the Services by an employee of the Department.

‘Digital Solutions Support’ means DEWR’s centralised point of IT support for Program Providers in relation to the Department’s IT Systems, including the Employment Services System and Employment and Community Services Network.

‘Direct Registration’ or **‘Directly Register’** means Registration by the Provider of an individual who does not have a Referral, in accordance with clause 108 [Direct Registration of Participants without a Referral]and any Guidelines.

‘Direction’ has the meaning given in clause 12.1.

‘Director’ means any of the following:

- (a) a person appointed to the position of a director or alternate director, and acting in that capacity, of a body corporate within the meaning of the *Corporations Act 2001* (Cth) regardless of the name given to their position;
- (b) a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (c) a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations;
- (d) a person who would be a director of the body corporate under paragraph (a) above if the body corporate were a body corporate within the meaning of the *Corporations Act 2001* (Cth);
- (e) a person who acts in the position of a director of a body corporate;
- (f) a person whose instructions or wishes the directors of a body corporate are accustomed to acting upon, and not simply because of the person’s professional capacity or business relationship with the directors or the body corporate; and
- (g) a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate.

‘Disability Employment Strategy’ means a strategy produced and implemented by the Provider that is designed to attract, develop and maintain employees with disability within the Provider’s own organisation.

‘Disability Support Pension’ has the meaning given to that term by the *Social Security Act 1991* (Cth).

‘Disability Support Pension Recipient (Compulsory Requirements)’ means a Participant who is in receipt of the Disability Support Pension, and has compulsory requirements.

‘Documentary Evidence’ means those Records of the Provider, as specified in this Deed including any Guidelines, that evidence the Services that were provided by the Provider for each claim for Payment made under this Deed, or that otherwise support a claim for payment by the Provider.

‘DSI Act’ (or **‘Act’**) means the *Disability Services and Inclusion Act 2023* (Cth).

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

‘Education’ means any education activity unless otherwise advised by the Department.

‘Effective Exit’ means the automatic removal of a Participant from the Department’s IT Systems as being eligible for the Services when the Participant:

- (a) is commenced in employment services or equivalent other than Services that is specified as an Effective Exit in any Guidelines;
- (b) in Ongoing Support has not received any Ongoing Support for 52 weeks from the date of the last Ongoing Support Assessment; or
- (c) participates in an activity, or an event occurs in relation to the Participant, that the Department may advise the Provider from time to time as being an Effective Exit.

‘Electronic Calendar’ means the electronic calendar in the Department’s IT Systems used by the Provider for managing, and/or setting dates and times for:

- (a) Referrals;
- (b) Engagements; and
- (c) referrals by the Provider to other relevant service providers.

‘Eligible School Leaver’ means a Participant:

- (a) described as an Eligible School Leaver in any Guidelines; or
- (b) who Directly Registers with the Provider and who is seeking to transition from:
 - (i) secondary school to post school employment; or
 - (ii) an Australian State or Territory Government disability transition to work program to employment,

and who has evidence that they:

- (iii) attract additional educational funding due to their disability;
- (iv) in a disability special school or disability special class in a mainstream school; or
- (v) are receiving Disability Support Pension,

in accordance with any Guidelines.

‘Employer’ means an entity that has the legal capacity to enter into a contract of employment with a Participant.

‘Employment’ or **‘Employed’** means the status of a person who is:

- (a) in paid work that is Open Employment, as specified in any Guidelines, under a contract of employment; or
- (b) otherwise deemed to be an employee under relevant Australian legislation.

‘Employment Assistance Fund’ or **‘EAF’** means the Australian Government’s initiative that provides financial assistance for the costs of work related modifications and the work equipment for people with disability.

‘Employment Benchmark’ means the number of hours, on average, that a Participant (other than an Ongoing Support (Work Assist) Participant) must work each week to achieve a Full Outcome, as identified on the Department’s IT Systems.

‘Employment Outcome’ means:

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

'Employment Service Area' or **'ESA'** means a geographical area identified and displayed at <https://data.gov.au> as varied by the Department from time to time at the Department's absolute discretion.

'Employment Services Assessment' or **'ESAT'** means an assessment of a Participant's barriers to employment and work capacity conducted by Services Australia Assessment Services.

'Employment Service Provider' means a provider under any employment services deed with DEWR.

'Employment Services Tip Off Line' means the telephone line (1300 874 536) that has been developed primarily for current and former employees or 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, and that allows those persons to report their concerns to the Department.

'Engagement' means an engagement that is recorded in the Electronic Calendar in accordance with clause 112.5.

'ESA Coverage' means an area in which a Provider agrees to provide Services within a specific ESA.

'ESAF' means DEWR's External Systems Assurance Framework, which outlines requirements for Provider IT system accreditation such as RFFR.

'ESAT' see **Employment Services Assessment**.

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

'Exemption' means circumstances recorded by Services Australia, resulting in an exemption by Services Australia of a Participant's Mutual Obligation Requirements for a specified period of time.

'Exercise' in respect of Intellectual Property Rights means the right to perform any and all of the rights that are held by the owner or licensor of the Intellectual Property other than the right to assign the ownership or grant an exclusive or sole licence of the Intellectual Property.

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

- (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 152 [Effect of Exits].

'Exited' has a corresponding meaning.

'Exploring Self-Employment Workshop' means a workshop that helps Participants undertaking Self-Employment Assistance to learn about small business, to generate and validate a business idea, and to decide whether self-employment is a good fit for them.

'External IT System' means any information technology system or service, other than the Department's IT Systems, used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems. 'External IT System' includes a Provider IT System and any Third Party IT System.

'Fees' means any amounts payable by the Department under this Deed that are specified to be Fees or that are not expressly identified as Funds, 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; and
- (d) 1 April to 30 June.

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

'Flexible Ongoing Support' is a Level of Ongoing Support and means the provision of Services to a Participant to maintain that Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with any Guidelines.

'Flexible Ongoing Support Fee' means the Fee payable in accordance with clause 163.2 and Annexure B1.

'Flexible Service' means a level of Services that are provided to a Participant who cannot participate in the Intensive Service, in order to prepare them for Employment.

'Fraud' has the meaning given in the Commonwealth Fraud Control Framework (available at: <https://www.counterfraud.gov.au/library/framework-2024>) which, at the Deed Commencement Date is means:

Dishonestly obtaining (including attempting to obtain) a gain or benefit, or causing a loss or risk of loss, by deception or other means. The conduct does not need to represent a breach of criminal law.

A benefit or loss is not restricted to a material benefit or loss, and may be tangible or intangible. A benefit may also be obtained by a third party.

'Full Outcome' means the Outcome specified in Row 2 of Table 1 of Annexure B2.

'Full-Time' means, for a Site, Monday to Friday from 9:00 am to 5:00 pm daily on Business Days, or as otherwise agreed with the Department in writing.

'Full-Time Study' means:

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

'Funds' or **'Funding'** means any amounts (in cash or kind) payable by the Department under this Deed that are specified to be Funds or Funding, including any amounts not expressly identified as Fees, Reimbursements or Ancillary Payments.

'Funding Level' means the funding level for a Participant as determined using the Participant Investment Funding Model.

'Gaining Provider' means the Program Provider receiving a Participant on its caseload, if the Participant transfers from a different Program Provider.

'Generalist Provider' means:

- (a) a Program Provider that is identified as a Generalist Provider in Item 00 of Schedule 1 – Deed Details; and
- (b) if the Provider is identified as a Generalist Provider in Item 00 of Schedule 1 – Deed Details of this Deed, includes the Provider as the context requires.

'Group Respondent' means a group of two or more entities, however constituted, which have entered into an arrangement for the purposes of jointly delivering the Services, and which 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 Schedule 1.

'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).

'Guidelines' refers to the guidelines, if any, that are referred to in this Deed and that apply to the provision of the NSDEP, as they may be amended from time to time 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 email, backdoors, botspyware, adware, diallers, toolkits, keyloggers, highjackers, web bug, exploits, cracking tools, and hacking tools.

'High Ongoing Support' is a Level of Ongoing Support and means the provision of Services to a Participant to maintain that Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with any Guidelines.

'High Ongoing Support Fee' means the Fee payable for the provision of High Ongoing Support Services, in accordance with clause 163.13 and Annexure B1.

'High Value Deed' means, for the purposes of the Indigenous Procurement Policy, a Deed under which:

- (a) the Services will be wholly delivered in Australia;
- (b) the value of the Services is \$7.5 million (GST inclusive) or more;
- (c) more than half the value of the Deed is being spent in one or more of the industry sectors specified at the Indigenous Procurement Policy website (<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>); and
- (d) the value of the Deed is not being spent in one of the sub-category industry sectors specified at the Indigenous Procurement Policy website (<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>).

'Hub and Spoke Model' is a delivery model which a Specialist Provider may use to deliver Services from one ESA to an adjacent ESA(s) if contracted to do so in accordance with Item 00.3 of Schedule 1.

'In-Employment Support' means the Services that a Participant receives starting from when the Participant has found Employment and is working towards an Outcome or enters the NSDEP as an Ongoing Support (Work Assist) Participant, and ends when the Participant Exits. It encompasses Post Placement Support and Ongoing Support (including Ongoing Support (Work Assist)).

'Income Support Payment' has the meaning given to the term 'income support payment' in the *Social Security Act 1991* (Cth).

'Independent Worker' means a Participant who is assessed as not requiring Ongoing Support, in accordance with any Guidelines.

'Indigenous Employment Strategy' means a strategy produced and implemented by the Provider designed to:

- (a) attract, develop and retain Aboriginal and Torres Strait Islander employees within the Provider's own organisation; and
- (b) encourage the procurement of goods and services, as relevant, from Indigenous Enterprises.

'Indigenous Enterprise' means an organisation that is 50 per cent or more Indigenous owned that is operating a business.

'Indigenous Participation Plan' means the plan which sets out how the Provider will comply with the Indigenous Procurement Policy, including how the Provider will meet the Mandatory Minimum Requirements.

'Indigenous Procurement Policy' means the Commonwealth policy of that name, as amended from time to time, available at the Indigenous Procurement Policy website: www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp.

'Information Commissioner' means the person appointed under section 14 of the *Australian Information Commissioner Act 2010* (Cth) as the Australian Information Commissioner.

'Initial Deed Term' means the period from the Deed Commencement Date until 30 June 2028.

'Initial Interview' means an initial meeting between the Provider and a Participant in accordance with clause 113 [Initial Interview].

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

'Inspector' means a person appointed as such under the WHS Act.

'Instance' means the provision of Services to a Participant receiving Flexible Ongoing Support, in accordance with any Guidelines.

'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, trade marks (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 simple interest calculated in respect of each calendar day from the day after the debt became due and payable, up to and including the day that the Provider effects full payment of the debt to the Commonwealth or a PT PCP Subcontractor (as relevant), using the following formula:

$$SI = UA \times GIC \times D:$$

where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = for the purposes of clause 27 [Debts and offsetting], 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); or

for the purposes of clause 92 [Payment Times Procurement Connected Policy], the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day; and

D = the number of days from the day after payment was due up to and including the day that payment is made. "The day that payment is made" is the day when the Provider's system generates a payment request into the banking system for payment to the Commonwealth or the PT PCP Subcontractor (as relevant).

'Intervention' means a specialist service provided by a private sector or community entity or an employment or training program administered by the Commonwealth or by a State or Territory Government (including by State or Territory Government funded providers) that the Provider may provide, pay for, or otherwise access, to provide specialised assistance to Participants to address Vocational Barriers and Non-Vocational Barriers.

Note: The Department will only reimburse Program Providers for Interventions if this Deed specifically provides that reimbursement is available under the EAF.

'Intensive Service' means a level of service to be provided to a Participant to prepare them for Employment.

'IT Contact' has the meaning given in clause 40.16(a).

'Invalid Claim' means a claim by the Provider for a Payment from the Department when the Provider was not entitled to the Payment under this Deed.

'JobAccess' or **'JobAccess Services'** means the services of that name provided by the Department.

'JobAccess Provider' means the entity contracted by the Department to deliver JobAccess Services.

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

'Job Placement' means Employment for a Participant in a Vacancy.

'Job Placement Start Date' means the day that the Participant commenced in a Job Placement, as recorded on the Department's IT Systems.

'Job Plan' means the Job Plan under the *Social Security Act 1991* (Cth) and as described in clause 132 [General requirements for a Job Plan], or, if the *Social Security Act 1991* (Cth) is amended, any other such agreements.

'Job Referral' means a job opportunity that the Provider requests the Participant to act on.

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

Note: (i) Relevant job vacancies do not need to have been publicly advertised to count as a Job Search. (ii) Looking for job vacancies in newspapers or online does not count as a Job Search unless actual contact is made with the relevant potential Employer.

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

'Job Search phase' means a phase of the Intensive Service in which Participants who are considered closer to gaining Employment focus on job search activities.

'Job Search Requirement' means the number of Job Searches that a Participant (Mutual Obligation) or a Disability Support Pension Recipient (Compulsory Requirements) must complete as specified in any Guidelines and which must be specified in the Participant's Job Plan in accordance with clause 136 [Job Search Requirements].

'Job Seeker Classification Instrument' or **'JSCI'** means the statistical tool that determines a Participant's risk of becoming long term unemployed and which is the core assessment mechanism in the Job Seeker Snapshot.

'Job Seeker ID' means the unique identification number for a Participant recorded in the Department's IT Systems.

'Job Seeker Snapshot' means a questionnaire completed by the Participant, Services Australia or the Provider, the results of which informs the Participant of the employment services that they are eligible to receive and supports them in making relevant choices. It includes questions that determine the Participant's Job Seeker Classification Instrument score and helps identify if the Participant may require an Employment Services Assessment.

'Key Performance Indicators' or **'KPIs'** means the performance indicators specified in this Deed or as Notified to the Provider by the Department from time to time.

'Labour Market Region' or **'LMR'** means one of 17 geographical areas, each containing a number of ESAs as Notified by the Department from time to time.

'Learning Centre' means the range of online training products to assist Providers to understand the required policies and system functions to perform their day to day tasks in relation to the Services.

'Level of Ongoing Support' means Flexible Ongoing Support, Moderate Ongoing Support or High Ongoing Support.

'Liquidated Damages' means the amount that the Department may recover from a Provider in accordance with clause 66 [Liquidated damages].

'Mandatory Minimum Requirement' means any requirement of that name as set out in the Indigenous Participation Plan, or as otherwise advised by the National Indigenous Australians Agency.

'Market Share' means the proportion of Participants in an ESA to whom a Generalist Provider may provide Services, as specified in Item 00.2 of Schedule 1 – Deed Details.

'Material' includes documents, equipment, software (including source code and object code) and goods, as well as computer files, information, data and Records as each of them may be stored by any means and 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.

'Maximum Caseload' means the maximum number of Participants nominated by the Provider, and specified in Item 00.6 of Schedule 1 – Deed Details, for each Site for which it is able to provide Services at any one time, excluding Suspended Participants.

'Minister' has the same meaning as in the DSI Act.

'Moderate Intellectual Disability Participant' means a Participant who meets the eligibility requirements of a Moderate Intellectual Disability Participant, in accordance with any Guidelines.

'Moderate Intellectual Disability Payment' means the Fee payable in accordance with clause 162 [Moderate Intellectual Disability Payment] and Annexure B1.

'Moderate Ongoing Support' is a Level of Ongoing Support and means the provision of Services to a Participant to maintain that Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with any Guidelines.

'Moderate Ongoing Support Fee' means the Fee payable in accordance with clause 163.6 and Annexure B1.

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

'Mutual Obligation Failure' means when a Participant fails to comply with obligations such as attending appointments, undertaking activities, or taking action to gain employment.

'Mutual Obligation Requirements' means the activity test, participation requirements or other requirements that a Participant must meet in order to receive an Income Support Payment, including a requirement that, if it is not complied with, would be a:

- (a) Mutual Obligation Failure;

- (b) Work Refusal Failure;
 - (c) Unemployment Failure; or
 - (d) failure to meet a Reconnection Requirement,
- under the Social Security Law.

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

‘National Disability Insurance Agency’ means the agency that is established by the *National Disability Insurance Scheme Act 2013* as the National Disability Insurance Scheme Launch Transition Agency.

‘National Disability Recruitment Coordinator’, ‘NDRC’ or ‘NDRC Provider’ means the provider contracted by the Department to provide National Disability Recruitment Coordinator Services.

‘National Panel of Assessors’ or ‘the Panel’ means the panel of assessors that provide the Supported Wage System (**SWS**) assessment services, the Ongoing Support Assessment (**OSA**) services, the Workplace Modification Scheme (**WMS**) assessment services or other assessment-related services established by the Department.

‘National Standards for Disability Services’ means the disability employment standards and rehabilitation program standards as set out in the *Disability Services and Inclusion (Compliance Standards and Alternative Compliance Requirements) Rules 2023*.

‘NDIS’ means the National Disability Insurance Scheme that is established under the *National Disability Insurance Scheme Act 2013* (Cth).

‘NDIS Participant’ means a Participant who is eligible to receive services under NDIS and who is identified on the Department’s IT Systems as being an NDIS Participant.

‘NDRC Services’ means the services provided, or required to be provided, by the National Disability Recruitment Coordinator.

‘New ESAt/JCA’ means an ESAt or JCA conducted after an Exit if the Participant seeks to return to Services after Exiting.

‘New Specialist Disability Employment Program’ or ‘NSDEP’ means the program of that name administered by the Department.

‘Non-Payable Outcome’ means placement of a Participant into any:

- (a) employment in the sex industry or involving nudity, including retail positions;
- (b) volunteer work, work experience or unpaid work;
- (c) job that involves taking up employment in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company;
- (d) job involving illegal activity;
- (e) position involving income or funds from gambling deemed to be inappropriate by the Department;
- (f) discriminatory job;
- (g) except in relation to wage rates, employment that contravenes Commonwealth, State or Territory legislation or provides terms and conditions of employment that are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (h) in relation to wage rates, position sourced by the Provider for which the wage rate is not at least equivalent to:
 - (i) the minimum rate prescribed in any modern award that covers or applies to the position; or

- (ii) if no modern award covers or applies to the position, the national minimum wage;
- (i) a program funded by the Australian Government, or a State or Territory Government, including a Work Trial program or a Complementary Service, unless otherwise specified in any Guidelines;
- (j) non-ongoing employment or a Work Trial, as specified in any Guidelines;
- (k) Recurring Employment, unless otherwise specified in any Guidelines;
- (l) employment that pays a commission as either the entire remuneration or part of the remuneration, except if 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;
- (m) employment of a Participant in the same or a similar position to one vacated in the previous 14 calendar days by another Participant in respect of whom the Provider or another Program Provider has already claimed an Outcome Fee;
- (n) position that is contrived employment, as specified in any Guidelines;
- (o) position that is not Open Employment, as specified in any Guidelines;
- (p) employment within the Provider's Own Organisation or a Related Entity, unless otherwise specified in any Guidelines, or unless the Participant is so employed for:
 - (i) at least 12 Consecutive Weeks from the Anchor Date for a 12-week Period;
 - (ii) at least 26 Consecutive Weeks from the Anchor Date for a 26-week Period; or
 - (iii) at least 52 Consecutive Weeks from the Anchor Date for a 52-week Period,
 in accordance with any Guidelines;
- (q) position for which the type of work is inappropriate for the Participant based on their ESAt or JCA or because they only have a Partial Capacity to Work; or
- (r) other position that the Department may Notify from time to time.

In relation to 12-week Outcome, 26-week Outcome and 52-week Outcome only, a Non-Payable Outcome also includes a placement of the Participant into any Pre-Existing employment related activity, unless that Participant, at Commencement, was working in that Pre-Existing employment related activity for less hours per week on average than their Employment Benchmark.

Note: In this definition of Non-Payable Outcome, the term 'work experience' refers to a paid or unpaid short term placement of a person in a workplace to enable the person to observe and learn in an actual work setting.

'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, other than Vocational Barriers.

'Notice' means a written notice in accordance with clause 84 [Notices]; and **'Notify'**, **'Notified'** and **'Notification'** have a corresponding meaning.

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

'Objectives' means the objectives of the Services as described in clause 9 [Objectives] of this Deed.

'Observational Work Experience' means voluntary, short-term, unpaid, observational work experience placements arranged in accordance with any Guidelines by a Provider as a Specified Activity.

'Official Information' means any information developed, received or collected by or on behalf of the Commonwealth through its agencies and contracted providers.

'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.

'Ongoing Support' means the Services a Participant may receive while they are in Employment, Unsubsidised Self-Employment, an Apprenticeship or a Traineeship after a 26-week Employment Outcome or if the Participant is eligible to receive Ongoing Support as an Ongoing Support (Work Assist) Participant and until they Exit, and is provided in the form of a Level of Ongoing Support.

'Ongoing Support Assessment' or **'OSA'** means an Assessment by an Ongoing Support Assessor as to a Participant's need for Ongoing Support including Ongoing Support (Work Assist) Participants.

'Ongoing Support Assessor' means a person, organisation or Commonwealth agency, contracted by the Commonwealth through the National Panel of Assessors to conduct an Ongoing Support Assessment.

'Ongoing Support Fee' means the Fee payable in accordance with:

- (a) clause 163 [Ongoing Support Fees]; and
- (b) Annexure B1,

and includes a Flexible Ongoing Support Fee, a Moderate Ongoing Support Fee and a High Ongoing Support Fee.

'Open Employment' means Employment in respect of which:

- (a) the employee is a person with a disability who is engaged in the mainstream workforce, alongside employees without disability; and
- (b) any requirements provided in any Guidelines have been met.

'Other Service' means:

- (a) the new voluntary pre-employment service for parents of young children;
- (b) Transition to Work;
- (c) Workforce Australia; and
- (d) any other service specified as an 'Other Service' in any Guidelines.

'Outcome' means:

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

'Outcome Fee' means the Fee payable in accordance with:

- (a) clause 161 [Outcome Fees]; and
- (b) Annexures B1 and B2,

and includes a Partial Outcome Fee and a Full Outcome Fee.

'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 as agreed with the Department.

'Own Organisation' means the Provider or that part of the Provider that delivers Services under this Deed.

'Parenting Payment' has the meaning given to 'parenting payment' by *the Social Security Act 1991* (Cth).

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

'Partial Capacity to Work' has the meaning given to the term 'partial capacity to work' by the *Social Security Act 1991* (Cth).

'Partial Capacity to Work Participant' or **'PCW Participant'** means a Participant who has a Partial Capacity to Work.

'Partial Outcome' the Outcome specified in Row 1 of Table 1 of Annexure B2.

'Participant' means a person who meets the eligibility requirements to receive Services under the NSDEP, in accordance with this Deed and any applicable Guidelines.

'Participant (Mutual Obligation)' means a Participant with Mutual Obligation Requirements and any other Participant as specified in any Guidelines, but excluding a Disability Support Pension Recipient (Compulsory Requirements).

'Participant Investment Funding Model' means the model used by the Department to calculate the Funding Level for a Participant on the Department's IT Systems.

'Participant Scorecard' means a high-level summary of the Provider's performance published by the Department for the information of Participants and other stakeholders.

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

'Party' means a party to this Deed.

'Payment' means any Fee, Fund, Reimbursement or Ancillary Payment payable by the Department under this Deed.

'Performance Framework' means the framework set out in any Guidelines designed to assess, address, recognise and improve the performance of Providers in delivering the NSDEP.

'Period of Registration' means the period of time (of that name, as specified in the Department's IT Systems) during which a Participant is serviced by the Provider, being a period that:

- (a) begins on the Participant's Commencement with the Provider;
- (b) pauses while the Participant is Suspended; and
- (c) ends when the Participant is:
 - (i) transferred to another Program Provider; or
 - (ii) Exited.

'Period of Service' means a period of time (of that name, as specified in the Department's IT Systems) during which a Participant is receiving Services, being a period that:

- (a) begins when the Participant Commences in the NSDEP;
- (b) pauses if the Participant is Suspended; and
- (c) ends when the Participant is Exited.

'Period of Unemployment' means the period that commences on the date on which a Participant registers with Services Australia or directly with the Provider as unemployed, in accordance with any Guidelines.

'Permissible Break' means when a Participant:

- (a) involuntarily ceases Employment or has a break from their Employment due to a reason outside of the Participant's or Provider's control, which satisfies the requirements specified in any Guidelines;
- (b) subsequently commences in alternative Employment or returns to the same Employer; and

- (c) the relevant break or breaks do not exceed:
- (i) 28 calendar days in total in:
 - A. a 12-week Period;
 - B. each 12 weeks of the 26-week Period (which may be pro-rated); or
 - C. each 12 weeks of the 52-week Period (which may be pro-rated); or
 - (ii) any other period specified by the Department, including in any Guidelines.

'Personal Event' means a Participant's personal event that has been recorded in their Electronic Calendar.

'Personal Event Time' means the time that a Personal Event, that the Provider has confirmed in accordance with clause 112.8, is scheduled to occur.

'Personal Information' has the same meaning as under section 6 of the Privacy Act.

'Personnel' means:

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

'Placement' means:

- (a) an Education Placement; or
- (b) an Job Placement.

'Post Placement Support' means the Services a Participant receives, in relation to an Outcome, for the period from the Anchor Date and while the Participant is working towards an Outcome, unless the Participant is in Ongoing Support.

'Pre-Employment Support' means the Services a Participant receives from Commencement in the NSDEP until they enter Post Placement Support or Exit. Pre-Employment Support encompasses the Flexible and Intensive Service options for Participants and whether a Participant is engaged in the Work Preparation or Job Search phase.

'Pre-Existing' means an activity that a Participant started before Commencing in Services.

'Previous Provider' means a service provider with an agreement with the Department, for the provision of disability employment services, that is due to expire on 30 June 2025.

'Principal Carer' has the meaning given to the term 'principal carer' by the *Social Security Act 1991* (Cth).

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

'Program 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 this Deed, including any Guidelines.

'Program Provider' means a provider of Services under a New Specialist Disability Employment Program Deed, and includes the Provider as the context requires.

'Program of Support' means a program that is:

- a) designed to help people prepare for, find or maintain work;
- b) funded wholly or partly by the Commonwealth; and

- c) used to determine if a person is eligible for the Disability Support Pension under the Social Security Law, on the basis of a continuing inability to work.

'Program Summary' means a Report including the following information:

- (a) the reason for the Exit;
- (b) details of the Services provided to or purchased for the Participant;
- (c) details of any barriers to future employment or the maintenance of current employment for the Participant; and
- (d) any comments or other issues.

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

'Protective Security Policy Framework' or **'PSPF'** means the Australian Government Protective Security Policy Framework as amended from time to time, as set out at: (<https://www.protectivesecurity.gov.au/>).

'Provider' means the Party that has entered into this Deed with the Department and includes its successors and assigns and, where the context permits or requires, its Personnel.

'Provider Appointment Report' means an electronic Report sent by the Provider, through the Department's IT systems, recommending that a financial penalty be investigated and applied to a Participant (Mutual Obligation) for non-attendance at an Appointment, if the Provider has assessed the Participant (Mutual Obligation) as failing to attend an Appointment without a Valid Reason or Reasonable Excuse.

'Provider Exit' means the exiting of a Participant from the Services by the Provider by recording 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 or service (including any cloud storage platform) used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems.

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

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

the Deed Records.

'Provider Scorecard' means a periodic report describing the Provider's performance against Key Performance Indicators.

'Provider Sourced Voluntary Work' means voluntary work arranged in accordance with any Guidelines by the Provider in a not-for-profit community Activity Host Organisation as a Specified Activity.

'Reasonable Excuse' has the meaning given to the term 'reasonable excuse' in the Social Security Law.

Note: Under the Social Security law, a Participant cannot be taken to have failed to meet their Mutual Obligation Requirements if they have a Reasonable Excuse for the failure.

'Reconnection Requirement' has the meaning given to 'reconnection requirement' in the *Social Security (Administration) Act 1999* (Cth).

'Records' means documents, plans, reports, information and data stored by any means and all copies and extracts of the same, and includes Deed Records, Commonwealth Records and Provider Records.

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

'Recurring Employment' means Employment for which the Provider has already received an Outcome Fee for a 12-week Period, a 26-week Period or a 52-week Period, for that Participant in a previous Period of Service, for the same employment position, and with the same employer.

'Re-engagement' means the process by which a Participant reconnects with Services following:

- (a) an incident (or incidents) of non-compliance with their Mutual Obligation Requirements or compulsory requirements;
- (b) a period of Exemption; or
- (c) the completion of an approved activity.

'Re-engagement Appointment' means an Appointment for the purposes of Re-engagement of a Participant following:

- (a) an incident (or incidents) of non-compliance with their Mutual Obligation Requirements or compulsory requirements;
- (b) a period of Exemption; or
- (c) the completion of an approved activity.

'Referral' or **'Referred'** means a referral of a person to the Provider by Services Australia, the Department, or Services Australia Assessment Services.

'Regional Area' means any area that is not a Capital City.

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

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

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

Note: Reimbursements include Wage Subsidies, payments in relation to Certificate of Compliance certification and surveillance costs and reimbursement available under the EAF.

'Related Entity' means:

- (a) those parts of the Provider other than its 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, when 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.

‘Relationship Manager’ means the person for the time being holding, occupying or performing the duties of the position specified in Item 00 of Schedule 1 – Deed Details, who has authority to receive and sign Notices and written communications for the Department under this Deed.

‘Relinquishing Provider’ means the Provider that was providing Services to a Participant prior to their transfer to a different Provider.

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

‘RFFR’ means DEWR’s Right Fit For Risk accreditation which is contained in the ESAF.

‘Schedule’ means Schedule 1 – Deed Details.

‘Secretary’ means the Secretary of the Department.

‘Security Classified Information’ means Official Information that, if compromised, could have adverse consequences for the Commonwealth, as further defined in the PSPF.

‘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 Department’s online identity and access management tool to manage the Provider’s access to the Department’s IT Systems; and
- (c) to communicate with the Department in relation to IT security related matters.

‘Self-Employment Allowance’ means an allowance payable by DEWR to a Participant while undertaking Small Business Coaching in accordance with the Self-Employment Assistance Agreement.

‘Self-Employment Assistance’ means the assistance received by a Participant undertaking Self-Employment Assistance in accordance with the Workforce Australia Deed 2022 – 2028 and any guidelines issued by DEWR, including, if applicable, the payment of Self-Employment Allowance and small business start-up costs, Small Business Training, Small Business Coaching, Exploring Self-Employment Workshops, development of a business plan, business advice sessions and business health checks.

‘Self-Employment Assistance Provider’ means any entity that is contracted by the Commonwealth to provide Self-Employment Assistance under the Workforce Australia Deed 2022 – 2028.

‘Self-Employment Assistance Services’ means the services to be provided by the Self-Employment Assistance Provider to assist Participants undertaking Self-Employment Assistance in establishing and running viable new small businesses in accordance with any guidelines or written instructions that DEWR may issue to the Self-Employment Assistance Provider from time to time.

‘Serious Failure Penalty’ means the suspension of Income Support Payments for an eight week period applied by Services Australia, when a Participant (Mutual Obligation) has been found, following investigation by Services Australia, to:

- (a) have refused to accept or commence a suitable job without having a Reasonable Excuse; or
- (b) be persistently non-compliant (as determined through a Comprehensive Compliance Assessment).

'Service Fee' means a Fee payable in accordance with clause 159 [Service Fees] and Annexure B1, which is paid for the provision of all Services except those Services expressly related to:

- (a) Outcomes;
- (b) Progress Fees;
- (c) Ongoing Support (including Ongoing Support (Work Assist));
- (d) Moderate Intellectual Disability Payments; and
- (e) Self-Employment Assistance.

'Service Guarantee' means the set of minimum service standards specified for Service at Annexure C2.

'Services Start Date' means the date specified in Item 00 of Schedule 1 – Deed Details.

'Services' means all the categories of services referred to in Chapter 5 of this Deed, and any Additional Services, that the Provider is required to provide under this Deed.

'Services Australia' means the Australian Government agency known as Services Australia and, if the context permits or requires, includes the agency's relevant officers, delegates, employees, contractors and agents.

'Services Australia Assessment Services' means Assessment services provided by Services Australia.

'Site' means one or more physical locations in an ESA as specified in Item 00.5 or 00.3 of Schedule 1 – Deed Details.

'Site Frequency' means the days, times or basis on which Sites are open for the provision of the Services as specified in Item 00 or Item 00 of Schedule 1 – Deed Details.

'Skills Assessment' means an assessment by the Provider, in accordance with clause 115 [Skills Assessment], to determine what work/educational skills and experience a Participant currently possesses and to identify and develop strategies for the Participant to obtain sustainable employment.

'Skills Shortage' means any skills shortage area as provided for by Jobs and Skills Australia or as otherwise advised by the Department.

'Small Business Coaching' means up to 12 months of business mentoring and support for Participants undertaking Self-Employment Assistance and may include for eligible Participants, a Self-Employment Allowance for up to 39 weeks and/or rental assistance for up to 26 weeks.

'Small Business Training' means free accredited small business training of up to Certificate IV qualification available to Participants undertaking Self-Employment Assistance.

'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, as amended from time to time.

'Special Benefit' has the meaning given to the term 'special benefit' by the *Social Security Act 1991* (Cth).

'Special Class Client' means a person who acquired a disability, injury, or illness because they were present at, and directly affected by, notified events such as the Bali and London bomb attacks, and the December 2004 Tsunami and who is eligible for the NSDEP .

'Specialist Service Group' means a category of Participants serviced by a Specialist Provider as specified in Item 00.4 of Schedule 1 – Deed Details of this Deed.

'Specialist Provider' means:

- (a) a Program Provider that is identified as a Specialist Provider in Item 00 of Schedule 1 – Deed Details of this Deed; and
- (b) if the Provider is identified as a Specialist Provider in Item 00 of Schedule 1 – Deed Details of this Deed, includes the Provider as the context requires.

'Specified Activity' means an Observational Work Experience Placement, Provider Sourced Voluntary Work and any other Activity specified as such in any Guidelines.

'Subcontract' means an agreement entered into by the Provider by which some or all of the Services are conducted by another entity, and **'Subcontract'** and **'Subcontracting'** refer to the act of entering into any such an agreement.

'Subcontractor' means a party that has entered into a Subcontract with the Provider, including a Material Subcontractor.

'Supervisor' means any individual or organisation engaged or employed by the Provider or a Subcontractor to supervise Activities, or that may be engaged or employed by Activity Host Organisations to supervise Activities that they provide.

'Supported Employment Service' means services to support the paid employment of people with disabilities:

- (a) for whom competitive employment at or above the relevant award wage is unlikely; and
- (b) who, because of their disabilities, need substantial ongoing support to obtain and retain paid employment.

'Supported Wage System' or **'SWS'** means the Australian Government program that makes provision through the National Panel of Assessors for eligible people with disability to access a productivity based wage assessment.

'Suspend' or **'Suspended'** means the act of imposing a Suspension.

'Suspension' means a period of time, as recorded by either the Provider (in accordance with this Deed) or Services Australia on the Department's IT Systems, which is not counted as time for the purposes of calculating or accruing any entitlement to Fees and the requirement to provide Services to a Participant is suspended.

'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.

'Third Party Employment System' means any Third Party IT used in association with the delivery of the Services, whether or not that Third Party IT Accesses the Department's IT Systems, and if that Third Party IT:

- (a) contains program specific functionality or modules; or
- (b) is used, in any way, for the analysis of Records relating to the Services, or any derivative thereof.

'Third Party IT System' means any:

- (a) information technology system (including any cloud storage platform) developed and managed; or
- (b) information technology service (including any cloud storage platform) provided,

by a Third Party IT Vendor and used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems. 'Third Party IT' includes a Third Party Employment System and a Third Party Supplementary IT System.

'Third Party IT Vendor' means an entity contracted by the Provider to provide information technology systems or services to the Provider in association with the delivery of the Services, whether or not the entity is a Subcontractor, and includes as relevant, its Personnel, successor and assigns, and any constituent entities of the Third Party IT Vendor's organisation. A 'Third Party IT Vendor' includes a cloud services vendor, an infrastructure as a service vendor, a software as a service vendor, a platform as a service vendor, an applications management vendor, and also any vendor of infrastructure (including servers and network hardware) used for the purpose of Accessing or storing Records.

'Third Party IT Vendor Deed' means an agreement between a Third Party IT Vendor that provides or uses a Third Party Employment System and DEWR in the terms and form as specified by the Department from time to time.

'Third Party Supplementary IT System' has the meaning give in the ESAF.

'Traineeship' has the same meaning as Apprenticeship.

'Training' means any training activity unless otherwise advised by the Department.

'Transferred Participant' means a Participant who is identified in the Department's IT Systems as a transferred Participant.

'Transferred Wage Subsidy Participant' means a Participant who is the subject of a Wage Subsidy that was negotiated with the relevant Employer by a Program Provider other than the Provider.

'Transition-in Period' means the period, if any, Notified by the Department to the Provider in accordance with clause 69 [Transition in].

'Transition-Out Period' means the period, if any, Notified by the Department to the Provider in accordance with clause 70.1 [Transition out].

'Unemployment Failure' means if a Participant becomes unemployed because of a voluntary act (except a reasonable act) or misconduct.

'Unsubsidised Self-Employment' means self-employment as specified in any Guidelines.

'Vacancy' means any position for paid employment with an Employer that is not a Non-Payable Outcome.

'Valid ESAt' means an ESAt that was conducted within the last two years when the Participant has not had a significant change of circumstances which would make the ESAt invalid, in accordance with any Guidelines.

'Valid Job Capacity Assessment' or **'Valid JCA'** means a JCA that was conducted within the last two years when the Participant has not had a significant change of circumstances which would make the JCA invalid, in accordance with any Guidelines.

'Valid Reason' means a valid reason as specified in any Guidelines.

'Vocational Barrier' means a lack of appropriate training, skills or qualifications for employment.

'Voluntary Change in Employment' means when a Participant in either Post Placement Support or Ongoing Support voluntarily ceases Employment and subsequently commences in alternative Employment in accordance with any Guidelines, and the alternative Employment commences within:

- (a) seven calendar days of ceasing Employment; or
- (b) a longer period from the date of ceasing Employment, when this is in accordance with any Guidelines.

'Volunteer (Mutual Obligation)' means a Participant who is not a Disability Support Pension Recipient (Compulsory Requirements) and:

- (a) is subject to an Exemption;

- (b) has part-time Mutual Obligation Requirements and is satisfying their Mutual Obligation Requirements;
 - (c) has a temporary reduced work capacity of less than 15 hours per week, as determined by an ESAt or JCA, for the period determined by an ESAt or JCA.
 - (d) is a PCW Participant with a current or future work capacity of less than 15 hours per week;
 - (e) is aged 55 years or over and is satisfying their Mutual Obligation Requirements; or
 - (f) is advised by the Department to be a Volunteer (Mutual Obligation),
- and who volunteers to participate in additional activities.

‘Volunteer (Non-mutual Obligation)’ means a Participant who does not have Mutual Obligation Requirements.

‘Vulnerable Person’ means:

- (a) a Child; or
- (b) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

‘Wage Subsidy’ means a payment identified as a Wage Subsidy in any Guidelines, and any other wage subsidy as advised by the Department.

‘Warranted Material’ means any:

- (a) Existing Material;
- (b) Third Party Material; and
- (c) Deed Material.

‘WHS Act’ means the *Work Health and Safety Act 2011* (Cth) and any ‘corresponding WHS law’ as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

‘WHS Entry Permit Holder’ has the same meaning as that given in the WHS Act.

‘WHS Laws’ means the WHS Act and WHS Regulations.

‘WHS Regulations’ means the regulations made under the WHS Act.

‘Workforce Australia Deed 2022 – 2028’ means the deed of that name entered into between a provider and DEWR for the provision of employment services.

‘Work Preparation phase’ means a phase of the Intensive Service that seeks to address both vocational and Non-Vocational Barriers to employment, and build skills to find quality and sustainable employment.

‘Work Refusal Failure’ means when a Participant refuses or fails to accept an offer of suitable employment.

‘Working With Children Check’ means the process specified in, or pursuant to, relevant Working with Children Laws to screen an individual for fitness to work with Children.

‘Working with Children Laws’ means the:

- (a) *Child Protection (Working with Children) Act 2012* (NSW);
- (b) *Working with Children (Risk Management and Screening) Act 2000* (Qld);
- (c) *Working with Children (Criminal Record Checking) Act 2004* (WA);
- (d) *Worker Screening Act 2020* (Vic);

- (e) *Child Safety (Prohibited Persons) Act 2016 (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.

'Workplace Modification Scheme' or **'WMS'** means the Australian Government program providing assistance through the National Panel of Assessors for modifying a workplace or purchasing special services or equipment for eligible employees with disability.

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

'Youth Allowance' has the meaning given to the term 'youth allowance' by the *Social Security Act 1991 (Cth)*.

'Youth Allowance (Student)' has the meaning given to the term 'youth allowance' by the *Social Security Act 1991 (Cth)*, as it applies to students who are undertaking full-time study within the meaning of that Act.

ANNEXURE B FEES AND OUTCOMES

ANNEXURE B1 NEW SPECIALIST DISABILITY EMPLOYMENT PROGRAM FEE ANNEXURE – 1 JULY 2025 ONWARDS

Table 1: Service Fees*

*Indicative payment amounts

Pre-Employment Support	Fee by Funding Level (GST inclusive)				
	1	2	3	4	5
Intensive Service	\$268	\$307	\$357	\$458	\$522
Flexible Service	\$102	\$102	\$102	\$102	\$102

Note: The amount of the Service Fee payable to the Provider is determined by:

- (a) the Participant's Funding Level as specified in the Department's IT Systems; and
- (b) whether the type of Pre-Employment Support that the Participant has been receiving, that is Intensive Service or Flexible Service.

Table 2: Progress Fees*

*Indicative payment amount

Payment Type	Fee (GST Inclusive)
Progress Fee	\$1000

Table 3 – Outcome Fees*

*Indicative payment amounts

Employment Outcome Type	Fee by Funding Level (GST inclusive)				
	1	2	3	4	5
12-week Full Outcome	\$1,250	\$2,232	\$3,255	\$4,592	\$8,194
26-week Full Outcome	\$1,797	\$3,205	\$4,669	\$6,596	\$11,742
52-week Full Outcome	\$496	\$882	\$1,286	\$1,817	\$3,244
12-week Partial Outcome	\$401	\$718	\$1,060	\$1,520	\$2,696
26-week Partial Outcome	\$581	\$1,037	\$1,525	\$2,165	\$3,888
52-week Partial Outcome	\$157	\$283	\$420	\$593	\$1,070

Note: The amount of the Outcome Fee payable to the Provider is determined by:

- (a) the Participant's Funding Level as specified in the Department's IT Systems; and
- (b) whether the Participant has satisfied the requirements for a Full Outcome or a Partial Outcome.

Table 4: Moderate Intellectual Disability (MID) Payment*

*Indicative payment amount

MID Payment Type	Fee (\$GST inclusive)
12-week MID Payment	\$7,892
26-week MID Payment	\$16,020
52-week MID Payment	\$2,913

Table 5: Ongoing Support Fees*

*Indicative payment amount

Level of Ongoing Support	Fee by Claim type (GST inclusive)		
	Per Instance	Quarterly	Monthly
Flexible Ongoing Support	\$477	N/A	N/A
Moderate Ongoing Support	N/A	\$1,430	\$440
High Ongoing Support	N/A	\$3,576	\$1,100

Notes:

- All amounts are shown in Australian dollars and cents.
- Moderate Intellectual Disability Payments are paid in addition to the relevant Full Outcome Fee, and apply only when the Participant has worked in a job for at least 15 hours per week and achieved a Full Outcome. Moderate Intellectual Disability Payments are not available for Partial Outcomes.

ANNEXURE B2 OUTCOMES

Table 1 - Outcomes

Row	Column A Outcome Type	Column B Anchor Date	Column C Outcome Description
1	Partial Outcome	<p>The Anchor Date being:</p> <ul style="list-style-type: none"> (a) the same date as the Job Placement Start Date; or (b) any date thereafter, once the Provider has determined that the Participant is likely to meet the requirements of a 52-week Outcome; or (c) as otherwise specified in any Guidelines or advised by the Department. 	<p>For a:</p> <ul style="list-style-type: none"> (a) '12 Week Period', being a period of 12 Consecutive Weeks: <ul style="list-style-type: none"> (i) from the Anchor Date; and (ii) which does not overlap with the Outcome Period for any other Outcome that has been claimed in relation to the relevant Participant or (b) '26-Week Period', being a period that: <ul style="list-style-type: none"> (i) is 26 Consecutive Weeks that commences at the start of the 12 Week Period; and (ii) does not overlap with any other 12 week period or 26 week Period, except as otherwise provided in any Guidelines, (c) '52-Week Period', being a period that: <ul style="list-style-type: none"> (i) is 26 Consecutive Weeks that immediately follows the completion of a 26-week Period; and

Row	Column A Outcome Type	Column B Anchor Date	Column C Outcome Description
			<p>(ii) does not overlap with any other 12-week Period, 26-week Period or 52-week Period,</p> <p>a Participant:</p> <p>(d) remains each week in Employment, Unsubsidised Self-Employment, an Apprenticeship or a Traineeship and, after the Anchor Date:</p> <p>(i) works for a minimum of 5 hours and less than 8 hours per week on average in 12 Consecutive Weeks (for the 12-week Period) or 26 Consecutive Weeks (for the 26-week Period or 52-week Period), if that Participant has an 8 hour Employment Benchmark; or</p> <p>(ii) works for a minimum of 10 hours and less than 15 hours per week on average in 12 Consecutive Weeks (for the 12-week Period) or 26 Consecutive Weeks (for the 26-week Period or 52-week Period), if that Participant has a 15 hour Employment Benchmark; or</p> <p>(iii) works for a minimum of 15 hours and less than 23 hours per week on average in 12 Consecutive Weeks (for the 12-week Period) or 26 Consecutive Weeks (for the 26-week Period or 52-week Period), if that Participant has a 23 Hour Employment Benchmark; or</p> <p>(iv) works for a minimum of 20 hours and less than 30 hours per week on average in 12 Consecutive Weeks (for the 12-week Period) or 26 Consecutive Weeks (for the 26-week Period or 52-week Period), if that Participant has a 30 hour Employment Benchmark; or</p> <p>(e) satisfies the requirements of any other event that the Department may Notify the Provider from time to time as being a Partial Outcome.</p>

Row	Column A Outcome Type	Column B Anchor Date	Column C Outcome Description
2	Full Outcome	Anchor Date (see Row 1)	<p>For a:</p> <ul style="list-style-type: none"> (a) '12-week Period' (see Row 1); (b) '26-week Period' (see Row 1); or (c) '52-week Period' (see Row 1), <p>a Participant:</p> <ul style="list-style-type: none"> (d) remains each fortnight in Employment or Unsubsidised Self-Employment or an Apprenticeship or Traineeship that generates sufficient income to have caused the Participant's Basic Rate of any Income Support Payment to cease; (e) a Participant remains each week in Employment or Unsubsidised Self-Employment or an Apprenticeship or a Traineeship and, after the Anchor Date: <ul style="list-style-type: none"> (i) on average, works a minimum of 96 hours in 12 Consecutive Weeks (for the 12-week Period) or 208 hours in 26 Consecutive Weeks (for the 26-week Period or 52-week Period) if that Participant has an 8 Hour Employment Benchmark; (ii) on average, works a minimum of 180 hours in 12 Consecutive Weeks (for the 12-week Period) or 390 hours in 26 Consecutive Weeks (for the 26-week Period or the 52-week Period) if that Participant has a 15 Hour Employment Benchmark;

Row	Column A Outcome Type	Column B Anchor Date	Column C Outcome Description
			<ul style="list-style-type: none"> (iii) on average, works a minimum of 276 hours in 12 Consecutive Weeks (for the 12-week Period) or 598 hours in 26 Consecutive Weeks (for the 26-week Period or the 52-week Period) if that Participant has a 23 Hour Employment Benchmark; or (iv) on average, works a minimum of 360 hours in 12 Consecutive Weeks (for the 12-week Period) or 780 hours in 26 Consecutive Weeks (for the 26-week Period or the 52-week Period) if that Participant has a 30 Hour Employment Benchmark; or (f) with an 8 Hour Employment Benchmark and Future Work Capacity of 0-7 hours per week remains each week in Employment or Unsubsidised Self-Employment or an Apprenticeship or a Traineeship and, after the Anchor Date: <ul style="list-style-type: none"> (i) works at least 8 hours per week across any 9 weeks of a 12 Consecutive Week Period for a 12-week Employment Outcome; or (ii) works at least 8 hours per week across any 20 weeks of a 26 Consecutive Week Period (for the 26-week Period or the 52-week Period) for a 26-week Employment Outcome and a 52-week Employment Outcome; or (g) satisfies the requirements of any other event that the Department may Notify the Provider from time to time as being a Full Outcome.

ANNEXURE C CODE OF CONDUCT AND SERVICE GUARANTEE

ANNEXURE C1 NEW SPECIALIST DISABILITY EMPLOYMENT PROGRAM – CODE OF CONDUCT MADE BY THE *DISABILITY SERVICES AND INCLUSION (CODE OF CONDUCT) RULES 2023* UNDER THE *DISABILITY SERVICES AND INCLUSION ACT 2023*

The Code of Conduct (**Code**) is a mandatory set of guidelines that must be followed by anyone providing disability services funded by the Commonwealth.

As part of the Disability Services and Inclusion Framework, the Code promotes the health, safety and wellbeing of people with disability.

The Code sets out acceptable, appropriate and ethical conduct for providers and employees who are delivering disability services funded by the Commonwealth.

In undertaking an eligible activity to which the arrangement or grant relates, the covered person must:

- (a) act with respect for the individual rights of people with disability to freedom of expression, self-determination and decision-making, in accordance with applicable laws and conventions;
- (b) respect the privacy of people with disability;
- (c) provide the eligible activity in a safe and competent manner, with care and skill;
- (d) act with integrity, honesty and transparency;
- (e) promptly take steps to raise and act on concerns about matters that may have an impact on the quality and safety of the provision of the eligible activity to people with disability;
- (f) take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of, people with disability; and
- (g) take all reasonable steps to prevent and respond to sexual misconduct.

[CODE TO BE INSERTED]

ANNEXURE C2 DRAFT SERVICE GUARANTEE



Australian Government
Department of Social Services

New Specialist Disability Employment Program – Your Service Guarantee

The Guarantee reflects the Australian Government's expectations for providers of the new Specialist Disability Employment Program to provide individually tailored services that are *Respectful, Build Trust, Provide Support, Listen to your needs* and *Connects* you with appropriate services to support you find and keep a suitable job.

The service guarantee sets a minimum level of service that clients should expect from service providers while in the new Speciality Disability Employment Services in accordance with the Disability Services and Inclusion Act 2023, Code of Conduct Rules 2023, and the National Standards for Disability.

What you can expect from your provider:

Respect your Rights by treating you fairly, with respect and in a culturally sensitive way and clearly explaining to you what services they can provide to suit your individual circumstances and tell you what you must do to meet your obligations.

Deliver specialised individual disability employment services through the most appropriate intensive and flexible streams to support you build on your strengths to find and retain a job.

Staying connected to you through negotiating regular contact appointments in a way that works for you including face to face meetings whenever possible.

Build a trusting relationship to support you by consulting with you to develop an individualised Job Plan to identify activities that best meet your needs to provide an individually tailored program to assist you to prepare for and to find suitable and sustainable employment that match your skills and goals.

Listen to your needs and identify your strengths and any challenges you may have to provide a tailored pathway for you to access supports available to assist you and reassess your needs if your circumstances change and make appropriate adjustments to your program requirements.

Connecting you with other services that will help you build on your skills through further education and training or work experience.

Providing support to connect you with community support groups that are culturally appropriate.

Providing support to access to an interpreter if you need one.

Support and assist you to search for a suitable job that meet your needs and circumstances, help you settle into your job and provide continued support if you need it by developing a plan with you or help with on-the-job training to help you keep your job.

Stay Connected with you after you get a job by providing ongoing support appropriate to your needs.

Provide Ongoing Support for you and your employer through information, support and training and helping you to resolve any problems you may have at work. By continuing to meet with you regularly or giving you more intensive support when you need it or if you are at risk of losing your job.

Support and help you and your employer access a range of other support services, depending on your circumstances. Such as financial help for other services through the Employment Assistance Fund for workplace modifications, or purchase of specialised technology.

What are my responsibilities:

Keep *Connected* with your provider as soon as possible if you are unable to attend your appointments or do any of the activities set out in your Job Plan.

Respectfully work with your provider and let them know of any changes in your circumstances or if you have any problems in meeting your requirements.

Respectfully participate in all activities identified in your Job Plan that are targeted to help you build on your skills while meeting mandatory mutual obligations requirements.

Stay *Connected* with your provider by participating in appointments so they can provide you with the best possible quality service to improve your readiness for work through relevant activities.

Help available for making phone calls?

If you are deaf or hard of hearing, or find it hard to speak using the phone, you can call the **National Relay Service** by calling:

- TTY (Talk and Listen) on **1800 555 677** and then ask for 1800 880 052
- Speak and Listen (speech-to-speech relay) on **1800 555 727** and then asking for 1800 880 052

If you need something in a language other than English, you can call the Translating and Interpreting Service (TIS) on **131 450**.

ANNEXURE D CENTRE OF EXCELLENCE

The Disability Employment Centre of Excellence (**Centre of Excellence**) will provide resources, tools and training to help Providers deliver quality employment services and supports to both Participants with disability and Employers.

The Centre of Excellence will build:

- higher levels of disability awareness to support Participants more effectively
- knowledge of evidence-based models and approaches, including customised employment, job coaching and career planning, and
- an improved understanding of Employer needs, and the skills and knowledge to help Employers to hire and support employees with disability.

Providers are not required to engage with the Centre of Excellence. However, it is expected that all Providers will utilise all tools, resources and training available to effectively:

- help all eligible Participants, regardless of their level of disability, by providing personalised assistance to develop pathways into sustainable Employment
- engage and work with Employers to meet their labour needs, including working with individual Employers to identify job Vacancies and matching suitable candidates to those Vacancies while maintaining quality and sustainable Outcomes for people with disability
- continually meet and adapt to the needs of Employers and people with disability, and
- foster the continued engagement and participation of people with disability.

The Centre of Excellence is designed to provide support to Providers through adoptable practice resources, advice and training, so that all Providers can deliver quality services.