



**Australian Government**

**Department of Social Services**

**Disability Employment National Panel of Assessors Program**

**Deed of Standing Offer**

**2025-2028**

DRAFT for Exposure Draft

**Contents**

- Section 1 National Panel of Assessors 1
  - 1. Objectives 1
  - 2. Standing offer 1
  - 3. Commonwealth not bound to order from Provider 1
  - 4. Formation of Contracts 2
  - 5. Terms and Conditions of a Contract 2
  - 6. Priority of Contract Documents 2
- Section 2 Performing the Services 1
  - 7. General Requirements 1
  - 8. Geographic coverage 1
  - 9. Conduct of Assessments 1
  - 10. Services specifically not required 2
  - 11. Provider’s Personnel 2
  - 12. Checks, Child Safety and reasonable care 4
  - 13. Compliance with Commonwealth, State and Territory requirements 6
  - 14. Provider’s conduct 6
  - 15. Provider’s responsibility 8
  - 16. Liaison and compliance 8
  - 17. Minimising delay 9
  - 18. Directions 9
  - 19. Excluded activities 10
  - 20. Location and Accessibility 10
  - 21. Gap filling and action to address unmet demand 10
  - 22. Additional services 11
- Section 3 Conditions 1
- Section 3A Term of this Deed and any Contracts 1
  - 23. Term of this Deed 1
  - 24. Term of any Contracts 1
  - 25. Survival 1
- Section 3B Financial Matters 2
  - 26. General 2
  - 27. Evidence to support claims for Payment 3
  - 28. Superannuation 3
  - 29. No charge to Participants 4
  - 30. Overpayment 4
  - 31. The Department may change certain terms 5
  - 32. Debts and offsetting 5
  - 33. Taxes, duties and government charges 5
  - 34. Financial statements and guarantees 6
  - 35. Information provided to the Department 7
  - 36. Fraud 7
- Section 3C Evaluation and Management of Provider’s Performance 8
  - 37. Service Guarantee 8
  - 38. Code of Conduct 8
  - 39. Evaluation activities 8
  - 40. Key Performance Indicators 9
  - 41. Assurance Activities and audits 10
  - 42. Sample Reviews 11
  - 43. Performance Management 12
  - 44. Customer feedback process 12
  - 45. Dealing with Customer feedback 13
  - 46. Customer Feedback Register 13

47.	Complaints Resolution and Referral Service (CRRS)	13
48.	Provider feedback	14
	Section 4 Information and Information Management	15
	Section 4A Intellectual Property Rights	15
49.	Intellectual Property Rights	15
50.	Moral Rights	16
	Section 4B Control of Information	1
51.	Personal and Protected Information	1
52.	The Department's right to publicise the Services and release information	3
53.	The Department's right to publicise best practice	3
54.	Release of information on Provider's performance	3
55.	Confidential Information	3
56.	Public Sector Data	5
	Section 4C Records and Access	6
57.	Records the Provider must keep	6
58.	Access by Customers to their own Personal Information in connection with the NPA	8
59.	Access to documents	8
60.	Access to premises and records	9
	Section 4D Information Technology	10
61.	General	10
62.	Access and information security assurance	11
	Section 5 Administration	18
	Section 5A Indemnity and Insurance	18
63.	Indemnity	18
64.	Insurance	19
65.	Liability of Provider to the Department	23
66.	Special rules about trustees	24
	SECTION 5B Changes in Persons Delivering Services	24
67.	Corporate governance	24
68.	External administration	27
	Section 5C Resolving Problems	27
69.	Dispute Resolution	27
70.	Provider Suspension	29
71.	Remedies for breach	30
72.	Termination or reduction in scope with costs	31
73.	Termination or reduction in scope for default	33
	Section 5D Other Matters	34
74.	Transition in	34
75.	Transition Out	34
76.	Provider's obligation to assist and cooperate with the Department	35
77.	in accordance with clause 74 [Transition in]	35
78.	Disability Employment and Indigenous Employment Strategy	35
79.	Indigenous Procurement Policy	35
80.	Acknowledgement and promotion	37
81.	Conflict of interest	38
82.	Subcontracting	39
83.	Assignment and novation	41
84.	Negation of employment, partnership and agency	41
85.	Special rules about Group Respondents	42
86.	Waiver	42
87.	Severance	43
88.	Entire Deed	43
89.	Variation of this Deed	43

90.	Applicable law and jurisdiction	43
91.	Compliance with laws and government policies	43
92.	Work Health and Safety legislation	44
93.	Statutory Conditions	46
94.	Shadow Economy Procurement Connected Policy	46
95.	Modern Slavery	47
96.	Australian Industry Participation	48
97.	Payment Times Procurement Connected Policy	48
98.	Notification of Significant Events	50
99.	National Anti-Corruption Commission Act 2022 (Cth) Requirements	51
100.	Compliance with the Commonwealth Supplier Code of Conduct	52
101.	Illegal Workers	53
102.	Use of interpreters	53
103.	Notices	54
	Section 6 The National Panel of Assessors Services	55
	Section 6A Supported Wage System Assessments	55
104.	The SWS Services	55
105.	SWS Assessments	55
106.	SWS Assessment Reports	55
107.	SWS Payments	56
108.	OSA Services	57
109.	OSAs	57
110.	OSA Reports	58
111.	OSA Payments	58
112.	WMS Assessments	58
113.	WMS Assessments	58
114.	WMS Assessment Reports	59
115.	WMS Payments	59
	Section 7 Interpretation and Definitions	61
116.	Rules for Interpretation	61
117.	Precedence	62
118.	Definitions	62
<b>ANNEXURE 1</b>	<b>Code of Conduct</b>	<b>74</b>
<b>ANNEXURE 2</b>	<b>Service Guarantee</b>	<b>75</b>

## 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: **Deed Commencement Date**

*[Insert Commencement Date]*

Item 4: **Deed Completion Date**

*[The last day of the Term]*

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**Item 5: Provider Services Parameters**

Item 5.1 Employment Services Area (s)	Item 5.2 Location (s) Serviced (if not servicing the whole ESA)	Item 5.3 Specialist WMS Assessments

**Item 6: Subcontractors approved by the Department**

Item 6.1 Employment Service Area	Item 6.2 Subcontractor(s)	Item 6.3 Terms and conditions relating to use of each Subcontractor

**Item 7: Group Respondent Members approved by the Department**

Item 7.1 Employment Service Area	Item 7.2 Group Respondent lead member	Item 7.3 Group Respondent Members (as applicable)	Item 7.6 Terms and conditions relating to use of each Group Respondent Member

Item 8 – **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 9 **Provider Contact Person** (clause 16 [Liaison and compliance] and clause 117 [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 10 **Department Relationship Manager** (clause 16 [Liaison and compliance] and clause 117 [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>

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**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.

## **Section 1 National Panel of Assessors**

### **1. Objectives**

1.1 The Objectives of the National Panel of Assessors are to deliver Supported Wage System (SWS) Assessment, Ongoing Support Assessment (OSA), Workplace Modifications (WMS) Assessments and Additional Services to support the needs of people with disability in employment.

1.2 The delivery of the Services should achieve the following Objectives:

- (a) employment participation by people with disability, injury or a health condition;
- (b) appropriate support services which are provided to people with disability in the workplace;
- (c) access to employment by people with disability; and
- (d) provision of fair and accurate assessments of workplace productivity.

1.3 The Provider is appointed to the National Panel of Assessors for the:

- (a) SWS Assessments;
- (b) OSAs; and/or
- (c) WMS Assessments,

as specified in the Schedule to this Deed ('the Schedule') and any Additional Services agreed between the Parties in accordance with clause 22 [Additional services].

*Note: A Provider may be appointed to provide SWS Assessments and OSAs, or only WMS Assessments, or SWS Assessments, OSAs and WMS Assessments.*

#### **Program Provider**

1.4 In this Deed, a reference to the Department includes, as the context requires, a reference to a person or organisation approved by the Department to deliver Disability Employment Services that is acting in its capacity as agent for the Commonwealth for the coordination of WMS Assessments.

### **2. Standing offer**

2.1 The Provider:

- (a) represents that it has the skills, qualifications and experience necessary to perform and manage the Services required by the Department; and
- (b) makes an irrevocable standing offer to supply the Services to the Department on the terms and conditions set out in this Deed.

### **3. Commonwealth not bound to order from Provider**

3.1 Notwithstanding any other provision of this Deed, it is an express condition of this Deed that the Department:

- (a) provides no guarantee of:
  - (i) the volume or type of business the Provider will receive, including the number of Work Orders; and
  - (ii) the market and other information provided in the tender process;
- (b) is not obliged to request Services from the Provider; and

(c) may at any time purchase or fund Services or any other similar services, in any way, from any person on such terms and conditions as may be agreed by the Department.

3.2 The Provider must comply with its obligations under this Deed at its own cost and will only be entitled to charge fees in relation to Services provided under, and in accordance with the terms of, any Contract formed under this Deed.

#### **4. Formation of Contracts**

4.1 A separate and independent Contract to provide the Services is formed between the Department and the Provider when the Provider confirms acceptance of a Work Order in relation to the Services.

4.2 Work Orders will be submitted to the Provider by the Department using the Department's IT System and, in relation to the WMS Services, will be submitted to the Provider in the form notified by the Department from time to time.

4.3 The Department may have regard to the Provider's previous rejections of Work Orders when deciding whether to allocate further Work Orders to that Provider and the Department may withdraw a Work Order for any reason at any time up until acceptance of the Work Order by the Provider.

4.4 Within one (1) Business Day of receiving a Work Order, using the Department's IT System, or, in relation to the WMS Services, by e-mail or facsimile transmission, the Provider must:

- (a) accept the Work Order; or
- (b) reject the Work Order in whole or in part, and provide reasons for the whole or partial rejection.

4.5 Work Orders will be in the form set out in the Guidelines.

#### **5. Terms and Conditions of a Contract**

5.1 A Contract will comprise:

- (a) the terms and conditions specified in the Work Order accepted by the Provider, including details of the Services to be provided;
- (b) the clauses of this Deed (other than clauses 2 and 3 and this clause 5), except that (unless the contrary intention appears) a reference in those clauses to:
  - (i) 'this Deed' is taken to be a reference to 'the Contract';
  - (ii) 'Deed Commencement Date' is taken to be a reference to the 'Contract Commencement Date';
  - (iii) 'Deed Completion Date' is taken to be a reference to the 'Contract Completion Date';
  - (iv) 'Deed Term' or 'Initial Deed Term' is taken to be a reference to the 'Contract Term'.

#### **6. Priority of Contract Documents**

6.1 To the extent of any inconsistency between two or more documents which form part of a Contract, those documents will be interpreted in the following (descending) order of priority:

- (a) the Work Order;
- (b) this Deed;

- (c) the attachments to the Work Order; and
- (d) any other document referred to in the Work Order.

## **Section 2 Performing the Services**

### **7. General Requirements**

7.1 The Provider must perform the Services:

- (a) in accordance with the terms and conditions specified in the relevant Contract;
- (b) efficiently, effectively and ethically;
- (c) in a manner which meets the Objectives;
- (d) so as to achieve an optimum performance when measured against the Performance Framework; and
- (e) to the Department's satisfaction.

7.2 If a Provider is unable to perform the Services under any Contract, the Provider must promptly Notify the Department.

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

7.4 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 which it is unable to satisfy or with which it has failed to comply; and
- (b) any other information that the Department requests.

### **8. Geographic coverage**

8.1 The Provider must perform the Services in all of the ESAs specified in the Schedule, unless otherwise directed by the Department.

8.2 Unless otherwise specified in Item 5.2 of the Schedule, the Provider must provide the Services to the whole of each ESA specified in Item 5.1 of the Schedule.

### **9. Conduct of Assessments**

9.1 The Provider must undertake the Assessment(s):

- (a) in accordance with the specific requirements for the Assessment as specified in Section 6 [The National Panel of Assessors Services] and any Guidelines;
- (b) if the Assessment requires special knowledge and expertise, conduct the Assessment using appropriate Assessors with the required special knowledge and expertise;
- (c) in accordance with the terms of the Contract;
- (d) at a time negotiated between the Employer, the Participant and his or her nominee, the Participant's Disability Employment Service provider or Employment Service Provider (if applicable) and, if required by the Department, the Department; and
- (e) if the Provider is required to undertake both a SWS Assessment and an OSA for the same Participant, both Assessments at the same time wherever practicable to do so.

- 9.2 If the Department reasonably considers an Assessment is unsatisfactory or incomplete, the Provider must, without additional charges or claim for Payments, conduct a further Assessment, if requested by the Department.
- 9.3 The Provider must follow the procedures set out in the Guidelines for managing any dispute of an Assessment by:
- (a) the Participant;
  - (b) the Participant's nominee;
  - (c) the Participant's Employer;
  - (d) the Participant's New Specialist Disability Employment Services provider; or
  - (e) the Participant's Employment Service Provider.

## **10. Services specifically not required**

- 10.1 The Services do not include assessment or reporting on issues regarding:
- (a) industrial relations determinations;
  - (b) income support arrangements;
  - (c) medical, health or legal matters; or
  - (d) other related Commonwealth, State or Territory programs including those purchased by the Department.

## **11. Provider's Personnel**

### *Assessors*

- 11.1 The Services must only be performed by Assessors with the required qualifications and experience as specified in clause 11.9 and any Guidelines or approved by the Department pursuant to clause 11.4 (**Mandatory Qualifications**).
- 11.2 The Provider may approve its Personnel as Assessors, if those Personnel have the Mandatory Qualifications. The Department may issue Guidelines in relation to the process of approving Assessors.
- 11.3 If the Provider approves its Personnel as an Assessor, the Provider must Notify the Department that the Provider has done so, as soon as possible, and in any event within two Business Days, and provide:
- (a) in that Notice, details of:
    - (i) the relevant Personnel, including their name; and
    - (ii) their Mandatory Qualifications; and
    - (iii) any relationship they have with another NPA Provider or a Specialist Disability Employment Services Provider; and
  - (b) to the Department, any other information (i.e., other than the details referred to in clause 11.3(a)) in relation to the approval as required by the Department.

- 11.4 The Department may approve other qualifications and experiences as alternative Mandatory Qualifications for an Assessor (i.e., in the alternative to those set out in clause 11.9) at the request of the Provider, provided that the Provider justifies to the Department's satisfaction how the relevant qualifications and experiences make an individual suitable to conduct Assessments. Such justification may include a transcript of relevant subjects or courses completed by an individual with a written explanation of their relevance to the Assessments they will provide.
- 11.5 If requested by the Provider, the Department will provide a Direction on whether an individual is suitably qualified and experienced to be approved by the Provider as an Assessor.
- 11.6 If requested by the Department, the Provider must provide to the Department documentary evidence demonstrating the Mandatory Qualifications, or alternative qualifications approved by the Department pursuant to clause 11.4, of any Assessor, within the timeframe reasonably requested by the Department.
- 11.7 If the Provider approves, as an Assessor, its Personnel who do not have the Mandatory Qualifications, or alternative qualifications approved by the Department pursuant to clause 11.4, the Department may terminate this Deed and/or any Contract under which that Personnel performed, or is required to perform, an Assessment, under clause 73 [Termination or reduction in scope for default].
- 11.8 The Provider must ensure that Assessments are not performed by any person unless and until they are approved by the Provider as an Assessor.

*Qualifications and Experiences*

- 11.9 Subject to clause 11.4, the Mandatory Qualifications for an Assessor are:
- (a) the following capabilities:
    - (i) high level communication skills with the ability to consult and provide advice in a sensitive and appropriate manner;
    - (ii) the ability to complete Assessments to a high standard;
    - (iii) the ability to produce detailed written reports on completion of Assessments;
    - (iv) the ability to assess barriers and negotiate appropriate solutions to meet the needs of people with disability; and
    - (v) technical skills related to the relevant process of Assessment;
  - (b) a minimum of two years practical experience in disability employment, workplace productivity assessments or related sectors;
  - (c) knowledge of:
    - (i) duty of care and professional ethics;
    - (ii) employment assistance options available to people with disability seeking employment; and
    - (iii) relevant work health and safety, industrial relations and anti-discrimination legislation;
  - (d) if the Assessor will be delivering OSAs and SWS Assessments, a minimum of a diploma or higher-level qualification in one or more of the following fields:
    - (i) psychology;

- (ii) rehabilitation counsellor;
- (iii) vocational training; or
- (iv) other diploma or higher-level qualification which:
  - (A) the Provider considers is relevant to providing the required Assessments; and
  - (B) is approved in writing by the Department;
- (e) if the Assessor will be delivering WMS Assessments, a full (not provisional or restricted) and up-to-date qualification that is registered, accredited or recognised with the relevant association, as set out below:
  - (i) occupational therapy (registered with the Australian Health Practitioner Regulation Agency (**AHPRA**));
  - (ii) physiotherapy (registered with AHPRA);
  - (iii) nurse (registered with AHPRA);
  - (iv) medical practitioner (registered with AHPRA);
  - (v) exercise physiologist (accredited by Exercise and Sports Science Australia); or
  - (vi) rehabilitation counsellor (recognised by the Australia Society of Rehabilitation Counsellors or Rehabilitation Counselling Association of Australasia); and
- (f) any other qualifications and experiences specified in the Guidelines.

*Removal of Provider and Subcontractor Personnel*

- 11.10 The Department may give Notice, on reasonable grounds related to the performance of the Services, requiring the Provider to remove its Personnel (including Assessors) from work on the Services. The Provider must, at its own cost, promptly arrange for the removal of such Personnel from work on the Services, and their replacement with Personnel acceptable to the Department.
- 11.11 For the purposes of clause 11.10, if the Provider is unable to provide replacement Personnel who are acceptable to the Department, the Department may terminate this Deed under clause 73 [Termination or reduction in scope for default].

*Training*

- 11.12 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.

**12. Checks, Child Safety and reasonable care**

*Provider Personnel*

- 12.1 Before arranging for any of the Provider's Personnel to be involved in the Services, including any Assessments (except any Assessment 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 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.



- 12.2 The Provider must ensure that any of its Personnel and Subcontractors' Personnel who has direct involvement in the provision of the Services, including any Assessments (except any Assessments specified to be excluded in any applicable Guidelines or Notified as such by the Department), is a fit and proper person.
- 12.3 The Provider must promptly Notify the Department if it becomes aware, or has reason to believe, that any of its Personnel has engaged in conduct, in the course of providing the Services 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 NPA; or
    - (ii) bring the Department or NPA into disrepute.

*Child Safety*

- 12.4 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 12.1 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*

- 12.5 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 12.5(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 12.5(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.

12.6 With reasonable notice to the Provider, the Department may conduct a review of the Provider's compliance with the Child Safety Obligations.

12.7 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.

12.8 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.

12.9 The Provider must not allow any of its Personnel to participate in the provision of the Services, including any Assessments (except any Assessments 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.

### **13. Compliance with Commonwealth, State and Territory requirements**

13.1 If the Provider, any of its Personnel or a Subcontractor, breach a relevant statutory requirement of State or Territory legislation as a result of their compliance with any provision of clause 12, the Provider must promptly Notify the Department.

13.2 The Department may issue a Direction to the Provider in relation to any matter Notified by the Provider pursuant to clause 13.1. The Direction may include instructions as to how the Provider should comply with its obligations under clause 12 of this Deed in respect of any State or Territory legislation referred to in the Provider's Notice.

### **14. Provider's conduct**

14.1 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.
- 14.2 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.
- 14.3 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) Payment or Payment-related process;
    - (e) Participant or Employer; or
    - (f) 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.
- 14.4 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 14.3;
  - (b) Notify the Department of the practice identified and the action taken by the Provider under clause 14.4(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.
- 14.5 If, after investigation, the Department determines that the Provider has been engaged in activity described in clause 14.3, the Department may:
  - (a) take action under clause 71 [Remedies for breach]; or
  - (b) immediately terminate this Deed under clause 73 [Termination or reduction in scope for default] by providing Notice to the Provider.
- 14.6 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; or
  - (b) the requirements of this Deed.
- 14.7 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.

## **15. Provider's responsibility**

- 15.1 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 the Services or 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 60 [Access to premises and records];
  - (d) involvement by the Department in the performance of the Services; or
  - (e) payment made to the Provider on account of the Services.

## **16. Liaison and compliance**

- 16.1 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; and
  - (b) promptly comply with all of the Department's reasonable requests related to this Deed.
- 16.2 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.
- 16.3 The day to day management of, and communication under, this Deed and any Contract:
- (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.
- 16.4 The Provider must ensure that it has a valid electronic mail address for the Contact Person (as specified in Item 9 of the Schedule), and any other relevant Personnel, so as to facilitate the day to day management of the Services and communication between it and the Department.

16.5 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.

## **17. Minimising delay**

17.1 The Provider must take all reasonable steps to minimise delay in meeting its obligations under this Deed.

17.2 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.

17.3 The Provider must comply with the steps it Notifies to the Department in accordance with clause 17.2(b), subject to any additional requirements which the Department may Notify to the Provider.

17.4 If:

- (a) the Provider does not Notify the Department of any delay in accordance with clause 17.2 or fails to comply with clause 17.3; or
- (b) the Department determines that the delay, as Notified by the Provider or the Department pursuant to clause 17.2, places the Services in jeopardy,

the Department may, at the Department's absolute discretion:

- (c) take action under clause 71 [Remedies for breach];
- (d) immediately terminate this Deed under clause 73 [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.

17.5 Unless, and to the extent that, clause 17.3 applies, the Provider must comply with the timeframe for meeting its obligations as set out in this Deed.

## **18. Directions**

18.1 The Department may issue a written direction to Providers in relation to this Deed (a '**Direction**'), to clarify the manner in which the requirements of this Deed will apply, including in respect of 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.

18.2 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.

18.3 To avoid doubt, a Direction forms part of this Deed, but is not a variation to this Deed, and the Department is not required to issue a Direction in accordance with clause 72 [Termination or reduction in scope with costs] or 73 [Termination or reduction in scope for default].

## **19. Excluded activities**

- 19.1 The Provider must not conduct an Assessment of an employee of, or a person who has received or is receiving Program Services from, the Provider's Own Organisation or Related Entity, unless approved by the Department due to exceptional circumstances. The Provider must immediately notify the Department in the event the Provider receives a Work Order for such an employee or person.
- 19.2 The Department may, at its absolute discretion, treat a breach of clause 19.1 as a breach of an essential term of this Deed that is not capable of being rectified.
- 19.3 If at any time the Department becomes aware that the Provider is unable to deliver Services due to clauses 19.1 or due to a Conflict, the Department may withdraw a Work Order (even if it has been accepted by the Provider) and will not be liable to pay any Payment or other amount payable to the Provider in relation to that Work Order.

## **20. Location and Accessibility**

- 20.1 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;
  - (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 20.1(a); and
  - (c) 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.

## **21. Gap filling and action to address unmet demand**

- 21.1 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 the Schedule accordingly;
  - (b) agree with other service providers appointed to the NPA 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 other service providers appointed to the NPA under 21.1(a) or 21.1(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 ESAs among service providers appointed to the NPA in respect of any ESA.
- 21.2 The provision of Services under clause 21.1(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.

21.3 Any changes to this Deed (including the Schedule) for the purpose of this clause 21 will be given effect in accordance with clause 88 [Variation of this Deed ].

## **22. Additional services**

22.1 The Department and the Provider may agree, by variation to this Deed in accordance with clause 88 [Variation of this Deed ], any Contract or in a separate agreement, to the provision of:

- (a) other assessment-related services (i.e. other than the services set out in Section 6 of this Deed as at the Deed Commencement Date); or
- (b) employment-related services,

by the Provider on behalf of the Department, including applicable terms and conditions.

## **Section 3 Conditions**

### **Section 3A Term of this Deed and any Contracts**

#### **23. Term of this Deed**

- 23.1 This Deed takes effect on the Deed Commencement Date and continues for the duration of the Initial Deed Term unless:
- (a) extended in accordance with clause 23.2; or
  - (b) terminated earlier in accordance with clauses 72 [Termination or reduction in scope with costs] or 73 [Termination or reduction in scope for default].
- 23.2 The Department may, at its sole discretion, extend the Deed Term up to an additional maximum of three years, on the terms and conditions then in effect (unless otherwise agreed between the Parties), by giving Notice to the Provider not less than 60 Business Days prior to the end of the then current Deed Term.
- 23.3 Despite termination or expiration of this Deed:
- (a) the terms and conditions of this Deed continue in force in respect of all Contracts which have not been terminated or have not expired and which were entered into prior to the date of termination or expiration of this Deed; and
  - (b) any Contract formed prior to the expiration or termination of this Deed will continue in force until the Contract is terminated or expires notwithstanding that this Deed is no longer in force.

#### **24. Term of any Contracts**

- 24.1 A Contract commences on the Contract Commencement Date and, unless:
- (a) terminated earlier; or
  - (b) extended in accordance with the Contract, expires on the Contract Completion Date.

#### **25. Survival**

- 25.1 The operation of clauses:
- (a) 32 [Debts and offsetting],
  - (b) 39 [Evaluation activities],
  - (c) 49 [Intellectual Property Rights],
  - (d) 50 [Moral Rights],
  - (e) 51 [Personal and Protected Information],
  - (f) 55 [Confidential Information],
  - (g) 57 [Records the Provider must keep],
  - (h) 58 [Access by Customers to ],
  - (i) 63 [Indemnity],
  - (j) 64 [Insurance],
  - (k) 69 [Dispute Resolution],



- (l) 71 [Remedies for breach],
- (m) 89 [Applicable law and jurisdiction],

of this Deed and any other provisions (i.e., other than those listed in this clause 25.1) that are expressly specified as surviving, or by implication from their nature are intended to continue, including definitions and interpretation provisions, will survive the expiry or earlier termination of this Deed.

- 25.2 Clause 60 [Access to premises and records] of this Deed survives for seven years from the expiry or earlier termination of this Deed.

### **Section 3B Financial Matters**

#### **26. General**

- 26.1 Subject to sufficient funds being validly appropriated for the Services, and compliance by the Provider with this Deed to the Department's satisfaction, and depending on the Services that the Provider is required to provide under the Contract, the Department will pay to the Provider any Payments owed to the Provider in accordance with this Deed, at the times and in the manner specified in this Deed and any Guidelines, to the bank account(s) specified in Item 8 of the Schedule.
- 26.2 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.
- 26.3 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.
- 26.4 If the Department determines that the Provider is in breach of clause 26.2, 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 32 [Debts and offsetting], and exercise any other remedies specified in clause 71 [Remedies for breach].
- 26.5 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.
- 26.6 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.
- 26.7 It is a precondition of the Provider's entitlement to be paid any Payments 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);
  - (d) unless otherwise advised by the Department or specified in any Guideline, submits Tax Invoices to the Department for payment.
- 26.8 The Department will index the Payments annually on 1 July. The first indexation point will not be before 1 July 2026. The indexation value is at the Department's absolute discretion.
- 26.9 The Department will issue a Notice to the Provider with the new Payment amounts determined by the Department pursuant to clause 26.8.

## **27. Evidence to support claims for Payment**

- 27.1 The Provider must retain sufficient Documentary Evidence to prove its claim for Payment under this Deed for such period as is required under clause 57 [Records the Provider must keep].
- 27.2 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.
- 27.3 If:
- (a) the Provider does not comply with clause 27.2;
  - (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 27.2 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 32 [Debts and offsetting], without prejudice to any other rights that the Department may have under this Deed, under statute, at law or in equity.
- 27.4 The Department may contact Employers 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.

## **28. Superannuation**

- 28.1 The Department is not required to make any superannuation contributions in respect of Provider Personnel or Participants in connection with this Deed.
- 28.2 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.

*Unincorporated Providers – PAYG and superannuation*

28.3 This clause 28.3 and clause 28.4 only operate if the circumstances of the engagement of the Provider are such that, under a law of the Commonwealth, the Department is required to either:

- (a) deduct withholding tax under the “Pay As You Go” system; or
- (b) make compulsory contributions, on the Provider’s behalf, to a superannuation fund, in relation to the Payments to be paid to the Provider under a Contract.

28.4 The amount of any payments referred to under clause 28.3 may be deducted by the Department from the amount of the Payments otherwise payable to the Provider pursuant to this Deed.

**29. No charge to Participants**

29.1 The Provider must not demand or receive any payment or any other consideration either directly or indirectly from any Participant or Employer for, or in connection with, the Services.

**30. Overpayment**

*General*

30.1 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, at law or in equity, recover some or all of the relevant payment amounts from the Provider, as a debt in accordance with clause 32 [Debts and offsetting].

*Double payments*

30.2 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.

30.3 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 32 [Debts and offsetting].

30.4 Without limiting any other action the Department may take under clause 30.3, 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 30.3.

30.5 Throughout the Deed Term, the Provider must Notify the Department if it intends to enter any arrangement to which clause 30.2 may apply.

### **31. The Department may change certain terms**

31.1 The Department may at any time adjust 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, for all or part of the Deed Term, by providing Notice to the Provider:

- (a) 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 (including projected Participant demand); or
- (b) acting reasonably, for any other reason as determined by the Department in its absolute discretion.

31.2 If the Department exercises its rights under clause 31.1, 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.

### **32. Debts and offsetting**

32.1 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 32.1(a) or 32.1(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 32.1(a) or 32.1(b); and
- (d) the Provider must continue to perform its obligations under this Deed despite any action taken by the Department under clause 32.1(a) or 32.1(b).

32.2 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.

32.3 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.

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

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

33.2 If a claim for Payments 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.

- 33.3 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 payable to the Provider as consideration for the Taxable Supply.
- 33.4 The Provider must not claim from the Department any amount for which it can claim an Input Tax Credit.
- 33.5 If any debt is repaid, including by offset under clause 32 [Debts and offsetting], an Adjustment Note must be provided to or by the Department, as applicable, if required by the GST Act.
- 33.6 Subject to this clause 33, 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.

#### **34. Financial statements and guarantees**

- 34.1 Subject to clauses 34.3 and 34.4, 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.
- 34.2 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.
- 34.3 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 34.1.

##### *Financial statements*

- 34.4 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.
- 34.5 For the purposes of this clause 34, if audited financial statements are created for the Provider, they must be provided to the Department.

##### *Financial undertaking and performance guarantee*

- 34.6 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.
- 34.7 The financial undertaking and performance guarantee provided in accordance with clause 34.6 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.
- 34.8 The financial undertaking and performance guarantee provided under clause 34.6 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 73 [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 32 [Debts and offsetting].

34.9 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 34.6, the Department may withhold all or part of any Payment under this Deed until the Provider (or Related Entity) meets those obligations.

34.10 If the Department exercises any or all of its rights under the financial undertaking and performance guarantee provided under clause 34.6, the Department will not be liable for, and the Provider releases the Department from liability for, any resultant loss or damage to the Provider.

34.11 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 34.6 will not be limited by the Department's exercise of the security.

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

35.1 The Provider must ensure that:

- (a) all information it provides to the Department, in any form and by any means, including all Documentary Evidence, 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 35.1(a); and
- (c) any data entered into the Department's IT Systems is consistent with any associated Documentary Evidence held by the Provider.

### **36. Fraud**

36.1 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.

36.2 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.

36.3 The Provider acknowledges that the occurrence of Fraud by the Provider or its Personnel will constitute a breach of this Deed.

36.4 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.

36.5 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 71 [Remedies for breach]; or

- (b) immediately terminate this Deed under clause 73 [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 3C Evaluation and Management of Provider's Performance**

#### **37. Service Guarantee**

- 37.1 The Provider must prominently display in its offices (where possible), and make available to potential Participants and Employers, promotional Material made available by the Department about the Service Guarantee.
- 37.2 The Provider must perform the Services at or above the minimum standards set out in the Service Guarantee in Annexure 2.

#### **38. Code of Conduct**

*Compliance with the Code of Conduct*

- 38.1 The Provider must:
  - (a) comply with the Code of Conduct set out in Annexure 1;
  - (b) if requested by the Department, provide a copy of the Code of Conduct to all Participants; and
  - (c) explain the Code of Conduct to all Participants.
- 38.2 The Provider must prominently display in its offices, 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*

- 38.3 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 44 [Customer feedback]; or
    - (ii) if relevant, actively taken steps to ensure that the issue raised in the Complaint does not re-occur.
- 38.4 Non-compliance with the Code of Conduct will constitute a breach of the Deed and may result in the Department taking action under clause 71 [Remedies for breach].

#### **39. Evaluation activities**

- 39.1 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 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, Participants to whom the Services have been provided and Employers, 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 60 [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.

39.2 The Department may provide the information obtained through the conduct of the evaluation activities referred to in clause 39.1 to other Commonwealth entities, if this serves the legitimate interests of the Commonwealth.

#### **40. Key Performance Indicators**

40.1 In providing the Services, the Provider must meet the KPIs set out in Table 1 below, and the Department will measure the Provider’s performance against KPIs having regard to:

- (a) the deliverables specified in individual Contracts;
- (b) each Assessment; and
- (c) evaluation activities undertaken by the Department under clause 39 [Evaluation activities].

**Table 1 KPIs**

<b>KPI</b>	<b>Description</b>	<b>Measures</b>
KPI 1 Efficiency	1.1 Timeliness	<ul style="list-style-type: none"> <li>(a) 90 per cent of Assessments are completed within the timeframes set out in this Deed.</li> <li>(b) 90 per cent of allocated Assessments are accepted by the Provider.</li> </ul>



KPI	Description	Measures
		<p>(c) If the Provider rejects a Work Order, acceptable reasons for the rejection are provided to the Department.</p> <p>(d) If the Department has returned an Assessment Report to the Provider for corrective action, all subsequent versions of the Assessment Report are finalised and submitted to the Department within:</p> <ul style="list-style-type: none"> <li>i. for a SWS Assessment or OSA, five Business Days; and</li> <li>ii. for a WMS Assessment, two Business Days,</li> </ul> <p>of being asked by the Department to take the corrective action.</p>
KPI 2 Effectiveness	<p>2.1 Accurate individualised Assessments</p> <p>2.2 Thorough Assessment Reports</p>	<p>(a) Assessments are conducted in a manner that responds to the individual circumstances of the Participant, measured by the Department:</p> <ul style="list-style-type: none"> <li>(i) sampling Assessment Reports; and</li> <li>(ii) taking into consideration whether the level of appealed decisions (if the parties to the Assessment dispute the outcome following the assessment process) that are subsequently overturned by the Department, is higher than average.</li> </ul> <p>(b) 90 per cent of Assessment Reports sampled by the Department are accepted as complete, without requiring further work.</p>
KPI 3 Quality	3.1 Stakeholder satisfaction	<p>(a) The Department's satisfaction with the delivery of Assessments, as measured by (but not limited to) results of stakeholder satisfaction surveys, satisfaction feedback (including from other assessors subsequently assessing the same client) and complaints.</p>

*Note: Further detail on the Key Performance Indicators is provided in the Performance Framework.*

#### **41. Assurance Activities and audits**

41.1 The Department may conduct 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, 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.

41.2 Each Party must bear its own costs in relation to any action under this clause 41.

41.3 The Provider's compliance with this clause 41 does not in any way reduce the Provider's responsibility to perform its obligations in accordance with this Deed.

## **42. Sample Reviews**

42.1 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 71 [Remedies for breach] in relation to the Deemed Invalid Claims.

42.2 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.

42.3 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 42.5, 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**).

42.4 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 71 [Remedies for breach]; or
- (b) exercise any of its rights under clause 73 [Termination or reduction in scope for default].

### *Sampling methodology*

42.5 For the purposes of clause 42.3, 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 42; 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 42.3.
- 42.6 The Department must disclose the methodology used in a Sample Review to the Provider before exercising the Department's rights under clause 42.4.

### **43. Performance Management**

- 43.1 If the Department at any time determines that the performance of the Provider is less than satisfactory, including if the Provider has failed to meet one or more of the KPIs, the Department may Notify the Provider that a failure to improve its performance to the Department's satisfaction within a period of time specified by the Department, will allow the Department to take the action specified in clause 43.2.
- 43.2 If, following a Notification given under clause 43.1, the Department determines that the Provider's performance has not improved to the Department's satisfaction within the period of time specified in the Notice, the Department may:
- (a) reduce or cease submitting Work Orders to the Provider;
  - (b) withhold or reduce any Payments otherwise owed to the Provider under this Deed;
  - (c) withdraw a Work Order (even if it has been accepted by the Provider), and the Department will not be liable to pay any Payment or other amount payable to the Provider in relation to the Work Order;
  - (d) direct the Provider to undertake specific activities to remedy the under-performance;
  - (e) without limiting any other rights in this Deed, take action under clause 71 [Remedies for breach]; and/or
  - (f) immediately terminate this Deed and any Contract without the need to provide prior Notice to the Provider, and clauses 73.3 and 73.4 apply, as if the Deed was terminated under clause 73 [Termination or reduction in scope for default].

### **44. Customer feedback process**

- 44.1 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.
- 44.2 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.
- 44.3 Upon request, the Provider must provide to the Department details of the process it has established to receive and manage Customer feedback.

#### **45. Dealing with Customer feedback**

45.1 The Provider must:

- (a) explain the Customer feedback process to Customers on initial contact with the Provider, and to Customers at any time upon request;
- (b) make copies of the Customer feedback process available to 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 Complaints Resolution and Referral Service or the National Customer Service Line 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 Customer who provides feedback or makes a Complaint, or discriminate against a Customer because of feedback or a Complaint.

#### **46. Customer Feedback Register**

46.1 The Provider must keep a Customer Feedback Register which includes, at a minimum, the information specified in the Guidelines.

46.2 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.

46.3 Upon request, the Provider must give to the Department a copy of its Customer Feedback Register.

#### **47. Complaints Resolution and Referral Service (CRRS)**

47.1 In addition to the requirements under clauses 44 [Customer feedback process] to 46 [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 offices to inspect relevant Records; and

(c) not preventing Customers or Provider Personnel from being interviewed by the CRRS.

**48. Provider feedback**

48.1 If the Provider wishes to provide feedback to the Department other than in relation to a dispute dealt with under clause 69 [Dispute Resolution], the Provider must, in the first instance, provide feedback to the Relationship Manager.

48.2 The Relationship Manager will consider all feedback received from the Provider and respond as appropriate.

48.3 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.

## Section 4 Information and Information Management

### Section 4A Intellectual Property Rights

#### 49. Intellectual Property Rights

- 49.1 This clause 49 does not affect the ownership of the Intellectual Property Rights in any Existing Material or Third Party Material.
- 49.2 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.
- 49.3 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.
- 49.4 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.
- 49.5 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.
- 49.6 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.
- 49.7 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 49.

- 49.8 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.
- 49.9 For the purposes of this clause 49 '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).
- 49.10 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 49.

## **50. Moral Rights**

- 50.1 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.
- 50.2 In this clause 50, '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*

- 50.3 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 4B Control of Information

### 51. Personal and Protected Information

#### *Application of this clause*

51.1 This clause 51 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*

51.2 In this clause 51, 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*

51.3 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:

- (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;
- (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 51;
- (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 51 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).

51.4 Clauses 51 to 60:

- (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*

51.5 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 51 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*

51.6 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.

51.7 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.

51.8 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.

51.9 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*

51.10 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).

**52. The Department's right to publicise the Services and release information**

52.1 The Provider agrees that the Department may, by any means, publicise and report on the Services and this Deed, including the name of the Provider or any Subcontractor, the Provider's performance, the amounts of Payments, and a brief description of the Services, and the Provider agrees to provide to the Department such information as the Department reasonably requires for the purposes of this clause 52.

**53. The Department's right to publicise best practice**

53.1 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.

**54. Release of information on Provider's performance**

54.1 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.

**55. Confidential Information**

55.1 Subject to this clause 55 and clause 57.6;

- (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.

- 55.2 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.
- 55.3 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.
- 55.4 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 55, or aware of any suspected or possible breach of this clause 55, 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 55;
  - (c) comply with all directions from the Department in relation to the actual, suspected or possible breach of this clause 55; 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.
- 55.5 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)).
- 55.6 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.
- 55.7 If the Provider receives a request under clause 55.6, it must promptly arrange for all such undertakings to be given.
- 55.8 The obligations on the Parties under this clause 55 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 60 [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 55.
- 55.9 If the Provider discloses the Department's Confidential Information to another person pursuant to clauses 55.8(a) or 55.8(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.
- 55.10 Nothing in this clause 55 limits the obligations of the Provider under clause 51 [Personal and Protected Information ] or clause 60 [Access to premises and records].
- 55.11 The obligations of confidentiality under this clause 55 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 55.11(a), for 20 years, unless the Department Notifies the Provider otherwise in writing.

## **56. Public Sector Data**

- 56.1 In this clause 56, '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...".

- 56.2 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.

- 56.3 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.

- 56.4 If Notified under clause 56.3, 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 56.3; 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.
- 56.5 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.
- 56.6 The Provider must bear its own costs incurred in complying with this clause 56.

## **Section 4C Records and Access**

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

#### *General*

- 57.1 The Provider must create and maintain full and accurate Records of its management and provision of the Services, including, if relevant, Participant Services Records, the Customer Feedback Register and any other Material as set out in the Records Management Instructions or otherwise advised by the Department in writing.
- 57.2 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*

- 57.3 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*

- 57.4 The Provider must store all Records created under clause 57.1 in accordance with the Records Management Instructions and the Department's Security Policies, and if relevant, its Privacy Act obligations.

### *Control*

- 57.5 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*

- 57.6 Subject to clauses 51 [Personal and Protected Information ] and 60 [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*

- 57.7 Subject to clause 51 [Personal and Protected Information ] and if relevant clause 75 [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 57.1 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 57.1, only transfer the Records in accordance with the Records Management Instructions or as otherwise directed by the Department in writing.

### *Retention*

- 57.8 Subject to clause 51 [Personal and Protected Information ], all Records created in accordance with clause 57.1 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 27.2; or
  - (b) otherwise specified in the Records Management Instructions.

- 57.9 On the expiry or termination of this Deed, the Provider must manage all Records created in accordance with clause 57.1 in accordance with the Records Management Instructions or as otherwise directed by the Department in writing.

### *Destruction*

- 57.10 The Provider must:
- (a) not destroy or otherwise dispose of Records created in accordance with clause 57.1, 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.

## **58. Access by Customers to their own Personal Information in connection with the NPA**

58.1 This clause 58 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 NPA (**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 58 in respect of that APP 12 Request.

58.2 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 58.

58.3 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).

58.4 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.

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

58.6 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.

## **59. Access to documents**

59.1 In this clause 59, the terms 'Commonwealth contract', 'contracted service provider' and 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).

- 59.2 The Provider acknowledges that this Deed is a Commonwealth contract, and the Provider is a contracted service provider.
- 59.3 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 59.

**60. Access to premises and records**

- 60.1 The Provider must at all reasonable times give any Department Employee who is assessing the Provider's compliance with its obligations in this Deed:
- (a) unfettered access to:
    - (i) its 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 this 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; and
    - (iv) its 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 41.1;
    - (ii) inspect its premises and those of any Subcontractor or Third Party IT Vendor;
    - (iii) inspect the performance of 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 systems or those of any Subcontractor or Third Party IT Vendor.

*Limitation on access rights*

- 60.2 Subject to clause 60.3, the rights referred to in clause 60.1 are subject to:
- (a) the provision of reasonable prior notice to the Provider; and
  - (b) compliance with the Provider's reasonable security procedures.



### *Investigation of Breaches and Fraud*

- 60.3 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 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,

the clause 60.2 does not apply, and the Department may remove and retain Material and original Records that are relevant to the investigation, including items stored on an electronic medium, provided that in the case of clauses 60.1(a) and 60.1(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).*

- 60.4 Each Party must bear its own costs in relation to any action under this clause 60.
- 60.5 The Provider's compliance with this clause 60 does not in any way reduce the Provider's responsibility to perform its obligations in accordance with this Deed.

## **Section 4D Information Technology**

### **61. General**

#### *Use*

- 61.1 If required by the Department, the Provider must perform the Services and other obligations under this Deed by Accessing the Department's IT Systems.
- 61.2 If any Provider Personnel require disability access to the Department's IT Systems, the Provider must install suitable accessibility software to allow such access.
- 61.3 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*

- 61.4 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.
- 61.5 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*

61.6 The Provider must ensure that:

- (a) a Customer'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*

61.7 The Provider is responsible for all costs of meeting its obligations under this clause 61 and 62.

**62. Access and information security assurance**

*Access to the Department's IT Systems*

62.1 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 62.

62.2 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.

62.3 The Provider must:

- (a) advise DEWR, by email to [securitycompliancesupport@dewr.gov.au](mailto: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).

- 62.4 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.
- 62.5 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.
- 62.6 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 62.6.

*Provider IT System accreditation*

- 62.7 All Providers must comply with the ESAF, which outlines requirements for Provider IT system accreditation such as RFFR.
- 62.8 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.
- 62.9 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.
- 62.10 If the Provider does not obtain accreditation or reaccreditation within the timeframes specified in the ESAF or this clause 62, the Provider will be in breach of clause 62.8(b) and must immediately cease using the relevant Provider IT System until accreditation or reaccreditation has been obtained.
- 62.11 The Provider must:
- (a) keep Records of accreditation and reaccreditation obtained as required by this clause 62; and
  - (b) when requested by the Department, provide those Records to the Department within the timeframe required by the Department.
- 62.12 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.

62.13 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.

62.14 In addition to any applicable requirements under clause 81 [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 72 [Termination or reduction in scope with costs ] and 73 [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.

62.15 The Provider must impose the obligations set out in this clause 62 on any Subcontractor Accessing electronic Records relating to the Services.

*Technical advice*

62.16 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 any Guidelines.

## *Security*

### General security obligations

- 62.17 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) the Department's Security Policies and DEWR's security policies; 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.
- 62.18 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

- 62.19 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.
- 62.20 The Provider is responsible for all costs associated with obtaining security clearances.

### Information security

- 62.21 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.
- 62.22 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.
- 62.23 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

- 62.24 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.

- 62.25 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.
- 62.26 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

- 62.27 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.
- 62.28 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

- 62.29 If the Department considers that the Provider may be in breach of this clause 62, 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.
- 62.30 If the Department determines that the Provider is in breach of, or has previously breached, this clause 62, 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.

- 62.31 Any action taken by the Department under clauses 62.28 and 62.29 does not limit any other rights the Department has under this Deed, including pursuant to clause 71.2, or under statute, at law or in equity.
- 62.32 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 5 Administration

### Section 5A Indemnity and Insurance

#### 63. Indemnity

63.1 General indemnity 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 52 [The Department's right to publicise the Services and release information];
  - (ii) clause 53 [The Department's right to publicise best practice]; and
  - (iii) clause 54 [Release of information on Provider's performance],if the published information was provided by the Provider to the Department;
- (g) any breach by the Provider of clause 51 [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.

63.2 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*

63.3 The liability of the Provider to indemnify those indemnified under this clause 63 will be reduced proportionately to the extent that fault on the part of those indemnified contributed to the relevant Loss.

#### *Preservation of other rights*

63.4 The right of those indemnified to be indemnified under this clause 63 is in addition to any other right, power, or remedy provided by law, but those indemnified will not be entitled to be compensated in excess of the amount of the relevant Loss.

#### *Meaning of 'Department'*

63.5 A reference to the Department in this clause 63 is not to be read as a reference to a Program Provider.

#### *Meaning of 'fault'*

63.6 In this clause 63, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including Fraud.

## 64. Insurance

### *Obligation to have and maintain insurance*

64.1 Subject to this clause 64 and unless the Department otherwise agrees in writing, the Provider must, for the Deed Term, effect and maintain valid and enforceable and, except for the statutory workers' compensation insurance referred to in clause 64.1(b)(i)(A) and the professional indemnity insurance or errors and omissions insurance at clause 64.1(d), be written on an occurrence basis:

- (a) public liability insurance with a limited of indemnity of at least \$10 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 65; 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 64.1(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 64.1(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; and
- (c) for any motor vehicle used in the performance of this Deed:
  - (i) insurance with a limit of indemnity of at least \$10 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 Deed Term and for at least seven years following the end of the Deed Term, 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 65 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 65; 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 64.1(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 any 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; and
    - (B) the Provider's premises and the premises of the Participant's Employer.
  - (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 64.1(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.
- 64.2 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.
- 64.3 Unless otherwise agreed by the Department in writing, all insurances required under this clause 64 (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.
- 64.4 Each of the insurances required by this clause 64 (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.
- 64.5 Clauses 64.4(a), 64.4(c) and 64.4(e) do not apply to any personal accident insurance required by this clause 64, and clause 64.4(a) does not apply to any professional indemnity or errors and omissions insurance.
- 64.6 In relation to the insurances specified in this clause 64, 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.
- 64.7 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 64.1(d)); or
  - (b) receives a notice of cancellation in respect of any of the insurances that the Provider is obliged to effect and maintain.
- 64.8 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 64, 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*
- 64.9 Subject to clause 64.10, the Provider must obtain written independent professional advice that the insurances obtained by it and any Subcontractors pursuant to this clause 64 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.
- 64.10 If the advice referred to in clause 64.9 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.

- 64.11 Clause 64.9 does not apply to statutory workers' compensation insurance or compulsory third party motor vehicle insurance.
- 64.12 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.
- 64.13 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 64.9, at any time that the Department requests.

Note: Clause 64.13 allows the Department to request information relating to the insurances of any Subcontractor of the Provider.

#### *Assistance to the Department*

- 64.14 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.
- 64.15 For the avoidance of doubt, the provisions of this clause 64 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 64 does not limit its liability under any other provision of this Deed.

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

#### *Proportionate liability*

- 65.1 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*

- 65.2 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.

## **66. Special rules about trustees**

### *Trustee's warranties*

66.1 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 that right of indemnity referred to in clause 63 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 64 of this Deed.

### *Provider's indemnity as trustee*

66.2 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 66 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.

## **SECTION 5B Changes in Persons Delivering Services**

### **67. Corporate governance**

#### *Changes in Constitution, structure, management or operations*

67.1 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*

67.2 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 67.2(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 67.2(a); and
- (c) if clause 67.2(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.

67.3 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.

67.4 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 67.3(a) to 67.3(g) 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 67.3, 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 67.3(a) to 67.3(g), and take any action in respect of that individual, that is Notified by the Department.

Note: For the avoidance of doubt, clause 67.4(b) will also apply where an individual is transferred in accordance with clause 67.4(a)(i), to a role in the performance of the Services.

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

67.5 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.

67.6 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.

67.7 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.

- 67.8 If the Provider does not:
- (a) obtain the Department's consent to a Change in Control as required by clause 67.5; or
  - (b) provide the Department with any information required by the Department in accordance with clause 67.7,

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

- (c) take action under clause 71 [Remedies for breach]; or
- (d) immediately terminate this Deed under clause 73 [Termination or reduction in scope for default] by providing Notice to the Provider..

## **68. External administration**

68.1 Without limiting any other provisions of this Deed, the Provider must provide the Department, immediately upon receipt or generation by the Provider, a copy of:

- (a) any notice requiring the Provider to show cause why the Provider should not come under any form of external administration referred to in clause 68.1(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 his or her creditors.

68.2 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 68.1(b); or
- (b) is ceasing to carry on business.

## **Section 5C Resolving Problems**

### **69. Dispute Resolution**

69.1 Each Party agrees that it will:

- (a) only seek to rely on this clause in good faith, and only where the Party seeking to rely on this clause has made a reasonable assessment that the rights and obligations of the Parties in respect of a matter subject to this clause 69, are genuinely in dispute; and

- (b) cooperate fully with any process instigated in accordance with this clause 69, in order to achieve a prompt and efficient resolution of any dispute.

*Informal resolution*

- 69.2 The Parties agree that any dispute arising in relation to this Deed will be dealt with, in the first instance, through the process outlined in the Charter of Contract Management issued by the Department.
- 69.3 If any dispute arising in relation to this Deed cannot be resolved using the process in clause 69.2, the Parties will use the following process:
- (a) the Party claiming that there is a dispute will give the other Party a notice setting out the nature of the dispute;
  - (b) within five Business Days of receipt of the notice under clause 69.3, each Party will nominate a representative who has not been previously involved in the dispute;
  - (c) the Parties' representatives will try to settle the dispute by direct negotiation between them;
  - (d) if the dispute is not resolved within 10 Business Days of the date on which the last Party to do so nominates a representative under clause 69.3(b), the Party claiming that there is a dispute will refer the dispute to an independent third person, as agreed between the Parties, with power to mediate and recommend some form of non-binding resolution;
  - (e) if the dispute is not resolved within 10 Business Days of the date on which the dispute was referred to an independent third person in accordance with clause 69.3(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 69.3(d) or (e); or
    - (ii) the dispute is not resolved within 20 Business Days of referring the dispute to an independent third person pursuant to clause 69.3(e),either Party may commence legal proceedings.

*Costs*

- 69.4 Each Party will bear its own costs of complying with this clause 69, and the Parties must bear equally the cost of any independent third person engaged under clauses 69.3(d) or 69.3(e).

*Application of this clause*

- 69.5 This clause 69 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 clauses:
    - (i) 17 [Minimising delay];
    - (ii) 7 [General Requirements];
    - (iii) 27 [Evidence to support claims for Payment];
    - (iv) 32 [Debts and offsetting];

- (v) 37 [Service Guarantee];
  - (vi) 38 [Code of Conduct];
  - (vii) 39 [Evaluation activities];
  - (viii) 43 [Performance Management];
  - (ix) 58 [Access by Customers to their own Personal Information in connection with the NPA];
  - (x) 60 [Access to premises and records];
  - (xi) 67 [Corporate governance];
  - (xii) 71 [Remedies for breach];
  - (xiii) 72 [Termination or reduction in scope with costs],
  - (xiv) 73 [Termination or reduction in scope for default]; or
  - (xv) 81 [Subcontracting];
- (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*

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

**70. Provider Suspension**

70.1 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 71 [Remedies for breach], and prior to taking action under clause 73 [Termination or reduction in scope for default], take action under clause 71.2(a).

70.2 The Department will Notify the Provider if it exercises its rights under clause 70.1 and clause 71.2(a) within 10 Business Days after having exercised those rights.

70.3 Notwithstanding any action taken by the Department under clause 70.1, the Provider must continue to perform its obligations under this Deed that are not suspended, unless the Department agrees or directs otherwise in writing.

## **71. Remedies for breach**

71.1 Without limiting any other rights available to the Department under this Deed, at law or in equity, 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 of receiving a Notice from the Department to do so, or within such other period specified in the Notice by the Department;
- (b) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified (as determined by the Department); or
- (c) an event has occurred which would entitle the Department to terminate this Deed or reduce the scope of the Services under clause 73 [Termination or reduction in scope for default],

the Department may, by providing Notice to the Provider, immediately exercise one or more of the remedies specified in clause 71.2.

### *Options*

71.2 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 of the Services under this Deed (including in respect of one or more ESAs);
  - (ii) any payment under the Deed or a Contract in whole or in part;
  - (iii) 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 Payments; or
  - (iii) the management of Records;
- (g) withholding the referral of Work Orders;
- (h) reducing or not paying specific payments that would otherwise have been payable in respect of the relevant obligation;

- (i) reducing the total amount of any Payments, permanently or temporarily;
- (j) if the Department has already made any Payments, recovering, at the Department's absolute discretion, but taking into account the extent and nature of the breach, some or all of the Payments as a debt in accordance with clause 32 [Debts and offsetting];
- (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 or the Services; and
- (o) taking any other action specified in this Deed.

*No compensation*

71.3 For the avoidance of doubt, any reduction in Payments or the scope of this Deed or the Services under this clause 71 does not amount to a reduction of scope or termination for which compensation is payable.

*Good faith and proportionality*

71.4 The Department will exercise its rights under this clause 71 in good faith, taking into account the relevant breach.

*Variation*

71.5 If the Department takes any action under this clause 71:

- (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.

*Notice*

71.6 If the Department takes any action under this clause 71, the Department will Notify the Provider of:

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

**72. Termination or reduction in scope with costs**

72.1 The Department may, at any time by Notice to the Provider, terminate, or reduce the scope of, this Deed or the Services, without prejudice to the rights, liabilities or obligations of either Party accruing prior to the date of termination or reduction in scope takes effect.

*Provider's obligations*

72.2 Upon receipt of a Notice of termination or reduction in scope under this clause 72, 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.

72.3 The Provider must, in each Subcontract, secure a right, and terms for compensation, functionally equivalent to those of the Department under this clause 72.

*Payments*

72.4 If this Deed is terminated under clause 72.1, the Department is liable only for:

- (a) Payments that were properly due to the Provider before the date on which the termination or reduction in scope takes effect;
- (b) payment in accordance with this Deed for any ongoing Services, in the case of a reduction in the scope of this Deed or the Services; and
- (c) subject to clauses 72.5, 72.6, 72.7 and 72.8, any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination or a reduction in scope of this Deed.

*Abatement of the Payments*

72.5 If the Department reduces the scope of this Deed or the Services under clause 72.1, the Department's liability to pay any Payments and any allowances and costs 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.

*Limits on compensation*

72.6 The Department's liability to pay any compensation under, or in relation to, this clause 72 is subject to the Provider's:

- (a) strict compliance with this clause 72; and
- (b) substantiation of any amounts claimed under clause 72.4(c).

72.7 The Department is not liable:

- (a) to pay compensation for loss of prospective profits attributable to a termination or reduction in scope under this clause 72;
- (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 72 not occurred; or
- (c) for any amount that would, in aggregate, exceed the maximum Payment that would have been payable by the Department in respect of the relevant Services, but for the termination or reduction in scope made under this clause 72.

72.8 In addition, in relation to a reduction in scope under this clause 72, 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.

- 72.9 If the Department terminates, or reduces the scope of, this Deed under this clause 72:
- (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 72 represent a reasonable pre-estimate of any loss that may be incurred by the Provider.

**73. Termination or reduction in scope for default**

*Defaults*

- 73.1 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 or a Contract 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 or a Contract 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 specified 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*;
  - (e) the Provider fails to notify the Department of a Conflict in accordance with clause 80 [Conflict of interest] or is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department;
  - (f) the Provider or its Personnel or Subcontractors engages in fraudulent activity;
  - (g) the Provider is more than 20 Business Days overdue in providing an Assessment Report to the Department;
  - (h) the Provider is unable to provide replacement Personnel who are acceptable to the Department in accordance with clause 11 [Provider's Personnel];
  - (i) any event referred to in clause 68 [External administration] occurs, other than an event under clause 68.1(c);
  - (j) the Department is otherwise satisfied that the Provider is unable to pay all of its debts as and when they become due and payable;
  - (k) The Department is satisfied that, prior to entering into this Deed or any Contract, 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 a Contract or any action taken by the Department under this Deed or a Contract; or
  - (l) 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 73.1(l) does not apply if a Provider has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.*

- (m) the Department becomes entitled to terminate this Deed or any Contract under any other provision of this Deed or the Contract.

*Parties' rights and obligations on termination*

73.2 If the Department terminates this Deed or any Contract under clause 73.1:

- (a) the Department is not liable to pay any further Payments;
  - (b) the Department is entitled to recover any Payments previously paid by it for Services that have not been properly rendered;
  - (c) clause 72.2 applies as if the Deed was terminated in accordance with clause 72.1,
- and if the Department reduces the scope of this Deed under clause 73.1, clause 72.5 will apply as if the Deed were reduced in scope in accordance with clause 72.1.

*Good faith and proportionality*

73.3 The Department will exercise its rights under this clause 73 reasonably and in good faith, taking into account the relevant breach or other event.

*Preservation of other rights*

73.4 Clause 73.1 does not limit or exclude any of the Department's other rights or remedies, whether under this Deed, any Contract, statute, at law or in equity, including:

- (a) the right to recover any other amounts from the Provider on termination of this Deed or any Contract;
- (b) the right to reduce payments due on termination on the basis of breach or poor performance; and
- (c) any rights of offset.

## **Section 5D Other Matters**

### **74. Transition in**

74.1 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 Provider, so as to cause minimum disruption to Customers.

### **75. Transition Out**

*Transition-Out Period*

75.1 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.

75.2 The Transition-Out Period must not start more than six months before the end of the then current Deed Term.

75.3 If the Department Notifies the Provider of a Transition-Out Period under clause 75.1:

- (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 a Contract (including in respect of certain ESAs or Customers) are to be provided to any Customers and, if only some, which Services are to be provided; and
  - (ii) whether any provisions of this Deed or a Contract will not apply to the provision of the Services during the Transition-Out Period, and if so, which provisions will not apply.

75.4 Without limiting clause 75.3, a Notice issued under clause 75.1 may specify that the Department will cease issuing Work Orders to the Provider.

## **76. Provider's obligation to assist and cooperate with the Department**

76.1 If directed by the Department, the Provider must provide sufficient assistance and cooperation to any person nominated by the Department to enable Services to continue to be provided to Customers, for any reason including:

- (a) on the termination, or reduction in scope, of this Deed and any Contract;
- (b) at the Deed Completion Date or Contract Completion Date; or
- (c) in accordance with clause 74

76.2 The sufficient assistance and cooperation the Provider must provide under clause 53.1 will include, as a minimum, complying with the Department's directions in relation to the transfer of Deed Material and Commonwealth Material in the Provider's possession or control to any person nominated by the Department, or to the Department.

## **77. Disability Employment and Indigenous Employment Strategy**

### *Disability Employment Strategy*

77.1 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*

77.2 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 78.4 to 78.16 apply.

## **78. Indigenous Procurement Policy**

78.1 In this clause 78, capitalised terms that are not defined in clause 117 [Definitions] have the meaning provided in the Indigenous Procurement Policy (as amended from time to time).

78.2 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 Commonwealth Indigenous Procurement Policy for further information); and
- (b) the Provider must use reasonable endeavours to increase its:

- (i) purchasing from Indigenous Enterprises; and
  - (ii) employment of Indigenous Australians
- in delivering the Services.

78.3 For the purposes of clause 78.2(b)(i), purchases 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*

78.4 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 78.5 to 78.16.

78.5 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.

78.6 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.

78.7 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*

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

78.9 The Provider may meet the Mandatory Minimum Requirements either directly and/or through Subcontracts under this Deed.

78.10 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.

78.11 The reports specified in clause 78.10 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.

- 78.12 Notwithstanding any other clause of this Deed, the Provider acknowledges and agrees that all reports it submits under clause 78.10:
- (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.
- 78.13 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).
- 78.14 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.
- 78.15 The Provider must comply with all directions issued by the Department in relation to the Provider's implementation of the Indigenous Participation Plan.
- 78.16 The Department may terminate this Deed in accordance with clause 73 [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 78.15.

## **79. Acknowledgement and promotion**

- 79.1 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 Guidelines.

79.2 The Provider must market and promote Disability Employment Services and any programs related to the Services as required by the Department, and deal with enquiries relating to its provision of Disability Employment Services, in accordance with any Guidelines.

**80. Conflict of interest**

*Warranty of no Conflict*

80.1 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, unless they have otherwise notified the Department.

*Conflicts in respect of other Commonwealth programs*

80.2 If the Provider also provides (in addition to the Services) other Commonwealth funded employment assistance services, it is a Conflict for the Provider to provide the Services to the recipients of its other Commonwealth funded employment assistance services, and such a Conflict is not permitted under this Deed or any Contract.

*Conflicts in respect of other Commonwealth programs*

80.3 It is a Conflict for the Provider to provide Services to the recipients of employment services delivered by a Related Entity, and such a Conflict is not permitted under this Deed or any Contract.

*Conflicts in respect of product purchases or recommendations*

80.4 It is a Conflict for the Provider to receive a commission or any other benefit from a product supplier when recommending or sourcing products or equipment in their role delivering WMS assessments.

80.5 In recommending any product as part of their role delivering WMS assessments, the Provider must ensure the product is good value, is fit for purpose, and is in the best interest of the participant.

*Conflict that may arise*

80.6 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 or any Contract unless reported to and agreed by the Department and appropriately managed.

*Dealing with Conflict*

80.7 If, during the Deed Term or any Contract 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*

80.8 If the Provider:

- (a) fails to Notify the Department in accordance with this clause 80; or

- (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department,
- (c) the Department may immediately terminate this Deed under clause 73 [Termination or reduction in scope for default] by giving Notice to the Provider.

## **81. Subcontracting**

### *Application and Interpretation*

81.1 Subject to this clause 81, the Provider may enter into a Subcontract with another entity for the purposes of providing the Services.

81.2 In this clause 81, 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*

81.3 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 or any Contract; or
- (b) replace an approved Subcontractor with another Subcontractor.

81.4 In giving its approval under clause 81.3, the Department may impose, and the Provider must comply with, such terms and conditions as the Department thinks fit.

81.5 Notwithstanding clauses 81.1 to 81.4:

- (a) if the Provider nominated a Subcontractor to provide any of the Specialist WMS Assessments specified in Item 5.3 of the Schedule, and the Subcontractor is listed at Item 6.2 of the Schedule, the Subcontractor must continue to deliver the Specialist WMS Assessments for the Deed Term unless agreed or otherwise Directed by the Department; and
- (b) clause 81.5(a) is an essential term of this Deed.

81.6 The Subcontractors that the Department has approved as at the Deed Commencement Date are specified in Item 6 of the Schedule.

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

### *Liability*

81.8 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*

81.9 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.

- 81.10 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.

- 81.11 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.

- 81.12 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 81.

*Suitability of Subcontractor*

- 81.13 Despite any approval given by the Department under this clause 81, 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*

- 81.14 The Department may revoke its approval of a Subcontractor on reasonable grounds 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.

- 81.15 If the Department withdraws its approval of a Subcontractor, the Provider remains liable under this Deed or any Contract for the past acts or omissions of its Subcontractors as if they were current Subcontractors.

*Terms of Subcontracts*

- 81.16 The Provider must, in any Subcontract, reserve a right of termination to take account of the Department's right of termination under clauses 72 [Termination or reduction in scope with costs ] and 73 [Termination or reduction in scope for default] and the Department's right of revocation of approval of a Subcontractor under clause 81.14, 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.
- 81.17 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.
- 81.18 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) 11 [Provider's Personnel];
  - (b) 41 [Assurance Activities and audits];

- (c) 51 [Personal and Protected Information ];
- (d) 55 [Confidential Information ];
- (e) 57 [Records the Provider must keep ];
- (f) 60 [Access to premises and records];
- (g) 61 [General].
- (h) 62 [Access and information security assurance **Error! Reference source not found.**];
- (i) 64 [Insurance ];
- (j) 83 [Negation of employment, partnership and agency]; and
- (k) 90 [Compliance with laws and government policies].

*Prohibited Subcontractors*

- 81.19 The Provider must not enter into a Subcontract under this Deed or any Contract 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 93 [Shadow Economy Procurement Connected Policy]).
- 81.20 If the Provider does not comply with this clause 81 the Department may:
- (a) take action under clause 71 [Remedies for breach]; or
  - (b) immediately terminate this Deed under clause 73 [Termination or reduction in scope for default] by providing Notice to the Provider.

**82. Assignment and novation**

- 82.1 The Provider must not assign any of its rights under this Deed without the Department's prior written approval.
- 82.2 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.
- 82.3 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).

**83. Negation of employment, partnership and agency**

*Status*

- 83.1 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.



### *Representatives*

- 83.2 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.

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

- 84.1 If the Provider is a Group Respondent, the Provider:

- (a) notwithstanding clause 84.2(c), if the Provider approved an Assessor to provide Specialist WMS Assessments and that Assessor is the Personnel of a Group Respondent Member is listed at Item 6.2 of the Schedule, 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 84.1(a) is an essential term of the Deed.

- 84.2 If the Provider is a Group Respondent, the Provider:

- (a) agrees that its Group Respondent Members are as specified in Item 7.3 of the Schedule;
- (b) warrants that each of its Group Respondent Members has given their authority to the Group Respondent Member named in Item 7.2 of the Schedule 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.

## **85. Waiver**

### *Exercise of rights*

- 85.1 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*

- 85.2 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*

85.3 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*

85.4 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*

85.5 In this clause 85, 'rights' means rights provided by this Deed, under statute, at law or in equity.

**86. Severance**

86.1 If a court or tribunal says that any provision of this Deed has no effect, or interprets a provision to reduce an obligation or right 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.

**87. Entire Deed**

87.1 This Deed Contract 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.

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

**88. Variation of this Deed**

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

**89. Applicable law and jurisdiction**

*Applicable Law*

89.1 This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the laws of New South Wales.

*Jurisdiction*

89.2 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.

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

*Compliance with laws and policies*

90.1 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 authority, including relevant work, health and safety, industrial relations legislation 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, referred or made available to the Provider by the Department to the Provider (including by reference to an internet site), including any referred to in this Deed.

90.2 The Provider must, when using the Department's premises or facilities, comply with all reasonable directions and procedures relating to work health, safety and security in effect at those premises or in regard to those facilities, as advised by the Department or as might reasonably be inferred from the use to which the premises or facilities are being put.

*No unlawful discrimination*

90.3 Without limiting clause 90.1, the Provider must provide Services that are free of sexual harassment and any form of unlawful discrimination.

*Workplace gender equality*

90.4 Clauses 90.4(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 90.1, 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 Term of this Deed, 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.

## **91. Work Health and Safety legislation**

91.1 The Provider must at all times:

- (a) ensure that the Services are carried out in a safe manner;
- (b) comply with WHS Law;
- (c) be aware of, understand and comply with the Department's work health and safety policy and procedures that are in any way applicable to this Deed or the performance of the Services;
- (d) comply with any reasonable instruction from the Department relating to work health and safety;
- (e) immediately comply with directions on health and safety issued by any person having authority under the WHS Laws to do so;
- (f) 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);
- (g) communicate any issue or concern that the Provider has regarding work health and safety matters, as soon as practicable, with the Department;
- (h) when requested by the Department, provide evidence of the Provider's ongoing compliance of the WHS Laws;

- (i) if the Provider is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Services:
  - (i) at the same time, or as soon as is possible in the circumstances, give Notice of such incident, and a copy of any written notice provided to the Regulator, to the Department; and
  - (ii) provide to the Department, within such time as the Department specifies, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future
- (j) 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
  - (iv) 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.

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

- (a) prepare, submit, supply or obtain any document, including but not limited to 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.

91.3 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.

91.4 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.

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

## **92. Statutory Conditions**

92.1 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; and

(ii) National Standards for Disability Services; and

(b) this Deed must be read subject to the DSI Act.

92.2 The Parties agree that payment of any Payments by the Department to the Provider are made by way of an arrangement under section 13 of the DSI Act.

92.3 Without limiting the generality of clauses 92.1 and 92.2, 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.

92.4 If the Provider breaches clause 92.3, 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*

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

92.6 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 92 and any applicable Guidelines, as a contribution towards the certification and surveillance costs associated with the Certificate of Compliance.

## **93. Shadow Economy Procurement Connected Policy**

93.1 In this clause 93:

### **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](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.

- 93.2 The 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.
- 93.3 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 93.2 will be a breach of this Deed.
- 93.4 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.
- 93.5 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.
- 93.6 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 93.5 and must, on request by the Department, provide to the Department a copy of any such Statement of Tax Record.

#### **94. Modern Slavery**

94.1 In this clause 94.1:

- (a) **'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/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).
- (b) **'Modern Slavery'** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

94.2 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.

94.3 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 take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

## 95. 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](http://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.*

## 96. Payment Times Procurement Connected Policy

### *Interpretation*

96.1 In this clause 96.1, capitalised terms that are not defined in clause 117 [Definitions] have the meaning provided in the *Payment Times Reporting Act 2020* (Cth) and the PT PCP (as amended from time to time).

### *General*

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

96.3 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 96.5, 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 96.6, 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 96.7;
- (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 96.

96.4 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 96.3; 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 96.3; and
  - (ii) obligations equivalent to this clause 96.4 (such that the obligations in this clause 96.4 are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).

- 96.5 Clause 96.3(a)(i) does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 96.3(a)(i).
- 96.6 The Provider is not required to pay Interest in accordance with clause 96.3(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).
- 96.7 Interest payable under this clause 96 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*

- 96.8 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*

- 96.9 If the Department considers or becomes aware that the Provider has not or may not have complied with:
- (a) the requirements of clause 96; 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.
- 96.10 The Provider must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 96.9(d).
- 96.11 If the Department considers that the Provider has failed to comply with any of its obligations under this clause 96, 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.
- 96.12 The Provider agrees that, if it is the subject of a complaint in relation to its compliance with clause 96.2 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

96.13 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.

96.14 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 96.13 and 96.14. The Provider must provide evidence of such consents to the Department on request.

## 97. Notification of Significant Events

97.1 For the purposes of this clause 97 '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.

97.2 The Provider must immediately give the Department a notice on becoming aware of a Significant Event.

97.3 The notice issued under clause 97.3 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.

97.4 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 97.2 in relation to the event within three Business Days after being Notified by the Department.

97.5 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.

97.6 If requested by the Department, the Provider must prepare a draft Significant Event Plan and submit that draft Significant Event Plan.

- 97.7 A draft Significant Event Plan prepared by the Provider under clause 97.6 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.
- 97.8 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.
- 97.9 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.
- 97.10 The performance by the Provider of its obligations under this clause 97 will be at no additional cost to the Department.

## **98. National Anti-Corruption Commission Act 2022 (Cth) Requirements**

- 98.1 In this clause 97, 'corrupt conduct' has the meaning given in the *National Anti-Corruption Commission Act 2022 (Cth) (NACC Act)*.
- 98.2 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.
- 98.3 The Provider must:
- (a) ensure that its arrangements with its Personnel include obligations that are consistent with this clause 97;
  - (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 97.

- 98.4 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 98.6 would apply).
- 98.5 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.
- 98.6 Without limiting clause 73 [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.

**99. Compliance with the Commonwealth Supplier Code of Conduct**

- 99.1 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.
- 99.2 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.
- 99.3 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 99.2.
- 99.4 The Provider must immediately issue the Department a Notice on becoming aware of any breach of clause 99.2. The Notice must include a summary of the breach, the date that the breach occurred, and details of the Personnel, agent or Subcontractor involved.
- 99.5 If the Department identifies a possible breach of clause 99.2, 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 99.4 and otherwise comply with its obligations under this clause 99.
- 99.6 Notwithstanding clause 99.5, Department may Notify the Provider that it considers that the Provider has breached clause 99.2, in which case the Provider must issue a Notice under clause 99.4 and otherwise comply with its obligations under this clause 99.
- 99.7 A failure by the Provider to comply with its obligations under any part of this clause 99 will be a material breach of this Deed, in respect of which the Department may immediately terminate this Deed by Notifying the Provider.

99.8 Nothing in this clause 99 or the Code limits, reduces, or derogates from the Provider's other obligations under this Deed. The Department's rights under this clause 99 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 99 will be at no additional cost to the Department.

99.9 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.

## **100. Illegal Workers**

100.1 In clauses 100.3 to 100.5:

(a) **Illegal Worker** means a non-citizen who:

- (i) does not hold a valid visa and who performs Work in Australia; or
- (ii) holds a valid visa and who performs Work in Australia in breach of a visa condition that:
  - (A) prohibits him or her from working in Australia; or
  - (B) restricts the Work that he or she may perform in Australia.

(b) **Work** means any work, whether for reward or otherwise.

100.2 For more information regarding complying with Australian employment law see <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/learn-about-employing-migrants/your-responsibilities>.

100.3 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.

100.4 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.

100.5 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 100.

## **101. Use of interpreters**

### *Use of interpreters*

101.1 The Provider must, when carrying out the Services, provide an interpreter, in accordance with any Guidelines, to facilitate communication between the Provider and Customers wherever necessary, including where a Customer requires assistance:

- (a) to communicate comfortably and effectively with the Provider, on account of language or hearing barriers;
- (b) to understand complex information of a technical or legal nature;
- (c) during stressful or emotional situations where the Customer's command of English may decrease temporarily; or

(d) at group forums or public consultations, if the Customer does not easily speak or understand English, or has a hearing impairment.

101.2 The Provider must provide access to interpreter services fairly and without discrimination, based on a proper assessment of a Customer's needs. This will be at the Provider's cost except as otherwise provided in the Guidelines.

101.3 If a Customer requests the use of an interpreter and the Provider refuses to provide one, the Provider must record that fact and the reason for the Provider's decision.

*Staff training*

101.4 The Provider must ensure that those of its Personnel who, when providing Services, engage with Customers who may require interpreter services, have received training in the use of interpreters in accordance with the training requirements specified in any Guidelines or as otherwise advised by the Department.

*Record Keeping*

101.5 The Provider must keep Records of the use of interpreters in accordance with any Guidelines.

**102. Notices**

*Giving of Notice*

102.1 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 9 and 10 of the Schedule.

*Receipt of Notice*

102.2 A Notice given in accordance with clause 102.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, five Business Days after the date of posting, unless it has been received earlier; and
- (c) if transmitted electronically, upon actual receipt by the addressee.

## **Section 6 The National Panel of Assessors Services**

### **Section 6A Supported Wage System Assessments**

#### **103. The SWS Services**

103.1 The Supported Wage System ('SWS') is an industrial mechanism that enables employers to pay a productivity-based wage to people whose work productivity is reduced because of disability. The SWS is an independent Commonwealth funded wage assessment mechanism that can only be applied when the appropriate award or industrial order includes the SWS provisions (as confirmed by the Department). The SWS can be accessed by workers that meet the impairment criteria for the Disability Support Pension.

*SWS Training for Assessors*

103.2 The Provider must ensure that each of its Assessors has completed the SWS online training modules before conducting SWS Assessments. The modules are available on the JobAccess website at: <https://www.jobaccess.gov.au/supported-wage-system-sws>.

103.3 SWS Assessors must also be familiar with the SWS Assessment process, as is outlined in the Supported Wage System Handbook and Guidelines, which are accessible from <https://www.jobaccess.gov.au/downloads/supported-wage-system-handbook>.

#### **104. SWS Assessments**

104.1 SWS Assessments must be conducted in accordance with the requirements of this Deed and any Guidelines.

104.2 Subject to clause 104.3, the Provider must ensure that Assessors conduct SWS Assessments in-person with the Customer face-to-face, and not remotely (e.g., via videoconference).

104.3 If it is not feasible for an Assessor to conduct a SWS Assessment in-person with the Customer face-to-face (e.g. the SWS Assessment would be conducted in a CDP Region and travel to and from the CPD Region is not feasible for the Assessor), the Provider must obtain the Department's prior written approval for the Assessor to conduct the SWS Assessment remotely (e.g., via videoconference). The Department will consider the Provider's requests for such approval on a case-by-case basis, taking into account any exceptional circumstances as explained by the Provider.

104.4 If the Department provides its approval pursuant to clause 104.3, the Payment referred to in clause 106.2(b) will not be payable to the Provider.

#### **105. SWS Assessment Reports**

105.1 The Provider must:

- (a) in the SWS Assessment Report, outline the results of the SWS Assessment including describing the job tasks undertaken by the Participant and the timings of observations for each task, including a SWS Wage Assessment Agreement;
- (b) in the SWS Wage Assessment Agreement, confirm the agreement of the Participant and the Employer and any other party to that agreement by obtaining the signatures of all parties to the agreement; and
- (c) within seven Business Days of completion of the Assessment, submit the Assessment Report to the Department using the Department's IT System in the format required by the Department's IT System.

105.2 If the Department at its absolute discretion considers the SWS Assessment Report to be not of sufficient standard, the Department may require the Provider to, at its own cost, resubmit a revised SWS Assessment Report incorporating amendments as required by the Department within five Business Days of the request to resubmit, and the Department may repeat this process until satisfied with the SWS Assessment Report.

## **106. SWS Payments**

106.1 Upon completion of a SWS Assessment and SWS Assessment Report, and the Department's acceptance of the SWS Assessment Report, the Department will pay to the Provider:

- (a) the SWS Assessment Payment of \$679.10 (GST inclusive); plus
- (b) if the Assessment is conducted in a CDP Region, an additional SWS Assessment Payment of \$475.36 (GST inclusive).

106.2 If the SWS Assessment and SWS Assessment Report will jointly take more than five hours to complete, the Provider may seek the Department's written agreement to make Payments in addition to those referred to in clause 106.1, and such additional Payments, if agreed by the Department in writing:

- (a) will be payable at \$135.82 (GST inclusive) per additional hour (i.e., in addition to the initial five hours), up to a maximum of four additional hours or such fewer hours as specified by the Department in its written agreement;
- (b) for SWS Assessments conducted in a CDP Region, will be payable at \$230.89 (GST inclusive) per additional hour (i.e., in addition to the initial five hours), up to a maximum of five additional hours or such fewer hours as specified by the Department in its written agreement.

106.3 If the Provider seeks the Department's written agreement to pay the additional Payments referred to in clause 106.2:

- (a) the Department retains its absolute discretion to agree or refuse to make the additional Payments; and
- (b) the Provider must:
  - (i) provide to the Department in writing details of why the SWS Assessment and SWS Assessment Report will jointly take more than five hours to complete;
  - (ii) notify the Department at the earliest opportunity when the Provider first becomes aware that the SWS Assessment and SWS Assessment Report will jointly take more than five hours to complete; and
  - (iii) irrespective of whether the Department agrees in writing to make the additional Payments referred to in clause 106.2, complete the SWS Assessment and Assessment Report in accordance with this Deed.

106.4 The Payments specified in clauses 106.1 and 106.2 are inclusive of all costs incurred by the Provider in providing the SWS Services. The Department will not pay or reimburse the Provider for any costs such as travel costs incurred by the Provider in delivering the SWS Services.

## Section 6B Ongoing Support Assessments

### 107. OSA Services

- 107.1 Ongoing Support Assessments ('OSAs') will independently assess the Ongoing Support needs of Participants.
- 107.2 Subject to clause 107.3, the Provider must ensure that Assessors conduct OSAs in-person with the Participant face-to-face, and not remotely (e.g., via videoconference).
- 107.3 If it is not feasible for an Assessor to conduct an OSA in-person with the Participant face-to-face, the Provider must obtain the Department's prior written approval for the Assessor to conduct the OSA remotely (e.g., via videoconference). The Department will consider the Provider's requests for such approval on a case-by-case basis, taking into account any exceptional circumstances as explained by the Provider.

### 108. OSAs

- 108.1 Subject to clause 108.2, the Provider must undertake OSAs to ascertain the Participant's Ongoing Support needs by:
- (a) interviewing the Program Provider;
  - (b) interviewing the Participant;
  - (c) conducting a workplace assessment of the Participant and interviewing the Participant's Employer, if consented to by the Participant; and
  - (d) reviewing relevant documents held by the Program Provider.
- 108.2 If the Provider is unable to obtain the information referred to in clause 108.1(c) due to the Participant or their Employer withholding their consent (due to privacy concerns or otherwise), the Provider may, in accordance with the Guidelines, exclude the corresponding activity from the OSA.
- 108.3 In undertaking OSAs, the Provider must:
- (a) assess all relevant information to properly determine the ongoing support needs of the Participant and whether the Participant should:
    - (i) exit as an Independent Worker;
    - (ii) receive Flexible Ongoing Support;
    - (iii) receive Moderate Ongoing Support; or
    - (iv) receive High Ongoing Support; and
  - (b) make a recommendation to the Department on:
    - (i) the duration of the ongoing support needs of the Participant; and
    - (ii) the timing of the next OSA for the Participant. The recommended timing of OSAs for the Participant must be set at intervals of one, two or five years, based on the Participant's circumstances and the stability and permanence of their ongoing support needs,
- in accordance with any Guidelines.



## **109. OSA Reports**

- 109.1 The Provider must, within seven Business Days of completion of an OSA, submit the OSA Report to the Department using the Department's IT System in the format required by the Department's IT System.
- 109.2 If the Department at its absolute discretion considers the OSA Report is not of sufficient standard, the Department may require the Provider to, at its own cost, resubmit a revised OSA Report incorporating amendments as required by the Department within five Business Days of the request to resubmit, and the Department may repeat this process until satisfied with the OSA Report.

## **110. OSA Payments**

- 110.1 Upon completion of an OSA and OSA Report and the Department's acceptance of the OSA Report, the Department will pay to the Provider a Payment of \$475.36 (GST inclusive).
- 110.2 The Payment referred to in clause 110.1 is inclusive of all costs incurred by the Provider in providing the OSA Services. The Department will not pay or reimburse the Provider for any costs such as travel costs incurred by the Provider in delivering the OSA Services.

## **Section 6C Workplace Modifications Services Assessments**

### **111. WMS Assessment Services**

- 111.1 The Employment Assistance Fund (EAF) is a Government funded program which gives financial help to eligible people with disability and mental health conditions and employers to buy work related Modifications, equipment, Auslan services and workplace assistance and support services. The EAF is available to eligible people with disability who are about to start a job, are self-employed or who are currently working. It is also available to people with disability who need Auslan assistance or special work equipment to look for and prepare for a job. Applications for assistance under the ESA may be submitted online via the JobAccess website.
- 111.2 Providers may be required to complete WMS Assessments of work-related Modifications or equipment purchases, provided through the EAF, which will help improve access to employment and workplace productivity. The Provider must ensure that Assessors who are approved to undertake WMS Assessments, deliver WMS Assessments in accordance with this Deed and the Guidelines.
- 111.3 The Department will maintain a register that includes information on any Specialist Assessment Group. The JobAccess Provider will allocate WMS Assessments to Providers taking into consideration any specialist knowledge required to complete WMS Assessments. The JobAccess Provider will consider the Specialist Assessment Group, as well as the specialist knowledge and skills of Assessors who are approved to undertake WMS Assessments, when allocating WMS Assessments to Providers.

### **112. WMS Assessments**

- 112.1 In relation to each WMS Assessment, the Provider must:
- (a) clarify with the Participant any ambiguities in relation to the details on the EAF application form submitted to the Department;

- (b) conduct the WMS Assessment in accordance with the requirements of this Deed and the Guidelines, including by discussion with the Employer and Participant and, where relevant the Department, to identify the work requirements, work environment, nature of the Participant's disability and barriers to performing work tasks as a result of the Participant's disability;
  - (c) conduct research into available Modifications that will be suitable to respond to the identified barriers, and discussing options with the Department; and
  - (d) discuss with the Employer and Participant the potential Modifications which are available through the EAF to improve access to work and work productivity.
- 112.2 Subject to clause 112.3, the Provider must ensure that Assessors conduct WMS Assessments in-person with the Customer face-to-face, and not remotely (e.g., via videoconference).
- 112.3 If it is not feasible for an Assessor to conduct a WMS Assessment in-person with the Customer face-to-face, the Provider must obtain the Department's prior written approval for the Assessor to conduct the WMS Assessment remotely (e.g., via videoconference). The Department will consider the Provider's requests for such approval on a case-by-case basis, taking into account any exceptional circumstances as explained by the Provider.

### **113. WMS Assessment Reports**

- 113.1 The Provider must within seven Business Days of the date of acceptance of the Work Order, submit a Workplace Modifications Assessment Report to the Department in the format set out in Guidelines.
- 113.2 If the Department at its absolute discretion considers the WMS Assessment Report to be not of sufficient standard, the Department may require the Provider to, at its own cost, resubmit a revised WMS Assessment Report incorporating amendments as required by the Department within two Business Days of the request to resubmit, and the Department may repeat this process until satisfied with the WMS Assessment Report.

### **114. WMS Payments**

- 114.1 Upon completion of a WMS Assessment and WMS Assessment Report and the Department acceptance of the WMS Assessment Report, the Provider may apply for a WMS Assessment Payment of \$135.82 (GST inclusive) per hour up to a maximum of five hours.
- 114.2 If the WMS Assessment and WMS Assessment Report will jointly take more than five hours to complete, the Provider may seek the Department's written agreement to make Payments in addition to the Payment referred to in clause 114.1 and such additional Payments, if agreed by the Department in writing, will be payable at \$135.82 (GST inclusive) per additional hour (i.e., in addition to the initial five hours), up to a maximum of four additional hours or such fewer hours as specified by the Department in its written agreement.
- 114.3 If the Provider seeks the Department's written agreement to pay the additional Payment referred to in clause 114.2:
- (a) the Department retains its absolute discretion to agree or refuse to make the additional Payment; and
  - (b) the Provider must:
    - (i) provide to the Department in writing details of why the WMS Assessment and WMS Assessment Report will jointly take more than five hours to complete;

- (ii) Notify the Department at the earliest opportunity when the Provider first becomes aware that the WMS Assessment and WMS Assessment Report will jointly take more than five hours to complete; and
- (iii) irrespective of whether the Department agrees in writing to make the additional Payment referred to in clause 114.2, complete the WMS Assessment and Assessment Report in accordance with this Deed.

114.4 Subject to this clause 114.4, the Payments referred to in clauses 114.1 and 114.2 are inclusive of all costs incurred by the Provider in providing the WMS Service. The Department will not pay or reimburse the Provider for any costs such as travel costs incurred by the Provider in delivering the WMS Services, unless the WMS Assessment requires the Provider to travel for more than 200 km, in which case the Provider may seek the Department's written agreement to make additional travel-related Payments to the Provider (i.e., in addition to the Payments referred to in clause 114.1 and 114.2) prior to such travel occurring. The additional Payments, if agreed by the Department in writing, will be payable to the Provider in the following amounts:

- (a) \$56.59 (GST inclusive) per hour for travel time up to a maximum of eight hours per day, and which travel time must not include time used for completing the WMS Assessment or WMS Assessment Report; and
- (b) reimbursement of the Provider's accommodation and meal expenses provided that:
  - (i) the Provider submits to the Department a Tax Invoice for the Payment with evidence of payment of the expense by the Provider; and
  - (ii) reimbursement of accommodation and meal expenses will not exceed the rates specified for employees with an annual salary of the amount prescribed in Table 1 of taxation determination TD2024/3<sup>1</sup> published by the Australian Taxation Office, or the amount prescribed in any other relevant taxation determinations issues in respect of subsequent financial years.

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<sup>1</sup> <https://www.ato.gov.au/law/view/pdf/pbr/td2024-003.pdf>

## **Section 7 Interpretation and Definitions**

### **115. Rules for Interpretation**

115.1 In this Deed (including the Guidelines), unless the contrary intention appears:

- (a) all capitalised terms have the meaning given to them in clause 117 [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 the Schedule;
- (o) any uncertainty or ambiguity in the meaning of a provision of this Deed is not to be interpreted against a Party just because that Party prepared the provision or is seeking to rely on the provision;
- (p) a reference to an internet site includes those sites 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; and
- (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.

115.2 Subject to clause 115.3, any Guidelines do not expand or add essential terms to this Deed.

115.3 Guidelines form part of this Deed and the Provider must perform all obligations in this Deed in accordance with any Guidelines.

## **116. Precedence**

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

- (a) the Schedule;
- (b) this Deed;
- (c) any Contracts;
- (d) the Annexures;
- (e) any Guidelines; or
- (f) 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.

116.2 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.

## **117. Definitions**

**‘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.

**‘Additional Services’** means the additional services referred to in clause 22 [Additional services].

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

**‘Assessment’** means an Ongoing Support Assessment, Supported Wage System Assessment or Workplace Modifications Assessment, as relevant, and which is to be undertaken in accordance with the terms of this Deed and the Guidelines.

**‘Assessment Report’** means a report completed in respect of an Ongoing Support Assessment, Supported Wage System Assessment or Workplace Modifications Assessment, as relevant, in accordance with the terms of this Deed and the Guidelines.

**‘Assessor’** means the Provider’s Personnel and any Subcontractors’ Personnel approved by the Provider in accordance with clause 11.2 for the purposes of undertaking Assessments in accordance with this Deed and any Contract.

**‘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.

**‘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.

**‘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, where the Corporation does not have any shareholders;
- (b) in relation to a Corporation which is owned or controlled by a trustee company, any change as set out in paragraph (a) above in relation to either that Corporation or its corporate trustee;
- (c) in relation to a partnership:
  - (i) the sale or winding up or dissolution of the business by the partners;
  - (ii) a change in any of the partners; or
  - (iii) the retirement, death, removal or resignation of any of the partners;
- (d) in relation to an Exempt Public Authority, a change in relation to any of the following:
  - (i) the composition of the board of Directors;
  - (ii) ownership of any shareholding in any share capital; or
  - (iii) the enabling legislation so far as it affects Control, if any;
- (e) in relation to a Group Respondent:
  - (i) any change in the membership of the Group Respondent;
  - (ii) a change of the lead member of the Group Respondent, if the Group Respondent has appointed a lead member for the purposes of this Deed; or
  - (iii) a Change in Control as defined in paragraphs (a) to (d) above in any member of the Group Respondent.

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

**'Child-Related Personnel'** means any of the Provider's Personnel who are involved, or may be involved, with the Services, including any Assessments (except any Assessments 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 12.4 and 12.5 of this Deed.

**'Code of Conduct'** means the code of conduct for the Disability Employment National Panel of Assessors set out at Annexure 1.

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

**'Commonwealth Coat of Arms'** means the Commonwealth Coat of Arms as set out at *It's an Honour – Commonwealth Coat of Arms* available at <http://www.itsanhonour.gov.au/coat-arms/index.cfm>.

**'Commonwealth Material'** means any Material provided by the Department to the Provider for the purposes of this Deed or any Contract or which is copied or derived from that Material except for Deed Material.

**'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, Personnel 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 Customers and potential Participants, available directly or through the National Customer Service Line.

**'CDP Region'** means one of 60 geographical areas identified and displayed at <https://www.niaa.gov.au/resource-centre/community-development-program-cdp-regions>

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

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

**'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.

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

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

**'Contact Person'** means the person specified in the Schedule and any Contract who has the authority of the Provider to receive and sign notices and written communications, and accept any request or direction in relation to the Deed and any Contract as applicable.

**'Contract'** means a contract created pursuant to clause 4 of this Deed for the provision of the Services, as varied or extended by the Parties from time to time in accordance with this Deed.

**'Contract Commencement Date'** means the date on which the Contract takes effect as specified in the Work Order.

**'Contract Completion Date'** means the date specified in the Work Order for the completion of the Services.

**'Contract Term'** means the period of time for which a Contract is intended to continue, as described in clause 24.

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

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

**'Customer'** includes Employers, Participants and any other beneficiary of the Services.

**'Customer Feedback Register'** means the list of Customer feedback kept by the Provider.

**'Deed'** means this document, which is in the form of a deed, as varied or extended by the Parties from time to time in accordance with this Deed, and includes all Annexures, the Schedule and other documents incorporated by reference, including any Guidelines.

**'Deed Commencement Date'** means the later of:

- (a) 1 July 2025; and
- (b) the date on which this Deed is signed by both Parties.

**'Deed Completion Date'** means, unless terminated earlier, the later of:

- (a) 30 June 2028; or
- (b) if the Deed Term is extended under clause 23 [Term of this Deed], the expiry of the extended Deed Term.

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

- (a) created for the purpose of performing this Deed or a Contract;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a) above; or
- (c) copied or derived from Material referred to in paragraphs (a) or (b); and
- (d) includes all Records.

**'Deed Term'** means the Initial Deed Term plus any extensions agreed in accordance with clause 23 [Term of this Deed].

**'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, where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.

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

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

**'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 the Department's relevant officers, delegates, employees and agents.

**'Department's IT Systems'** means the IT computer system accessible by a Provider, through which information is exchanged between the Provider, Subcontractors, Services Australia and the Department in relation to the Services.

**'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 > Provider Operations > IT Security & Access, or at such other location as advised by the Department from time to time.

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

- (a) a person appointed to the position of a director or alternate director, and acting in that capacity, of a body corporate within the meaning of the *Corporations Act 2001* (Cth) regardless of the name given to their position;
- (b) a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (c) a member of the committee of an organisation incorporated pursuant to state or territory laws relating to the incorporation of associations;
- (d) a person who would be a director of the body corporate under paragraph (a) above if the body corporate were a body corporate within the meaning of the *Corporations Act 2001* (Cth);
- (e) a person who acts in the position of a director of a body corporate;
- (f) a person whose instructions or wishes the directors of a body corporate are accustomed to acting upon, and not simply because of the person's professional capacity or business relationship with the directors or the body corporate; and
- (g) a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate.

**'Disability Employment Services'** means:

- (a) Program Services delivered as part of the New Specialist Disability Employment Program;
- (b) JobAccess Services;
- (c) NDRC Services; and
- (d) Assessments delivered in accordance with a Disability Employment National Panel of Assessors Deed of Standing Offer.

**'Disability Employment Strategy'** means a strategy implemented by the Provider designed to attract, develop and maintain employees with disability within the Provider's own organisation.

**'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).

**'Employer'** means an entity with the legal capacity to enter into a contract of employment with an employee (including a Participant).

**'Employment Assistance Fund'** or **'EAF'** means the Commonwealth scheme which provides financial assistance for the costs of work related modifications and work equipment for people with disability.

**‘Employment Service Provider’** means any employment service provider under any employment services deed with the Department of Employment and Workplace Relations, the Department of Prime Minister and Cabinet or the Department of Social Services.

**‘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 this Deed, and that allows those persons to report their concerns to the Department.

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

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

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

**‘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.

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

**‘Flexible Ongoing Support’** means the provision of Program Services to a Participant to maintain the Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with the NSDEP Deed and any Guidelines.

**‘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:

**‘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 the Schedule.

**‘Group Respondent Member’** means an entity, however constituted, that is a member of a Group Respondent.

**‘GST’** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*.

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

**‘Guidelines’** refers to any guidelines related to the Services, if any, that apply to the provision of Disability Employment Services, as 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’** means the provision of Program Services to a Participant to maintain the Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with the NSDEP Deed and any Guidelines.

**‘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 (required to be provided under all Contracts) is \$7.5 million (GST inclusive) or more;
- (c) more than half the value of the Services 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 Services 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>).

**'Independent Worker'** means a Participant who is assessed as not requiring Ongoing Support, in accordance with the NSDEP Deed and 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](http://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp).

**'Initial Deed Term'** means the period from the Deed Commencement Date until 30 June 2028.

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

**'Inspector'** means a person appointed as such under the WHS Act.

**'Intellectual Property Rights'** includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions (including patent rights), plant varieties, 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 32 [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 96 [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).

**'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.

**'Key Performance Indicators'** or **'KPIs'** means the key performance indicators specified in this Deed or as Notified to the Provider by the Department from time to time.

**'Material'** includes documents, equipment, software (including source code and object code), goods, 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.

**'Moderate Ongoing Support'** means the provision of Program Services to a Participant to maintain the Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with the NSDEP Deed and any Guidelines.

**'Modification'** means the implementation of a piece of equipment or technology, or modification to an existing piece of equipment or technology or implementation of a service available from the EAF that enables a worker with disability to carry out a particular job.

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

**'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 Recruitment Coordinator Services'** or **'NDRC Services'** means the services of that name provided by the Department.

**'National Panel of Assessors'** or **'the Panel'** means the panel of assessors that provide SWS Assessments, OSAs, WMS Assessments or other assessment-related services established in accordance with this Deed.

**'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*.

**'New Specialist Disability Employment Program'** or **'NSDEP'** means the program of that name administered by the Department.

**'New Specialist Disability Employment Program Deed'** or **'NSDEP Deed'** means the deeds of agreement between the Department and Program Providers for the NSDEP, as varied or extended by the parties

from time to time in accordance with the NSDEP Deed, and includes all Annexures, Schedules and other documents incorporated by reference, including any Guidelines.

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

**'Objectives'** means the objectives of the National Panel of Assessors as described in clause 1 [Objectives] of this Deed.

**'Official Information'** means any information developed, received or collected by or on behalf of the Commonwealth through its agencies and contracted providers.

**'Ongoing Support'** means the Program Services a Participant may receive while they are in Employment, Unsubsidised Self-Employment, an Apprenticeship or a Traineeship after a 26 Week Employment Outcome and until they exit in accordance with the NSDEP Deed and any Guidelines.

**'Ongoing Support Assessment'** or **'OSA'** means the process for determining a Participant's need for Ongoing Support.

**'OSA'** means the services described in Section 6B.

**'OSA Report'** means a report prepared by a Provider in respect of an OSA.

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

**'Participant'** means a person, other than an Employer, to whom the Provider provides Services.

**'Participant Services Records'** means Records about a Participant, that are directly created for the purposes of providing Services.

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

**'Payment'** means the amount payable by the Department under a Contract as specified in Section 6 of 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 NPA.

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

**'Previous Provider'** means a service provider with an agreement with the Department, for the provision of services the same as, or substantially similar to, the Services, that is due to expire on 30 June 2025.

**'Program Provider'** means a provider of any Program Services under a NSDEP Deed.

**'Program Services'** means services delivered as part of the New Specialist Disability Employment Program.

**'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: [\(https://www.protectivesecurity.gov.au/\)](https://www.protectivesecurity.gov.au/).

**'Provider'** means the Party that has entered into this Deed with the Department and includes its successors, assigns and any constituent entities of the Provider's organisation, and, where the context permits or requires, includes its Personnel and Group Respondent Members.

**'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.

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

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

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

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

**'Relationship Manager'** means the person for the time being holding, occupying or performing the duties of the position specified in the Schedule and any Contract who has authority to receive and sign Notices and written communications for the Department in relation to this Deed and the Contract.

**'RFFR'** means DEWR's Right Fit For Risk accreditation which is contained in the ESAF.

**'Schedule'** means the schedule to this Deed that is signed by the Department and the Provider. It may include annexures and incorporate other documents by reference.

**'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.

**'Service Guarantee'** means the set of minimum service standards of that name specified for the Disability Employment National Panel of Assessors set out at Annexure 2.

**'Services'** means SWS Assessments, OSAs, WMS Assessments or 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.

**'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)*.

**'Specialist WMS Assessment'** means a WMS Assessment performed in respect of a category of Participants specified in Item 5.3 of the Schedule.

**'Specialist Assessment Group'** means a group of Assessors who have been approved by the Provider to provide Specialist WMS Assessments.

**'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 agreement.

**'Subcontractor'** means any party which has entered into a Subcontract with the Provider.

**'Supported Wage System'** or **'SWS'** means the Australian Government program that makes provision for eligible people with disability to access a productivity based wage assessment.

**'SWS Assessment'** means the services described in Section 6A of this Deed.

**'SWS Assessment Report'** means a productivity assessment and SWS Wage Assessment Agreement prepared by the Provider in accordance with Section 6A of this Deed.

**'SWS Wage Assessment Agreement'** means a written agreement prepared by the Provider that reflects an agreement between an Employer and a Participant and the results of a SWS Assessment.

**'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 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 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 and the Department of Employment and Workplace Relations in the terms and form as specified by the Department from time to time.

**'Third Party Material'** means Material owned by a person other than the Commonwealth, the Provider, the Provider's Personnel or a Subcontractor, that is embodied in, or attach to, the Services or are otherwise necessarily related to the functioning or operation of the Services.

**'Third Party System'** means the information technology system of a Third Party IT Vendor.

**'Transition-in Period'** means the period, if any, Notified by the Department to the Provider in accordance with clause 74 [Transition in].

**'Transition-Out Period'** means the period, if any, Notified by the Department to the Provider in accordance with clause 74 [Transition in

117.1 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 Provider, so as to cause minimum disruption to Customers.

Transition Out ].

**'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 within the meaning of section 4 of the WHS Act.

**'WHS Entry Permit Holder'** has the same meaning as that given in the WHS Act.

**'WHS Laws'** means the WHS Act and WHS Regulations.

**'WHS Regulations'** means the regulations made under the WHS Act.

**'WMS Assessments'** means the services described in Section 6C of this Deed.

**'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.

**'Work Order'** means a work order as described in clause 4 of this Deed.

**'Workplace Modifications'** or **'WMS'** means the Australian Government assistance for modifying a workplace or purchasing special services or equipment for eligible employees with disability.

**'Workplace Modifications Assessment'** means an evaluation of the specific work related requirements of a person with disability in response to a request for assistance under the EAF.

**'Workplace Modifications Assessment Report'** or **'WMS Assessment Report'** means a report prepared by a Provider under Section 6C of this Deed recommending work related solutions to improve access to work and work productivity.



## **ANNEXURE 1 Code of Conduct**

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.

## **ANNEXURE 2     Service Guarantee**

### ***National Panel of Assessors – Your Service Guarantee***

The Australian Government's Disability Employment National Panel of Assessors (**NPA**) provides assessment services to support the needs of people with disability in the workplace.

As NPA Providers, we will work cooperatively with people with disability receiving assessment services, Employers and Program Providers of the New Specialist Disability Employment Program (**NSDEP**). We will:

- explain clearly the purpose of the assessment services, what assessment services you will receive, what we will do for you, and what you must do;
- deliver a professional, confidential, and timely service;
- treat you fairly and with respect ;
- ensure the information we provide is current and accurate ;
- work continually to improve our services; and
- produce an independent assessment report taking into consideration information obtained during the conduct of the assessment.

### **What can I expect?**

We will work with you to conduct the following assessments:

- Ongoing Support Assessments for NSDEP Participants ;
- Supported Wage System assessments; and
- Workplace Modifications Service assessments.

We will contact the Employer or NSDEP Provider prior to conducting the assessment to:

- explain the purpose and procedure for the assessment;
- plan to meet with you to conduct the assessment;
- agree any special requirements for the assessment, including access to the worksite, Occupational Health & Safety (OH&S) requirements and interpreters;
- answer any questions about the assessment;
- obtain information that may help us to understand your employment requirements and prepare for the assessment; and
- provide our contact details to you and be available to answer questions relating to each assessment that we conduct.

When we conduct the assessment, we will:

- describe the steps involved in the assessment;
- discuss the relevant work tasks, and any issues that impact on performing those tasks;

- behave in a manner that is not obstructive or stressful;
- respect you and the work environment;
- record appropriate information that relates to the assessment and that will assist us in preparing the assessment report; and
- ensure that your privacy and dignity are maintained.

### **What are my responsibilities?**

If for any reason you are not available at the time your assessment has been scheduled for, you, your Employer, or your NSDEP provider should contact us to reschedule your assessment.

To ensure that we provide an effective and efficient assessment service to you, you need to provide current and accurate information to us.

If we visit your worksite to conduct assessment services, your Employer should advise us of any special access and OH&S requirements.

### **What happens to what I tell you?**

We will collect information from you for the purpose of completing the assessment. We will keep all information that you provide in accordance with the *Privacy Act 1988* (Cth) (*Privacy Act*).

If you ask, we will usually be able to show you the information we hold about you. If you have any concerns about the way in which information about you is being managed, you can discuss your concerns with us.

More information about the *Privacy Act* and the powers of the Information Commissioner can be found on the Office of the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au).

### **What can I do if I'm not happy with the assessment service?**

If you are not satisfied with the way we conducted the assessment service, you should first try to talk to us. We will provide a feedback process which is fair, and we will try to resolve your concerns.

If you can't do this, or you are still not happy, you can get assistance from one of the following relevant numbers:

- Ongoing Support Assessments – contact the National Customer Service Line on 1800 805 260;
- Supported Wage System Assessments – contact the Department of Social Services Assessment Team on 1800 065 123; and
- Workplace Modifications Assessments – contact the JobAccess service on 1800 464 800.