

Workforce Australia - Employability Skills Training Deed 2022–2027

Effective 1 July 2022

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READER'S GUIDE TO THIS DEED

This Deed is comprised of:

1. THE PARTICULARS
2. PART A - GENERAL TERMS AND CONDITIONS
3. PART B - SERVICES REQUIREMENTS
4. ATTACHMENTS AND THE SCHEDULES TO THIS DEED
5. THE GUIDELINES

The PARTICULARS set out the details of the parties to this Deed.

There are 4 CHAPTERS in PART A – GENERAL TERMS AND CONDITIONS:

CHAPTER A1 – INTRODUCTION

CHAPTER A2 – BASIC CONDITIONS

CHAPTER A3 – INFORMATION MANAGEMENT

CHAPTER A4 – DEED ADMINISTRATION

There are 4 CHAPTERS in PART B - SERVICES REQUIREMENTS

CHAPTER B1 – GENERAL REQUIREMENTS FOR EST SERVICES AND PLACEMENT MANAGEMENT SERVICES

CHAPTER B2 – EST SERVICES

CHAPTER B3 – PLACEMENT MANAGEMENT SERVICES

CHAPTER B4 – WHS, SUPERVISION AND INCIDENTS REQUIREMENTS

There are 3 ATTACHMENTS to this Deed:

ATTACHMENT 1 – DEFINITIONS

ATTACHMENT 2 - JOINT CHARTER

ATTACHMENT 3 – SERVICE GUARANTEE

There are two SCHEDULES to this Deed:

SCHEDULE 1 – DEED AND BUSINESS DETAILS

SCHEDULE 2 – SERVICE DELIVERY PLAN(S)

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

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PART A - GENERAL TERMS AND CONDITIONS

CHAPTER A1 – INTRODUCTION

Section A1.1 – Definitions and interpretation

1. Definitions and interpretation

1.1 In this Deed, unless the contrary intention appears:

- (a) all:
 - (i) capitalised terms have the meaning given to them in the definitions in ATTACHMENT 1 – DEFINITIONS; and
 - (ii) other words have their natural and ordinary meaning;
- (b) words in the singular include the plural and vice versa;
- (c) a reference to an entity includes a natural person (i.e. an individual), a partnership, a body corporate, an incorporated association, a governmental or local authority or agency, or any other legal entity;
- (d) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time;
- (e) the chapter headings, section headings, clause headings and subheadings within clauses and notes are inserted for convenience only, and do not affect the interpretation of this Deed;
- (f) a rule of construction does not apply to the disadvantage of a Party just because the Party was responsible for the preparation of this Deed;
- (g) a reference to an internet site or webpage includes those sites or pages as amended from time to time;
- (h) a reference to a Guideline, form, agreement or other document is to that document as revised or reissued from time to time;
- (i) a reference to the name of a Commonwealth program is to that name as amended from time to time;
- (j) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (l) a reference to time is to the time in the location where the relevant Services are to be performed; and
- (m) a reference to A\$, \$A, dollar or \$ is to Australian currency.

- 1.2 The Provider agrees that:
- (a) Conditions of Offer form part of this Deed;
 - (b) Guidelines form part of this Deed;
 - (c) it must perform all obligations in this Deed in accordance with any Guidelines, even if a particular clause does not expressly refer to any Guidelines;
 - (d) Guidelines may be varied by the Department at any time and at the Department's absolute discretion; and
 - (e) any action, direction, advice or Notice that may be taken or given by the Department under this Deed, may be taken or given from time to time and at the Department's absolute discretion.
- 1.3 The word 'Reserved' indicates that a particular clause is not used.
- 1.4 The Department's exercise of any right under this Deed does not in any way limit the Department's other rights under this Deed or the law.
- 1.5 For avoidance of doubt, the Department's exercise of any right under this Deed, except under clause 58, does not amount to a reduction of scope or termination for which any amount is payable by the Department.

2. Priority of Deed Documents

- 2.1 To the extent of any inconsistency between any of the following documents forming part of this Deed, the following order of precedence will apply:
- (a) any Conditions of Offer;
 - (b) clauses 1 to 104 and ATTACHMENT 1 – DEFINITIONS;
 - (c) SCHEDULE 2 – SERVICE DELIVERY PLAN(S);
 - (d) SCHEDULE 1 – DEED AND BUSINESS DETAILS;
 - (e) the Particulars;
 - (f) any Guidelines;
 - (g) ATTACHMENT 2 - JOINT CHARTER and ATTACHMENT 3 – SERVICE GUARANTEE; and
 - (h) any documents incorporated by reference.

CHAPTER A2 – BASIC CONDITIONS

Section A2.1 – Deed length

3. Term of this Deed

- 3.1 This Deed starts on the Deed Commencement Date and, unless terminated earlier, expires on the Deed Completion Date.

- 3.2 The Department may, at its absolute discretion, offer the Provider an extension of the Term of this Deed:
- (a) for one or more Extended Service Periods up to a maximum total period of three years; and
 - (b) if the Department determines, at its absolute discretion, on the basis of additional terms and conditions or variations to existing terms and conditions,
- by giving Notice to the Provider not less than 20 Business Days prior to the Deed Completion Date.
- 3.3 If:
- (a) the Department offers the Provider an extension of the Term of this Deed under clause 3.2; and
 - (b) the Provider accepts the offer,
- the Term of this Deed will be extended in accordance with the offer.

4. Survival

- 4.1 The termination or expiry of this Deed for any reason does not extinguish or otherwise affect the operation of:
- (a) clauses 10 (Information provided to the Department), 11 (Records to be provided), 12 (General reporting), 17 (Provider's obligation to assist and cooperate with the Department and others), 19 (Evidence to support entitlement to Payments), 23 (Debts and offsetting), 27 (Evaluation activities), 31 (General), 32 (Access and information security assurance), 33 (Intellectual Property Rights), 34 (Moral Rights), 35 (Personal and Protected Information), 36 (Confidential Information), 37 (Records the Provider must keep), 38 (Public Sector Data), 39 (Access by Participants and Employers to Records held by the Provider), 40 (Access to documents for the purposes of the Freedom of Information Act 1982 (Cth)), 41 (Program Assurance Activities and audits), 42 (Access to Material), 43 (Indemnity), 44 (Insurance), 45 (Liability of the Provider to the Department), 53 (Dispute Resolution), 55 (Remedies), 57 (Liquidated Damages), 60 (Transition out leading up to expiry, termination or reduction in scope of this Deed), 65 (Protection of rights) and 70 (Applicable law and jurisdiction); or
 - (b) any other clauses that are expressly specified as surviving, or by implication from their nature are intended to continue.

Section A2.2 – Some basic rules about Services

5. General Requirements

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

- (ii) any representation or undertaking made by the Provider in its response to any request for proposal relating to the Services, unless otherwise agreed with the Department;
 - (b) subject to clause 5.2, in each Employment Region specified in items 4.1 and 4.2 of SCHEDULE 1 – DEED AND BUSINESS DETAILS and, at a minimum, from each Site specified in item 4.4 of SCHEDULE 1 – DEED AND BUSINESS DETAILS;
 - (c) in a manner which meets the Objectives; and
 - (d) so as to achieve optimum performance when measured against the KPIs.
- 5.2 Subject to the Department’s prior written approval, the Provider may deliver Courses through an online medium in accordance with this Deed from outside the Employment Region(s) specified in items 4.1 and 4.2 of SCHEDULE 1 – DEED AND BUSINESS DETAILS.
- 5.3 The Provider warrants that it has the expertise, capacity and capability to provide the Services in accordance with this Deed, including to meet the changing demand for such Services over the Term of this Deed.
- 5.4 Subject to the express provisions of this Deed, the Provider is fully responsible for the performance of the Services, for ensuring compliance with the requirements of this Deed, and for all costs of meeting the Provider's obligations under this Deed, notwithstanding any other matter or arrangement, including any Subcontract or Host Organisation Agreement.

6. Accessibility

- 6.1 The Provider must ensure that:
- (a) any location from which the Services are provided, including the location of any Course, Industry Awareness Experience or Placement, and any information delivered by electronic means that forms part of the delivery of the Services (such as online training or information delivered by telephone):
 - (i) is accessible to people with a disability;
 - (ii) is presented in a manner that upholds and maintains the good reputation of the Services, as determined by the Department;
 - (iii) in relation to locations, has appropriate facilities for use by the Participants, including access to clean drinking water and toilets; and
 - (iv) in relation to each Site, uses appropriate badging and signs with the name of the Provider, and/or the Course, in accordance with any Guidelines;
 - (b) any virtual environment used for the delivery of the Services (including a Course) complies with the requirements in this Deed including any Guidelines; and
 - (c) it takes all reasonable steps to avoid acts or omissions which the Provider could reasonably foresee would be likely to cause injury to Participants or any other individuals at the locations referred to in clause 6.1(a).
- 6.2 In designing and developing any Deed Material, the Provider must comply with Australian Government accessibility standards as specified in any Guidelines.

7. Use of interpreters

- 7.1 The Provider must, when carrying out the Services, accommodate the attendance of an interpreter where one is arranged by a Referring Provider or the DSCC, as relevant, to facilitate communication between the Provider and Participants wherever necessary, including where a Participant requires assistance:
- (a) to communicate comfortably and effectively with the Provider, on account of language or hearing barriers;
 - (b) to understand complex information of a technical or legal nature;
 - (c) during stressful or emotional situations where a Participant's command of English may decrease temporarily; or
 - (d) at group forums or public consultations, where Participants do not speak or understand English, or have a hearing impairment.

8. Provider's conduct

- 8.1 The Provider must:
- (a) at all times, act in good faith towards the Department, Eligible EST Participants and Participants, and in a manner that does not bring the Services, the Provider or the Department into disrepute; and
 - (b) immediately Notify the Department of any matter or incident that could be damaging to the reputation of the Services, the Provider or the Department should it become publicly known.
- 8.2 The Provider must:
- (a) not engage in, and must ensure that its Personnel, Subcontractors, Related Entities, Third Party IT Vendors and agents do not engage in, any practice that manipulates or impacts, as relevant, any aspect of the Services including any:
 - (i) Record, including any Documentary Evidence;
 - (ii) Payment or Payment related process;
 - (iii) Course, Industry Awareness Experience or Placement;
 - (iv) Participant, Host Organisation or Employer; or
 - (v) monitoring of the Services by the Department,with the effect of improperly, as determined by the Department, maximising payments to, or otherwise obtaining a benefit (including with regard to performance assessment) for, the Provider or any other entity; and
 - (b) if it identifies an improper practice, immediately:
 - (i) take all action necessary to either stop the practice or otherwise change the practice so that the Provider is not in breach of clause 8.2(a); and

- (ii) Notify the Department of the practice identified and the action taken by the Provider under clause 8.2(b)(i), and provide all information in relation to the situation as required by the Department.
- 8.3 The Provider must not have a remuneration or rewards structure that encourages its Personnel to act in a manner that is inconsistent with the Objectives or any of the other requirements of this Deed.
- 8.4 Where the Department determines that the Provider has breached clause 8.2 or 8.3 the Department may, at its absolute discretion and by Notice to the Provider:
 - (a) exercise any remedies specified in clause 55.2; or
 - (b) terminate this Deed under clause 59.
- 8.5 The Provider must advise its officers and employees that:
 - (a) they are Commonwealth public officials for the purposes of section 142.2 of the *Criminal Code Act 1995* (Cth);
 - (b) acting with the intention of dishonestly obtaining a benefit for any entity is punishable by penalties including imprisonment; and
 - (c) disclosures of “disclosable conduct” under the *Public Interest Disclosure Act 2013* (Cth) can be made directly to their supervisors within the Provider, or to an Authorised Officer of the Department as specified on the Department's website (<https://www.dese.gov.au/about-us/corporate-reporting/freedom-information-foi/foi-disclosure-log/public-interest-disclosure-act-2013>), and where a disclosure of “disclosable conduct” is made to a supervisor within the Provider, the supervisor is required under section 60A of the *Public Interest Disclosure Act 2013* (Cth) to pass information about the conduct to an Authorised Officer of the Department.
- 8.6 For the avoidance of doubt, no right or obligation arising from this Deed is to be read or understood as limiting the Provider's right to enter into public debate regarding policies of the Australian Government, its agencies, employees, servants or agents.

9. Joint Charter

- 9.1 The Department and the Provider agree to conduct themselves in accordance with the Joint Charter.

10. Information provided to the Department

- 10.1 The Provider must ensure that:
 - (a) all information it provides to the Department, in any form and by any means, including all Documentary Evidence and information about change in the circumstances of Participants, is true, accurate and complete at the time of its provision to the Department;
 - (b) it diligently, and in accordance with any Guidelines, takes all necessary steps to verify the truth, completeness and accuracy of any information referred to in clause 10.1(a); and

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

11. Records to be provided

- 11.1 Without limiting its obligations under clause 42, when requested by the Department, the Provider must provide to the Department, or the Department's nominee, any Records in the possession or control of the Provider or a Third Party IT Vendor:
 - (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.

12. General reporting

- 12.1 Without limiting any other provisions of this Deed, the Provider must provide, as required by the Department:
 - (a) specific Reports on:
 - (i) the Services, including on the results of internal and external audits of Payment claims and claim processes, action taken to address performance issues raised by the Department, and training provided to its Personnel and Subcontractors;
 - (ii) the performance of Personnel, including any Facilitator, including Reports outlining any actions taken by the Provider in accordance with clause 88.3 to actively monitor the delivery of the EST Services for quality assurance purposes; and
 - (iii) the financial status of the Provider; and
 - (b) a suitably qualified, informed and authorised representative at any meeting arranged by the Department, in order to discuss and accurately answer questions relating to the Reports referred to in clause 12.1(a) or those otherwise required under this Deed.
- 12.2 The Provider must also provide any other Reports that may reasonably be required by the Department, within the timeframes requested by the Department or as specified in any Guidelines.
- 12.3 The Provider must provide:
 - (a) all Reports in a form acceptable to the Department; and
 - (b) if, in the Department's opinion, either the form or the content of a Report is not satisfactory, the Provider must submit a revised Report to the Department's complete satisfaction within 10 Business Days of Notice to the Provider from the Department to do so.

13. Liaison and directions

- 13.1 The Provider must:
 - (a) liaise with, and provide information related to this Deed, to:

- (i) the Department; and/or
 - (ii) any other entity nominated by the Department,
- as requested by the Department; and

- (b) immediately comply with all of the Department's requests and directions related to this Deed.

Note: 'other entity' referred to in clause 13.1(a)(ii) includes, for example, an auditor appointed by the Department.

- 13.2 For the day to day management of, and communication under, this Deed, the Department and the Provider must respectively nominate an Account Manager and a Contact Person for the Term of this Deed, and Notify the other Party as soon as practicable of any change to the details of the individuals occupying those positions.

- 13.3 The Provider must:

- (a) provide all reasonable assistance to the Commonwealth in relation to the Social Security Appeals Process; and
- (b) respond, within five Business Days, to any request for information by Services Australia or the Department in relation to the Social Security Appeals Process.

14. Business level expectations

- 14.1 The Provider agrees that:

- (a) it may be one of a number of providers (including EST Providers) in any Employment Region who may provide services which are the same as or similar to the Services; and
- (b) Referring Providers and the DSCC are not obliged to Refer any Eligible EST Participant to the Provider.

- 14.2 The Department provides no guarantee of:

- (a) the volume or type of business the Provider will receive, including the number of Referrals;
- (b) the numbers of Participants for any Services;
- (c) the numbers of Participants for any Employment Region; or
- (d) the accuracy of market and other information provided in any request for proposal for this Deed.

15. Action to address unmet demand and gaps in services

- 15.1 For the purposes of addressing unmet demand and gaps in services, the Department may agree with:

- (a) the Provider to the provision of additional services by the Provider, including in additional Employment Regions, on the same terms as specified in this Deed; and
- (b) any EST Provider to the provision of additional services in any Employment Region.

16. Additional Services

- 16.1 The Department and the Provider may agree to the provision of other services by the Provider to the Department, including applicable terms and conditions.

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

- 17.1 The Provider must, if directed by the Department, provide sufficient assistance and cooperation to any entity nominated by the Department to enable services to continue to be provided to any Participant who is or will be transferred to another EST Provider for any reason, including:
- (a) the expiry, termination or reduction in scope of this Deed; or
 - (b) any transfer of the Participant under any provision of this Deed.
- 17.2 The assistance and cooperation the Provider must provide under clause 17.1 includes complying with the Department's directions in relation to:
- (a) the transfer of Deed Material and Commonwealth Material in the Provider's possession or control, including that stored in External IT Systems; and
 - (b) the redirection of Participants,
- to any entity nominated by the Department, or to the Department.

Section A2.3 – Some basic rules about financial matters

18. General

- 18.1 Subject to sufficient funds being validly appropriated for the Services and the Provider's compliance with this Deed to the Department's complete satisfaction, the Department will make Payments to the Provider, at the times and in the manner specified in this Deed, to the account specified in item 3 of SCHEDULE 1 – DEED AND BUSINESS DETAILS.
- 18.2 The Provider must not claim or accept a Payment from the Department if the requirements under this Deed which must be satisfied to qualify for the Payment have not been fully and properly met.
- 18.3 Where the Department determines that the Provider is in breach of clause 18.2, 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 23, and exercise any other remedies specified in clause 55.2.
- 18.4 Subject to any Guidelines, the Provider must have, at the time it makes a claim for 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 claim for Payment; and
 - (c) has done so in accordance with this Deed, including any Guidelines.

18.5 If the Provider identifies that it has claimed, or accepted, a Payment:

- (a) in breach of this Deed; or
- (b) in circumstances where the requirements under this Deed to qualify for the Payment have not been fully and properly met,

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

18.6 The Provider must:

- (a) have a valid ABN;
- (b) immediately Notify the Department if it ceases to have a valid ABN;
- (c) correctly quote its ABN on all documentation provided to the Department, where relevant;
- (d) supply proof of its GST registration, if requested by the Department;
- (e) immediately Notify the Department of any changes to its GST status; and
- (f) unless otherwise advised by the Department or specified in any Guidelines, submit a Tax Invoice to the Department for payment.

19. Evidence to support entitlement to Payments

19.1 The Provider must provide Documentary Evidence to the Department:

- (a) if required by any Guidelines, at the time of making the relevant claim for a Payment, and through the Department's IT Systems; and
- (b) otherwise, within five Business Days of any request by the Department to do so.

19.2 If:

- (a) the Provider does not comply with a request by the Department under clause 19.1, including if the Documentary Evidence provided is not true, complete and accurate; and
- (b) the Department has already paid the Provider the relevant Payment,

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 23, and exercise any other remedies specified in clause 55.2.

19.3 The Department may contact Employers, Host Organisations or Participants or any other relevant parties to verify Documentary Evidence provided by a Provider.

20. Exclusions

20.1 The Department will not pay any money to the Provider in excess of the Payments.

- 20.2 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 worker's compensation premiums and liabilities.
- 20.3 The Provider must not demand or receive any payment or any other consideration either directly or indirectly from any Participant for, or in connection with, the Services.

21. Ancillary Payments

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

22. Overpayment and double payment

Overpayment

- 22.1 If, at any time, the Department determines that an overpayment by the Department has occurred for any reason, including where a:

- (a) Tax Invoice is found to have been incorrectly rendered after payment; or
- (b) payment has been made in error,

the Department may recover some or all of the relevant payment amounts from the Provider, at its absolute discretion, as a debt in accordance with clause 23.

Double payment

- 22.2 Subject to any Guidelines and any express written agreement with the Department to the contrary:

- (a) the Provider warrants that neither it, nor any Related Entities, are entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing services that are the same as, or similar to, the Services as provided under this Deed; and
- (b) the Department may require the Provider to provide evidence, in a form acceptable to the Department, proving that neither the Provider, nor any Related Entities, are so entitled.

- 22.3 Throughout the Term of this Deed, the Provider must Notify the Department if it intends to deliver services that are, or could be perceived to be, the same as or similar to, the Services provided under this Deed.

- 22.4 For the purposes of clause 22.2, if the Department determines, at its absolute discretion, that the Provider, or any Related Entity, is entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing the same or similar services as provided under this Deed, the Department may, at its absolute discretion:

- (a) make any Payment related to the relevant Services;
- (b) decide not to make such a Payment; or

- (c) recover any such Payment made by the Department as a debt in accordance with clause 23.
- 22.5 Regardless of any action the Department may take under clause 22.4, the Department may, at any time, issue Guidelines setting out the circumstances in which the Department will or will not make Payments in connection with any situation of the type described in clause 22.4.

23. Debts and offsetting

- 23.1 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
 - (c) the Department will Notify the Provider if it exercises its rights under clause 23.1(b) within 10 Business Days after having exercised those rights; and
 - (d) the Provider must continue to perform its obligations under this Deed despite any action taken by the Department under clause 23.1(a) and/or 23.1(b).
- 23.2 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.
- 23.3 Where the Provider owes any debt to the Commonwealth under this Deed, Interest is payable by the Provider if the debt is not repaid within 30 calendar days of receipt of a Notice from the Department requiring payment, until the amount is paid in full.

24. Taxes, duties and government charges

- 24.1 Unless expressly stated to the contrary, all dollar amounts in this Deed are inclusive of GST.
- 24.2 If a Payment is not in relation to a Taxable Supply, the Provider must only claim or accept an amount exclusive of GST.
- 24.3 Unless otherwise advised by the Department or specified in any Guidelines, the Provider must give to the Department a Tax Invoice for any Taxable Supply before any Payments are made to the Provider as consideration for the Taxable Supply.
- 24.4 The Provider must not claim or accept from the Department any amount for which it can claim an Input Tax Credit.
- 24.5 Where any debt is repaid, including by offset under clause 23.1(b), an Adjustment Note must be provided to the Department if required by the GST Act.
- 24.6 Subject to this clause 24, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the Provider.

25. Fraud

25.1 The Provider must:

- (a) not engage in, and must ensure that its Personnel, Subcontractors, Third Party IT Vendors and agents do not engage in, fraudulent activity in relation to this Deed; and
- (b) take all reasonable steps to prevent fraud upon the Commonwealth, including the implementation of an appropriate fraud control plan, a copy of which must be provided to the Department on request.

25.2 If, after investigation, the Department considers that the Provider has failed to comply with clause 25.1, the Department may:

- (a) exercise any remedies specified in clause 55.2; or
- (b) terminate this Deed under clause 59,

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.

26. Financial statements and guarantees

26.1 Subject to clause 26.3, the Provider must, for the Term of this Deed, provide to the Department audited financial statements:

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

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

26.3 If directed by the Department, the Provider must provide to the Department:

- (a) any other financial statements, in a form, with the content and at a frequency, as directed by the Department; and
- (b) within 20 Business Days of the relevant direction by the Department:
 - (i) an unconditional and irrevocable financial guarantee duly executed by a financial institution; and/or
 - (ii) a performance guarantee duly executed by a Related Entity of the Provider,

in a form and in terms satisfactory to the Department.

26.4 The Provider must ensure that any guarantee provided in accordance with clause 26.3(b) remains in place until the Department Notifies the Provider that it is no longer required.

- 26.5 If an Insolvency Event occurs in relation to the Related Entity that has provided the guarantee under clause 26.3(b)(ii), the Provider must replace the performance guarantee to the Department's complete satisfaction within five Business Days of such an event occurring.
- 26.6 Any guarantee provided under clause 26.3(b) will be exercisable by the Department for either or both of the following, to the extent required:
- (a) to obtain compensation for the Department's Loss if the Provider fails to perform any or all of its obligations under this Deed, including on the termination of this Deed; or
 - (b) to recover any debts due to the Department under or in connection with this Deed.
- 26.7 If the Provider fails to provide or maintain any guarantee required by clause 26.3(b), the Department may withhold all or part of any Payment until the Provider meets that obligation.
- 26.8 If the Department exercises any or all of its rights under any guarantee provided under clause 26.3(b), the Department will not be liable for, and the Provider releases the Department from liability for, any resultant Loss by the Provider.

Section A2.4 – Assessment and management of Provider's performance

27. Evaluation activities

- 27.1 The Provider agrees that:
- (a) evaluation activities may be undertaken by the Department for the purposes of evaluating the Services, including the Provider's performance, and may include:
 - (i) the Department monitoring, measuring and evaluating the delivery of the Services by the Provider;
 - (ii) the Provider's Personnel and Subcontractors being interviewed by the Department or an independent evaluator nominated by the Department; and
 - (iii) the Provider giving the Department or the Department's evaluator access to its premises and Records in accordance with clause 42; and
 - (b) it will fully cooperate with the Department in relation to all such activities.

28. Performance reviews

- 28.1 During each Performance Period, the Department will assess the Provider's performance against the requirements of this Deed including any Guidelines, including, without limitation, and as relevant, the KPIs, the Joint Charter, the Service Delivery Plan(s), any representations in the Provider's response to the request for proposal for this Deed and the Service Guarantee.
- 28.2 For the purposes of clause 28.1, the Department may rely on information and data collected from any source, including feedback from Participants, Employers, Host Organisations, EST Providers, employment services providers, and intelligence from the Department's Employment Services Tip off Line.
- 28.3 At such times as the Department determines, the Department may:
- (a) review the Provider's performance in each Employment Region where the Provider delivers Services; and

- (b) subsequently provide feedback to the Provider on the Department's assessment of its performance.
- 28.4 The Provider agrees that the Department may publish information the Department holds concerning the Provider's performance of the Services.

29. Sample reviews

- 29.1 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 55.2 in relation to the Deemed Invalid Claims.
- 29.2 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.
- 29.3 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 29.5, 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').
- 29.4 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 55.2; or
 - (b) exercise any of its rights under clause 59.

Sampling methodology

- 29.5 For the purposes of clause 29.3, 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 29; and
 - (b) will provide at least a 95% confidence level that the proportion and/or value of Invalid Claims identified in the Sample Review can be extrapolated as specified in clause 29.3.
- 29.6 The Department must disclose the methodology used in a Sample Review to the Provider before exercising the Department's rights under clause 29.4.

Section A2.5 – Customer feedback

30. Customer feedback process

- 30.1 The Provider must establish and publicise to its Customers the existence and details of a Customer feedback system that:
- (a) is visible, user-centred, simple to access and easy to use for Customers;
 - (b) supports early resolution of Complaints lodged by Customers;
 - (c) is integrated within the overall corporate structure of the Provider's organisation, with clearly described advice for Customers on the customer feedback process including, confirmation that any Complaint lodged by any Customer will be investigated by an appropriately senior staff member of the Provider;
 - (d) is recorded in an electronic system capable of producing complaint insights with robust quality assurance and review processes for both internal reporting purposes, as well as for quarterly reporting to the Department or as required; and
 - (e) includes advice about escalation processes of Complaints, including referral of the Customer to the Department's National Customer Service Line for further investigation of the matter.
- 30.2 If a Customer is dissatisfied with the results of the Customer feedback process, the Provider must refer the Customer to the Department's National Customer Service Line for further investigation of the matter.
- 30.3 Upon request, the Provider must give to the Department and Customers copies and details of the process it has established to manage Customer feedback.
- 30.4 The Provider must, when approached by the Department, actively assist:
- (a) the Department in its investigation of any Complaint, including providing a detailed response to issues Notified by the Department within the timeframe required by the Department;
 - (b) the Department in negotiating a resolution to any Complaint; and

- (c) other authorities in negotiating a resolution to any Complaint, where the relevant Customer has chosen to utilise legislative or other complaints mechanisms.

CHAPTER A3 – INFORMATION MANAGEMENT

Section A3.1 – Information Technology

31. General

- 31.1 The Provider must conduct the Services by Accessing the Department's IT Systems provided by the Department for that purpose.
- 31.2 The Department may require that data relating to specific transactions must only be stored on the Department's IT Systems, and the Provider must comply, and ensure that all Subcontractors and Third Party IT Vendors comply, with any such requirements.
- 31.3 The Provider must not allow any Provider Personnel or Subcontractors to have Access to the Department's IT Systems until they have successfully completed any onboarding processes and training specified in any Guidelines.
- 31.4 The Provider is responsible for all costs of meeting its obligations under this clause 31.

32. Access and information security assurance

Access to the Department's IT Systems

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

External IT Systems

Note: An '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.

- 32.2 The Provider acknowledges and agrees that:
 - (a) the External System Assurance Framework is the method the Department uses to gain assurance over External IT Systems;
 - (b) the Department is the accreditation authority for the ESAF; and
 - (c) the requirements for a Provider IT System are outlined in the Department's Right Fit For Risk program under the ESAF.
- 32.3 The Provider must:
 - (a) advise the Department by email to securitycompliancesupport@dese.gov.au, or such other address as advised by the Department from time to time, of 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 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:
 - (i) is not accessible from outside of Australia, and that no data in relation to the Services is transferred or stored outside of Australia, without prior written approval from the Department; and
 - (ii) meets the minimum requirements specified in any Guidelines, including the *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 and in an unadulterated form (i.e. with no amendments or transformations to the Records or their data structures).

32.4 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 is not responsible for any Loss by the Provider arising from such changes.

Provider IT System accreditation

Note: A 'Provider IT System' falls within the definition of 'External IT System' and means an information technology system used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems.

32.5 Subject to the requirements of 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 accreditation until the Deed Completion Date.

32.6 Where a Provider IT System is modified, the Provider must ensure that any necessary reaccreditation activities are completed in accordance with the requirements of the ESAF.

- 32.7 If the Provider or any Subcontractor does not obtain accreditation or reaccreditation within the timeframes specified in the ESAF or this clause 32, the Provider must immediately cease using, and ensure that any relevant Subcontractor ceases using, the relevant Provider IT System.

Third Party IT

Note: 'Third Party IT' means any information technology system developed and managed, or information technology service provided, by a Third Party IT Vendor and used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems. 'Third Party IT' includes a Third Party Employment System and a Third Party Supplementary IT System.

- 32.8 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 until the Third Party IT has met the relevant requirements of the ESAF for Access as specified in any Guidelines;
- (b) where the Third Party IT is a Third Party IT Employment System:
 - (i) ensure that the relevant Third Party IT Vendor has entered into a Third Party IT Vendor Deed with the Department in relation to the Third Party IT Employment System; and
 - (ii) only allow Access in accordance with the terms of the relevant Third Party IT Vendor Deed and any Guidelines;
- (c) where 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.

Technical advice

- 32.9 The Provider must:

- (a) nominate Personnel ('IT Contact') by email to their Account Manager to receive technical advice from the Department on the Department's IT Systems, and to provide advice to the Department on technical issues arising from Accessing the Department's IT Systems;
- (b) ensure that an IT Contact is appointed at all times during the Term of this Deed, and that, at all times, the Department has up-to-date contact details for the current IT Contact; and
- (c) ensure that the IT Contact meets all requirements specified in any Guidelines.

Security

- 32.10 The Provider must comply, and ensure that its Subcontractors and Third Party IT Vendors comply, with the Department's Security Policies, as relevant.
- 32.11 The Provider must ensure that a Security Contact is appointed at all times during the Term of this Deed, and that, at all times, the Department has up-to-date contact details for the current Security Contact.
- 32.12 The Provider must (through its Security Contact) promptly report all breaches of IT security to the Employment Systems Service Desk, including where any of its Personnel or any Subcontractor suspect that a breach may have occurred or that any entity may be planning to breach IT security, and provide updates on their resolution.
- 32.13 Where the Department considers that the Provider may be in breach of this clause 32, or there is a risk of such a breach, the Department may, at its absolute discretion, immediately suspend Access, or require the Provider to cease all Access, to the Department's IT Systems for any one or more of the following:
- (a) any Personnel;
 - (b) any Subcontractor;
 - (c) any Third Party IT Vendor;
 - (d) the Provider; or
 - (e) any External IT System,
- by providing Notice to the Provider.
- 32.14 Where the Department determines that the Provider is in breach of, or has previously breached, this clause 32, the Department may immediately exercise any remedies specified in clause 55.2.
- 32.15 If the Department gives Notice to the Provider that Access to the Department's IT Systems is terminated for any particular Provider Personnel, Subcontractor or Third Party IT Vendor, the Provider must immediately take all actions necessary to terminate that Access and promptly confirm to the Department that it has complied with the Department's requirements.

Cybersafety Policy

- 32.16 For the purposes of clauses 32.16 to 32.18:

'Clients' means entities who may use the Provider's computers and/or other digital technology that is supported through public funding provided pursuant to this Deed, and includes Participants, the Provider, any Subcontractor and the public, whether they be adult or Children.

'Reasonable Steps' means having in place strategies to minimise and manage risks of exposure to inappropriate or harmful online content by users of computers, particularly Children, and may include having a policy in place regarding appropriate use and protection for Clients, installation of filters, audits and provision of information or training to Clients regarding the risks of, and protection from, inappropriate or harmful online content.

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

Section A3.2 – Intellectual Property Rights and Moral Rights

33. Intellectual Property Rights

- 33.1 This clause 33 does not affect the ownership of the Intellectual Property Rights in any Commonwealth Material incorporated into Deed Material, Existing Material or Third Party Material.
- 33.2 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.
- 33.3 Subject to clause 33.4, all:
- (a) Intellectual Property Rights in; and
 - (b) rights of ownership of any physical documents comprising,

any Deed Material vest in the Provider on creation.
- 33.4 The Provider grants to the Department (or must arrange for the grant to the Department of) a perpetual, irrevocable, world-wide, royalty-free, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, communicate, broadcast, distribute, exploit and publish:
- (a) the Deed Material for any Commonwealth purpose; and
 - (b) to the extent that the Department needs to use any Existing Material or Third Party Material provided by the Provider:
 - (i) in connection with the Services; or
 - (ii) for any other Department or Commonwealth purpose,

that Material.
- 33.5 To the extent that the Provider needs to use any of the Commonwealth 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 licence to use, reproduce, adapt, modify and communicate the Commonwealth Material solely for the purpose of performing its obligations under this Deed.
- 33.6 On the expiration or earlier termination of this Deed or on such earlier date as may be specified by the Department, the Provider must 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.

33.7 The Provider warrants that:

- (a) any Warranted Material and the Department's use of any Warranted Material will not infringe the Intellectual Property Rights 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 33.

33.8 If an entity claims, or the Department reasonably believes that an entity is likely to claim, that any Warranted Material or the Department's use of any Warranted Material infringes that entity's Intellectual Property 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 of any other entity without any degradation of the performance or quality of the affected Warranted Materials.

34. Moral Rights

34.1 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 and Subcontractors 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.

34.2 In this clause 34, '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 altered Deed Material or infringing copies (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

34.3 The Provider must not use the Commonwealth Coat of Arms for the purposes of this Deed or otherwise, except as authorised in accordance with the Use of the Commonwealth Coat of Arms General Guidelines (<https://www.pmc.gov.au/government/commonwealth-coat-arms>).

Section A3.3 – Control of information

35. Personal and Protected Information

- 35.1 Clauses 35.2 to 35.7 apply only where the Provider deals with Personal Information for the purpose of conducting the Services under this Deed, and the terms 'agency', 'APP Code', 'Australian Privacy Principle' (APP), 'contracted service provider', 'eligible data breach', 'organisation' and 'sensitive information' have the same meaning as they have in section 6 of the Privacy Act.
- 35.2 The Provider acknowledges that it is a contracted service provider and agrees, in conducting the Services under this Deed:
- (a) to use or disclose Personal Information, including sensitive information, obtained in the course of conducting the Services ('relevant Personal Information'), only for the purposes of this Deed or where otherwise permitted under the Privacy Act;
 - (b) except where this clause 35 expressly requires the Provider to comply with an APP that applies only to an organisation, and subject to clause 35.3, to carry out and discharge the obligations contained in the APPs as if it were an agency;
 - (c) subject to clause 35.3, not to do any act or engage in any practice that if done or engaged in by the Department would breach an APP or be contrary to the Privacy Act;
 - (d) to cooperate with reasonable demands or inquiries made by the Australian Information Commissioner or the Department in relation to the management of Personal Information;
 - (e) to notify individuals whose Personal Information it holds, that complaints about its acts or practices may be investigated by the Australian Information Commissioner who has power to award compensation against the Provider in appropriate circumstances;
 - (f) unless expressly authorised or required under this Deed, to not engage in any act or practice that would breach:
 - (i) APP 7 (direct marketing);
 - (ii) APP 9 (adoption, use or disclosure of government related identifiers); or
 - (iii) any registered APP code that is applicable to the Provider;
 - (g) to comply with any request under section 95C of the Privacy Act;
 - (h) to comply with any directions, guidelines, determinations, rules or recommendations of the Australian Information Commissioner to the extent that they are consistent with the requirements of this clause 35;
 - (i) not to transfer relevant Personal Information outside of Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Department;
 - (j) to its name being published in reports by the Australian Information Commissioner;
 - (k) if the Provider suspends or terminates any of its relevant Personnel, or if any of its relevant Personnel resign, the Provider must immediately:

- (i) remove any access that the Personnel have to any relevant Personal Information;
 - (ii) require that the Personnel return to the Provider or the Department any relevant Personal Information held in the Personnel's possession; and
 - (iii) remind the Personnel of their relevant obligations under this Deed;
 - (l) to ensure that any of its Personnel who are required to deal with relevant Personal Information:
 - (i) where required by the Department, undertake in writing to comply with the APPs (or a registered APP code, where applicable); and
 - (ii) are made aware of their obligations in this clause 35, including to undertake in writing to comply with the APPs (or a registered APP code, where applicable); and
 - (m) otherwise comply with any Guidelines.
- 35.3 The Provider will not, by reason of this clause 35, be bound by any provision of the *Privacy (Australian Government Agencies – Governance) APP Code 2017*.
- 35.4 Unless such act or practice is expressly authorised by this Deed, no clause in this Deed will be interpreted so as to authorise the Provider or its Subcontractors to engage in an act or practice that would breach an APP if done or engaged in by the Department.
- 35.5 The Provider must immediately Notify the Department if it becomes aware:
- (a) of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 35 by any of its Personnel or a Subcontractor;
 - (b) that a disclosure of Personal Information may be required by law; or
 - (c) of an approach to the Provider by the Australian Information Commissioner or by an individual claiming that their privacy has been interfered with.

Notifiable data breaches

- 35.6 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 the Provider holds as a result of this Deed or its performance of the Services, the Provider must:
- (a) Notify the Department in writing no later than the Business Day after the Provider becomes so aware; and
 - (b) 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.

- 35.7 Where the Provider is aware that there are reasonable grounds to believe that there has been, or where the Department Notifies the Provider that there has been an eligible data breach in relation to any Personal Information the Provider holds 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 where required); and
 - (c) take any other action as reasonably directed by the Department or the Australian Information Commissioner.

Protected Information

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

36. Confidential Information

Confidential information not to be disclosed

- 36.1 Subject to this Deed, a Party must not, without the other Party's prior written approval, disclose that other Party's Confidential Information to a third party.
- 36.2 In giving written approval to disclose Confidential Information, a Party may impose conditions as it thinks fit, and the other Party agrees to comply with the conditions.

Exceptions to obligations

- 36.3 The obligations on the Parties under this clause 36 will not be breached to the extent that Confidential Information is disclosed:
- (a) unless otherwise Notified by the Department, by the Provider to its Personnel to enable the Provider to comply with its obligations, or to exercise its rights, under this Deed;
 - (b) unless otherwise Notified by the Department, by the Provider to its internal management Personnel, solely to enable effective management or auditing of Deed related activities;
 - (c) by the Department to its Personnel, within the Department's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
 - (d) by the Department to the responsible Minister or the Minister's staff;
 - (e) by the Department, in response to a request or direction by a House or a Committee of the Parliament of the Commonwealth of Australia; or
 - (f) by a Party as authorised or required by law.

Obligation on disclosure

- 36.4 Where the Provider discloses Confidential Information to its Personnel pursuant to clause 36.3(a) or 36.3(b), the Provider must notify the Personnel that the information is Confidential Information.

No reduction in privacy obligations

- 36.5 Nothing in this clause 36 limits the obligations of the Provider under clauses 35, 41 or 42.

Section A3.4 – Records management

37. Records the Provider must keep

- 37.1 The Provider must:

- (a) in accordance with this Deed and the Records Management Instructions, create and maintain detailed Records of the management of the Services in a form, and with the content, that is sufficient to enable proper auditing by the Department; and
- (b) ensure that those Records are true, complete and accurate.

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

Financial Accounts and Records

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

- (a) in accordance with Australian Equivalents to International Financial Reporting Standards; and
- (b) such that:
 - (i) all Payments made by the Department are clearly and separately identified from each other and from other money of the Provider; and
 - (ii) an auditor or other entity may examine them at any time and thereby ascertain the Provider's financial position.

Records Management Instructions

- 37.4 Without limiting the Provider's other obligations under this Deed, including in relation to Personal Information, the Provider must:

- (a) store, transfer and retain all Records in connection with this Deed, and only destroy such Records;
 - (b) maintain a register of Records; and
 - (c) ensure that its Personnel and Subcontractors only access Records,
- in accordance with the Records Management Instructions.

37.5 The Provider must:

- (a) not, without the prior written approval of the Department, transfer, or be a party to an arrangement for the transfer of, custody of the Records outside of Australia or to any person, entity or organisation other than to the Department; and
- (b) where transferring Records, only transfer the Records in accordance with the Records Management Instructions or as otherwise directed by the Department.

37.6 All Records must be retained by the Provider for a period of no less than six years after the creation of the Record, unless otherwise specified in the Records Management Instructions or advised by the Department.

Third Party IT Vendors

37.7 If any Third Party IT Vendor creates or maintains Records in association with the delivery of the Services by the Provider, the Provider must comply, and must ensure that the Third Party IT Vendor complies, with the requirements in this clause 37 in respect of any such Records.

38. Public Sector Data

38.1 Subject to passage of the Data Availability and Transparency Bill 2020 (Cth) ('the Bill'), the Department may at any time require the Provider by Notice 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 Bill.

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

38.2 Where Notified under clause 38.1, 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, including by:
 - (i) providing access to the Department to any External IT System for the purposes of regular and automated retrieval of Records through the Department's IT Systems; and
 - (ii) manipulating or enhancing the Public Sector Data as required by the Department before providing it to the Department or a third party; and
- (b) in providing the required Public Sector Data to the Department or a third party, comply with the relevant data breach provisions of the Bill.

38.3 If the Department requires the Provider to provide Public Sector Data directly to a nominated third party, the Department may require the Provider to register as an 'Accredited Data Services Provider' pursuant to the accreditation scheme in Part 5.2 of the Bill.

38.4 The Provider agrees that compliance with this clause 38 is at the Provider's own cost.

39. Access by Participants and Employers to Records held by the Provider

- 39.1 Subject to this clause 39, the Provider must allow Participants and Employers who are individuals to access Records that contain their own Personal Information, and provide them with copies of such Records if they require, except to the extent that Commonwealth legislation would, if the Records were in the possession of the Commonwealth, require or authorise the refusal of such access by the Commonwealth including Records of the type set out in clause 39.3.
- 39.2 The Provider must, in providing access to the requested Records in accordance with clause 39.1:
- (a) ensure that the relevant Participant or Employer requesting the access in clause 39.1 provides proof of identity to the Provider before access is given to the requested Records;
 - (b) ensure that any third party requesting the access in clause 39.1 on behalf of a Participant or Employer provides to the Provider written authority from the relevant Participant or Employer to obtain access to the requested Records before access is given; and
 - (c) notate the relevant files with details of the Records to which access was provided, the name of the individual granted access and the date and time of such access.
- 39.3 Where a Participant or an Employer requests access to Records containing information falling within the following categories:
- (a) information about another individual;
 - (b) medical/psychiatric records (other than those actually supplied by the Participant or Employer, or where it is clear that the Participant has a copy or has previously sighted a copy of the records);
 - (c) psychological records; and
 - (d) information provided by other third parties,
- the request must be directed by the Provider to the Department for consideration.
- 39.4 The Provider must comply with any direction given by the Department in relation to the provision, or refusal, of access to Records held by the Provider to a Participant or Employer.

40. Access to documents for the purposes of the Freedom of Information Act 1982 (Cth)

- 40.1 In this clause 40, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).

40.2 The Provider agrees that:

- (a) where the Department has received a request for access to a document created by, or in the possession of the Provider, any Subcontractor or any Third Party IT Vendor, related to the performance of the Services, 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 40.

41. Program Assurance Activities and audits

41.1 The Department may conduct Program Assurance Activities and audits relevant to the performance of the Provider's obligations under this Deed including in relation to:

- (a) the Provider's operational practices and procedures as they relate to this Deed and the provision of the Services, including security procedures;
- (b) the accuracy of the Provider's invoices and reports provided, or claims for payments made, under this Deed;
- (c) the Provider's compliance with its confidentiality, privacy 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. Access to Material

42.1 The Department may access, locate, inspect, copy and remove any Record including Records stored on any External IT System for any purpose connected with employment, skills and education related services, including for the purposes of improving employment services and conducting Program Assurance Activities and audits.

42.2 For the purposes of clauses 41.1 and 42.1, the Provider must, in accordance with any request by the Department, give or arrange:

- (a) unfettered access for the Department to:

- (i) any of its Sites or premises and/or any of those of any Subcontractor or Third Party IT Vendor;
- (ii) any External IT System, including for the purposes of regular and automated retrieval of Records through the Department's IT Systems;
- (iii) any Material, including:
 - (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, Subcontractors and Third Party IT Vendors; and
- (b) all assistance to or for the Department, to:
 - (i) undertake any activities for the purposes of any audit under clause 41.1;
 - (ii) inspect its Sites or 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, any Records including data stored on any External IT System.

42.3 Subject to clause 42.4, the obligations referred to in clause 42.2 are subject to the Department providing reasonable prior notice to the Provider and compliance with the Provider's reasonable security procedures.

42.4 If:

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

- (c) the Department accesses any External IT System and any related Material pursuant to a regular, automated process of retrieval of Records including through the Department's IT Systems,

clause 42.3 does not apply, and the Department may remove and retain any Records, including those stored electronically, that the Department determines are relevant to any action under this clause 42.4, provided that, in the case of clauses 42.4(a) and 42.4(b), the Department returns a copy of all such Records 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).

- 42.5 Each Party must bear its own costs in relation to any action under this clause 42.
- 42.6 The Provider's compliance with this clause 42 does not in any way reduce the Provider's responsibility to perform its obligations in accordance with this Deed.

CHAPTER A4 – DEED ADMINISTRATION

Section A4.1 – Indemnity and insurance

43. Indemnity

- 43.1 The Provider must indemnify the Department against any Loss by the Department, including in dealing with any claim against the Department, arising from or in connection with any:
 - (a) act or omission by:
 - (i) the Provider;
 - (ii) a Subcontractor (whether or not the relevant entity is a current Subcontractor);
 - (iii) an Employer; or
 - (iv) a Host Organisation,in connection with this Deed, where there was fault on the part of the entity whose conduct gave rise to the Loss;
 - (b) breach by the Provider of this Deed or failure to meet an undertaking given under this Deed;
 - (c) publication of the information referred to in clauses 28.4 or 62, where the published information was provided by the Provider to the Department; or
 - (d) use by the Department of any Warranted Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in any Warranted Material.
- 43.2 The liability of the Provider to indemnify the Department under this clause 43 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant Loss.

- 43.3 The Department's right to be indemnified under this clause 43 is in addition to any other right, power, or remedy provided by law, but the Department will not be entitled to be compensated in excess of the amount of the relevant Loss.

Meaning of fault

- 43.4 In this clause 43, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

44. Insurance

- 44.1 Subject to this clause 44 and unless the Department otherwise agrees in writing, the Provider must, for the Term of this Deed, effect and maintain or cause to be effected and maintained, the following insurances, which must be valid and enforceable and, except for the statutory workers compensation insurance referred to in clause 44.1(b)(i)(A) and the professional indemnity insurance or errors and omissions insurance at clause 44.1(d), be written on an occurrence basis:

- (a) public liability insurance with a limit of indemnity of at least \$20 million in respect of each and every occurrence, 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 45; and
 - (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider, its Personnel, representatives and agents,in respect of:
 - (iii) loss of, or damage to, or loss of use of any real or personal property (including property of the Department in the care, custody or control of the Provider); and
 - (iv) the bodily injury, disease or illness (including mental illness), 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 44.1(b)),arising out of, or in connection with, the Provider's performance of this Deed;
- (b) insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any 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) where common law claims by such workers are permissible outside of the statutory scheme referred to in clause 44.1(b)(i)(A), for employer's liability at common law with a limit of indemnity of at least \$50 million in respect of each and every occurrence;
 - (ii) in each Australian state or territory where the Services are performed or delivered; and

- (iii) where possible under the relevant law or scheme governing workers compensation insurance and in respect of all employers' liability policies, extending to indemnify the Department for its liability as principal in relation to any such claim;
- (c) for any motor vehicle used in the performance of this Deed:
 - (i) insurance with a limit of indemnity of at least \$20 million in respect of each and every occurrence which covers:
 - (A) third party property damage arising from the use of any plant or vehicles (registered or unregistered) used in respect of the performance of this Deed (including transporting Participants); and
 - (B) the bodily injury, disease or illness (including mental illness), disability, shock, fright, mental anguish or mental injury or death of, any individual arising from the use of any unregistered plant or vehicles used in or in connection with the performance of the Services pursuant to this Deed (including transporting Participants); and
 - (ii) compulsory third party motor vehicle insurance for all registrable vehicles used in the performance of this Deed (including transporting Participants in the Provider's or the Provider's employees vehicles);
- (d) for any Services provided in a professional capacity – professional indemnity insurance or errors and omissions insurance to be maintained during the Term of this Deed and for at least seven years following the Deed Completion Date with a limit of indemnity of at least \$5 million in respect of each claim and in the aggregate for all claims in any one 12 month policy period with one right of reinstatement which covers the liability of the Provider at general law and additionally as assumed under the terms of clause 45 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, its Personnel, representatives or agents; 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 45; 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 44.1(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 the Services, but not including undertaking a Placement or Industry Awareness Experience or any other activity specified in any Guidelines; and
 - (iii) travelling between:
 - (A) the Provider's premises and the Participant's home; and
 - (B) the Provider's premises and the Referring Provider's premises;
- (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 44.1(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 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 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.

- 44.2 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.
- 44.3 Unless otherwise agreed by the Department in writing, all insurances required under this clause 44 (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.
- 44.4 Each of the insurances required by this clause 44 (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 shall 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 notice 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.
- 44.5 Clauses 44.4(a), 44.4(c) and 44.4(e) do not apply to any personal accident insurance required by this clause 44, and clause 44.4(a) does not apply to any professional indemnity or errors and omissions insurance.
- 44.6 In relation to the insurances specified in this clause 44, 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.
- 44.7 The Provider must Notify the Department immediately if it:
- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Provider is obliged to effect and maintain, that could materially reduce the available limits or involve the Department (other than a claim by the Department against the Provider which would be insured under the insurance referred to in clause 44.1(d)); or

- (b) receives a notice of cancellation in respect of any of the insurances that the Provider is obliged to effect and maintain.
- 44.8 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 44, 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

- 44.9 Subject to clause 44.10, the Provider must obtain written independent professional advice that the insurances obtained by it and any Subcontractors pursuant to this clause 44 meet the requirements of this Deed:
 - (a) before commencing the performance of any Services and in any event within 20 Business Days of the Deed Commencement Date; and
 - (b) within 10 Business Days of the date of renewal of each of the insurances required under this Deed.
- 44.10 Where the advice referred to in clause 44.9 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.
- 44.11 Clause 44.9 does not apply to statutory workers compensation insurance or compulsory third party motor vehicle insurance.
- 44.12 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.
- 44.13 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 44.9,at any time that the Department requests.

Note: Clause 44.13 allows the Department to request information relating to the insurances of any Subcontractor of the Provider.

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

Assistance to the Department

- 44.15 The Provider must:
 - (a) give full, true and particular information, in respect of any proposal for a policy of insurance (including any policy issued pursuant to any self-insurance scheme of the

Commonwealth) to be effected by the Department, of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payments of all or any benefits under a policy; and

- (b) provide all reasonable assistance to the Department, in order to facilitate the Commonwealth making a claim under any insurance policy or self-insurance scheme effected for the Commonwealth's benefit.

44.16 For the avoidance of doubt, the provisions of this clause 44 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 44 does not limit its liability under any other provision of this Deed.

45. Liability of the Provider to the Department

Joint and several liability

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

Proportionate liability

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

- (a) the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under, or in connection with, this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, a claim in tort or otherwise; and
- (b) in accordance with clause 70, this clause 45.2 applies to all and any rights, obligations and liabilities under, or in connection with, this Deed whether such rights, obligations or liabilities arise in the State of New South Wales or elsewhere in Australia.

Note: Clause 70 provides that this Deed is to be construed in accordance with, and any other matter related to it is to be governed by, the laws of the State of New South Wales.

46. Special rules about Group Respondents

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

- (a) agrees that its members are as specified in the Particulars;
- (b) warrants that each of its members have given their authority to the member named in the Particulars as the Group Respondent's lead member to negotiate, bind and act on that member's behalf in relation to this Deed and any variations thereto; and
- (c) agrees that it can only change:
 - (i) its membership; and/or
 - (ii) the lead member of the Group Respondent,

by entering into an appropriate deed(s) with the Department on terms acceptable to the Department, including, in relation to a change to the lead member, a term under

which the Provider and the new lead member warrant that each of the members of the Group Respondent have given their authority to the new lead member to negotiate, bind and act on that member's behalf in relation to this Deed and any variations thereto and providing evidence, to the Department's complete satisfaction, that each of the members have given that authority.

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

Section A4.2 – Changes in entities delivering Services

47. Corporate governance

47.1 The Provider must, and must ensure that any Material Subcontractor:

- (a) provide(s) 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

47.2 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 services provider (including without limitation any EST Provider); and
 - (ii) if clause 47.2(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 47.2(a); and

- (c) if clause 47.2(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.
- 47.3 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; or
 - (f) the individual is otherwise prohibited from being a member or Director or employee or responsible officer of the organisation of the Provider.
- 47.4 Unless otherwise agreed by the Department in writing at its absolute discretion, where an individual falls, or is discovered as falling, within any of clauses 47.3(a) to 47.3(f) while employed or engaged by the Provider, or elected as an officer of the Provider, in a role in:
 - (a) its management or financial administration, the Provider will be in breach of clause 47.3, 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 47.3(a) to 47.3(f), and take any action in respect of that individual, that is Notified by the Department.

Note: For the avoidance of doubt, clause 47.4(b) will also apply where an individual is transferred in accordance with clause 47.4(a)(i), to a role in the performance of the Services.

48. Removal and training of Provider and Subcontractor Personnel

- 48.1 The Department may give Notice, on reasonable grounds related to the performance of the Services or risk to the Services or the Commonwealth, requiring the Provider to remove Personnel (including Subcontractor Personnel) from work on the Services. The Provider must, at its own cost, promptly arrange for the removal of such Personnel from work on the Services and their replacement with Personnel acceptable to the Department.
- 48.2 For the purposes of clause 48.1, if the Provider is unable to provide replacement Personnel (including Subcontractor Personnel) who are acceptable to the Department, the Department may terminate this Deed under clause 59.
- 48.3 The Provider must provide for, and ensure that its Personnel and Subcontractors participate in, any training as requested by the Department or as specified in any Guidelines.

49. Change in Control of the Provider or a Material Subcontractor

- 49.1 The Provider must not, without the Department's prior written consent, cause or allow to occur a Change in Control of:
 - (a) the Provider; or
 - (b) any Material Subcontractor.
- 49.2 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.
- 49.3 The Provider must, within five Business Days of receiving a written request from the Department, provide such information and supporting evidence as the Department may request in relation to the:
 - (a) shareholdings;
 - (b) issued shares;
 - (c) board of Directors;
 - (d) board of management;
 - (e) executive;
 - (f) voting rights;
 - (g) partnership composition, if relevant; or

- (h) ultimate holding company, if relevant,
- of the Provider or any Material Subcontractor, including the dates of any changes to those matters.
- 49.4 If the Provider breaches clause 49.1 or 49.3, the Department may:
 - (a) vary any Employment Region and/or any Site of the Provider;
 - (b) exercise any remedies specified in clause 55.2; or
 - (c) terminate this Deed under clause 59,by providing Notice to the Provider.
- 49.5 In determining whether to take action under clause 49.4, the Department may take into account any matter, including whether the Department considers, at its absolute discretion, that the relevant Change in Control:
 - (a) presents a risk to the Commonwealth; or
 - (b) has an impact on Employability Skills Training (including any actual or constructive change to the proportion of Services being performed by the Provider in a particular Employment Region, geographic region or nationally).
- 49.6 If the Department exercises its rights under clause 49.4(a):
 - (a) where relevant, this Deed is deemed to be varied accordingly; and
 - (b) the Provider must perform all of its obligations under this Deed as varied.

50. Notice regarding Insolvency Events

- 50.1 Without limiting any other provisions of this Deed, the Provider must:
 - (a) immediately Notify the Department if it becomes aware of any Insolvency Event; and
 - (b) provide the Department, immediately upon receipt or generation by the Provider, a copy of any:
 - (i) record of a decision of the Provider; or
 - (ii) notice or orders of any other entity,relating, or potentially relating, to an Insolvency Event, including any:
 - (iii) statutory demand within the meaning of sections 459E and 459F of the Corporations Act;
 - (iv) proceedings initiated with a view to obtaining an order for the Provider's winding up;
 - (v) 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;

- (vi) notice that a shareholder, member or Director is convening a meeting for the purpose of considering or passing any resolution for the Provider's winding up; or
- (vii) notice that the Provider has become bankrupt or has entered into a scheme of arrangement with their creditors (if the Provider is an individual).

51. Subcontracting

- 51.1 The Provider must not, without the Department's prior written approval, enter into, or terminate, a Subcontract.
- 51.2 In giving approval under clause 51.1, the Department may impose such terms and conditions as the Department thinks fit and the Provider must comply with any such terms and conditions.
- 51.3 The Subcontractors that the Department has approved, and any terms and conditions relating to their use, are identified at item 5 of SCHEDULE 1 – DEED AND BUSINESS DETAILS.
- 51.4 If the Department gives any approval under clause 51.1 following the Deed Commencement Date, the Department may issue an updated SCHEDULE 1 – DEED AND BUSINESS DETAILS to reflect this approval.
- 51.5 The Provider must ensure that any Subcontract is in writing.
- 51.6 The Provider is liable to the Department for any Loss by the Department in connection with this Deed caused by the acts or omissions of any Subcontractor, whether or not the relevant entity is a current Subcontractor.
- 51.7 The Provider must ensure that:
 - (a) every potential Subcontractor is aware, before entering into any Subcontract, of all terms and conditions of this Deed that will be 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.
- 51.8 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.
- 51.9 The Department may revoke its approval of a Subcontractor on any reasonable ground by giving Notice to the Provider, and, on receipt of the Notice, the Provider must, at its own cost, promptly:
 - (a) cease using that Subcontractor; and
 - (b) if the Provider continues to require that the relevant function is Subcontracted, arrange for its replacement by another Subcontractor acceptable to, and approved by, the Department.

51.10 The Provider must ensure that any Subcontract includes:

- (a) a right of termination for the Provider to take account of the Department's right of termination under clauses 58 and 59 and the Department's right of revocation of approval of a Subcontractor under clause 51.9, and the Provider must, where appropriate, make use of that right in the Subcontract in the event of a termination, or revocation of approval of the Subcontractor, by the Department;
- (b) 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;
- (c) the obligations referred to in clause 32.8(d) (Access and information security assurance); and
- (d) obligations on the Subcontractor that are the same as the obligations imposed on the Provider under any provision of this Deed that is relevant to any aspect of the Services that have been Subcontracted, including the obligations imposed on the Provider under clauses 35 (Personal and Protected Information), 36 (Confidential Information), 37 (Records the Provider must keep), 38 (Public Sector Data), 41 (Program Assurance Activities and audits), 42 (Access to Material), 44 (Insurance), 64 (Negation of employment, partnership and agency), and 71 (Compliance with laws and government policies).

51.11 The Provider must not enter into a Subcontract under this Deed with a Subcontractor:

- (a) named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
- (b) listed as a terrorist under section 15 of the *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 77).

51.12 The Department may publicly disclose the names of any Subcontractors.

51.13 The Provider must inform all Subcontractors that their participation in performing any of the Provider's obligations under this Deed may be publicly disclosed.

51.14 If the Provider does not comply with this clause 51, the Department may:

- (a) exercise any remedies specified in clause 55.2; or
- (b) terminate this Deed under clause 59.

Subcontracts to which the Payment Times Procurement Connected Policy (PT PCP) applies

51.15 Clauses 51.16 to 51.28 only apply to the extent that:

- (a) the estimated value of this Deed is above \$4,000,000 (GST inclusive) as at the Deed Commencement Date, or the Department Notifies the Provider that this Deed is of such value; and

- (b) the Provider is a Reporting Entity as at the date of the relevant request for proposal for this Deed.
- 51.16 The Provider must comply with the PT PCP.
- 51.17 The Provider must include in any PT PCP Subcontract:
 - (a) a requirement for the Provider to pay the PT PCP Subcontractor:
 - (i) subject to clause 51.19, within 20 calendar days after the acknowledgement of the satisfactory delivery of the goods and/or services and receipt of a Correctly Rendered 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 51.20, for payments made by the Provider after the payment is due, the unpaid amount plus Interest on the unpaid amount;
 - (b) a statement that the PT PCP applies to the PT PCP Subcontract; and
 - (c) a statement that the PT PCP Subcontractor may make a complaint to the PT PCP Policy Team or to the Commonwealth as represented by the Department in accordance with the PT PCP if the requirements of this clause 51.17 have not been complied with.
- 51.18 The Provider must, in any Reporting Entity Subcontract it enters into in anticipation of (or after) entering this Deed, use reasonable endeavours to include:
 - (a) obligations equivalent to those in clause 51.17; 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 in clause 51.17; and
 - (ii) obligations equivalent to this clause 51.18(b) (such that the obligations in this clause 51.18(b) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 51.19 Clause 51.17(a)(i) does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period specified in clause 51.17(a)(i).
- 51.20 The Provider is not required to pay Interest if:
 - (a) the Commonwealth 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).

PT PCP Evaluation Questionnaire

- 51.21 If requested in writing by the Commonwealth, the Provider must properly complete and return a PT PCP Evaluation Questionnaire within 30 calendar days of the request.

Non-Compliance and Remediation

- 51.22 If the Commonwealth considers or becomes aware that the Provider has not or may not have complied with:
- (a) the requirements of clauses 51.15 to 51.20; or
 - (b) the payment requirements of a PT PCP Subcontract,
- the Commonwealth may direct the Provider to provide to the Commonwealth either or both of the following within the timeframes specified by the Commonwealth:
- (c) information to enable the Commonwealth to review the Provider's compliance; or
 - (d) a properly completed PT PCP Remediation Plan.
- 51.23 The Provider must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 51.22(d).
- 51.24 If the Commonwealth considers that the Provider has failed to comply with any of its obligations under clauses 51.15 to 51.28, the Commonwealth may:
- (a) take the failure to comply into account as part of the Commonwealth's monitoring of the Provider's performance under this Deed; and/or
 - (b) report the failure to comply (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.
- 51.25 If the Provider is the subject of a complaint in relation to its compliance with clauses 51.15 to 51.20 or the associated payment provisions of a PT PCP Subcontract, the Provider agrees that it will:
- (a) not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
 - (b) cooperate in good faith with the Commonwealth in connection with any investigation or inquiry and any attempt to resolve the complaint.

Consent

- 51.26 For any PT PCP Purpose, the Provider consents to the Commonwealth:
- (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 Commonwealth in connection with this Deed or a PT PCP Subcontract; and
 - (b) receiving from an Entrusted Person, and using, PT PCP Protected Information.
- 51.27 Without limiting clause 35, the Provider warrants and represents that in submitting a PT PCP Evaluation Questionnaire, PT PCP Remediation Plan or any other document in connection with the PT PCP that includes any Personal Information, 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 clause 51.26. The Provider must provide evidence of such consents to the Commonwealth on request.

Interpretation

- 51.28 A reference to the Commonwealth in clauses 51.21, 51.22, 51.25(b), 51.26 and 51.27 includes the PT PCP Policy Team.

52. Assignment and novation

- 52.1 The Provider must not assign any of its rights under this Deed without the Department's prior written approval.
- 52.2 The Provider must not enter into an arrangement that will require the novation of this Deed, without the Department's prior written approval.
- 52.3 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 Employability Skills Training (including any actual or constructive change to the proportion of services being performed by an entity in a particular Employment Region, geographic region or nationally).

Section A4.3 – Resolving Problems

53. Dispute Resolution

Best endeavours, good faith and cooperation

- 53.1 Subject to clause 53.7, if a dispute arises between the Parties in connection with this Deed, each Party must use its best endeavours to resolve the dispute in accordance with this clause 53.
- 53.2 Each Party must:
- (a) only seek to rely on this clause 53 in good faith, and only after making a reasonable assessment that the relevant rights and obligations of the Parties are genuinely in dispute; and
 - (b) cooperate fully with any process instigated in accordance with this clause 53, in order to achieve a prompt and efficient resolution of any dispute.

Informal resolution

- 53.3 Subject to clause 53.7, 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 any Guidelines.

Formal resolution

- 53.4 Subject to clause 53.7, if any dispute arising in relation to this Deed cannot be resolved using the process in clause 53.3, the Parties will use the following process:
- (a) the Party claiming that there is a dispute will give the other Party a Notice ('Notice of Dispute') setting out:
 - (i) the nature of the dispute; and

- (ii) the relief or outcome being sought by the Party;
- (b) within five Business Days of receipt of the Notice of Dispute, each Party will nominate a representative with the authority to negotiate and settle the dispute, and who has not been previously involved in the dispute;
- (c) within 10 Business Days of the date on which the last Party to do so nominates a representative under clause 53.4(b), the Parties must confer and attempt to resolve the dispute in good faith. Any resolution reached by the Parties must be reduced to writing and signed by or on behalf of each Party and will be final and binding on the Parties; and
- (d) if the dispute is not resolved within the 10 Business Day period specified in clause 53.4(c), the Parties will engage in a mediation in accordance with clause 53.5.

Mediation

53.5 If clause 53.4(d) applies, the Parties:

- (a) will engage an independent mediator ('Mediator'), acceptable to each Party, to mediate the dispute within a time period agreed by the Parties and the Mediator;
- (b) agree that:
 - (i) any matters arising in the course of the mediation are confidential;

Note: The definition of 'Confidential Information' includes information that the Parties agree under this Deed is confidential, subject to certain exceptions.

- (ii) the Mediator may discuss the dispute with either Party in absence of the other Party;
- (iii) all discussion and negotiation during the mediation will be on a privileged 'without prejudice' basis unless such privilege is waived by agreement between the Parties; and
- (iv) neither Party may refer in any subsequent proceedings to any such privileged discussions and negotiations or require the Mediator to do so, nor may either Party have access to any of the Mediator's notes or call the Mediator as a witness in any such proceedings; and
- (c) may either submit to arbitration by agreement or institute legal proceedings if the dispute is not resolved within 20 Business Days after the engagement of the Mediator.

Costs and application of this clause

53.6 Each Party must bear its own costs of complying with this clause 53, and the Parties must bear equally the cost of any Mediator engaged under clause 53.5.

53.7 This clause 53 does not apply to the following circumstances:

- (a) either Party commences legal proceedings for urgent interlocutory relief;

- (b) where action is taken, or purportedly taken, by the Department under clauses 18 (General), 19 (Evidence to support entitlement to Payments), 22 (Overpayment and double payment), 23 (Debts and offsetting), 25 (Fraud), 28 (Performance reviews), 29 (Sample reviews), 32 (Access and information security assurance), 38 (Public Sector Data), 39 (Access by Participants and Employers to Records held by the Provider), 41 (Program Assurance Activities and audits), 42 (Access to Material), 47 (Corporate governance), 51 (Subcontracting), 54 (Provider Suspension), 55 (Remedies), 56 (Performance under other Commonwealth agreements), 57 (Liquidated Damages), 58 (Termination or reduction in scope with costs), 59 (Termination or reduction in scope for default) or 69 (The Department may vary certain terms);
 - (c) where the Department is conducting its own breach of contract or fraud investigation or taking consequential action; or
 - (d) where an authority of the Commonwealth, or of a state or a territory is investigating a breach, or suspected breach, of the law by the Provider.
- 53.8 Despite the existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform their obligations under this Deed.

54. Provider Suspension

- 54.1 The Department may take action under clause 55.2(a) by issuing a Notice to the Provider 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 is less than satisfactory to the Department;
 - (c) the Provider has outstanding or unacquitted money under any arrangement, whether contractual or statutory, with the Commonwealth; or
 - (d) the Provider may be engaged in fraudulent activity, and while the Department investigates the matter.
- 54.2 Notwithstanding any action taken by the Department under clause 54.1, the Provider must continue to perform its obligations under this Deed, subject to any Notice under clause 55.2(a)(i) to Suspend the Services, in whole or in part.
- 54.3 If the Department Suspends the Provider from delivering Services under clause 55.2(a), in whole or in part, the Provider must:
- (a) during the period of Suspension commencing on the date specified in the relevant Notice from the Department and ending on the date Notified by the Department:
 - (i) immediately cease delivering the Services in accordance with the relevant Notice (including in respect of any relevant Employment Region); and
 - (ii) not accept any new Referrals in accordance with the relevant Notice (including in respect of any relevant Employment Region); and

- (b) Notify any relevant Referring Provider (including in respect of any relevant Employment Region) in respect of which the Provider has been Suspended, within 10 Business Days of the Provider being Notified that it is Suspended.

55. Remedies

55.1 If:

- (a) the Provider fails to rectify a breach, or pattern of breaches, of this Deed, as determined and specified by the Department, to the Department's complete satisfaction, within 10 Business Days of receiving a Notice from the Department to do so, or such other period specified by the Department;
- (b) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified, as determined by the Department;
- (c) the Provider's performance of any of its obligations under this Deed is less than satisfactory to the Department;
- (d) an event has occurred which would entitle the Department to terminate this Deed under clause 59; or
- (e) this Deed otherwise provides for the Department to exercise rights under clause 55.2,

the Department may, at its absolute discretion and by providing Notice to the Provider, immediately exercise one or more of the remedies specified in clause 55.2.

55.2 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 Services under this Deed, in whole or in part (including in respect of one or more Employment Regions and/or Sites);
 - (ii) Referrals, including at some or all Sites;
 - (iii) any Payment under this Deed, in whole or in part; and/or
 - (iv) access to all or part of the Department's IT Systems for any Personnel of the Provider and/or any Subcontractor, Third Party IT Vendor, External IT System and/or other entity;
- (b) terminating, or requiring the cessation of all Access to the Department's IT Systems for any particular Personnel of the Provider and/or any Subcontractor, Third Party IT Vendor, External IT System or any other entity;
- (c) requiring the Provider to obtain new logon IDs for any Personnel of the Provider and/or any Subcontractor, Third Party IT Vendor and/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 and/or any Subcontractor, Third Party IT Vendor, External IT System and/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 special conditions on:
 - (i) the manner of delivery of the Services;
 - (ii) the claiming or making of Payments; and/or
 - (iii) the management of Records,
 as the Department thinks fit, and the Provider must comply with any such special conditions;
- (g) reducing or not paying specific Payments that would otherwise have been payable in respect of a relevant obligation;
- (h) reducing the total amount of any Payments, permanently or temporarily;
- (i) where the Department has already made any payment to the Provider, recovering some or all of the relevant payment from the Provider, at the Department's absolute discretion, as a debt in accordance with clause 23;
- (j) imposing additional financial or performance reporting requirements on the Provider; and/or
- (k) reducing the scope of this Deed (including, for the avoidance of doubt, with respect to one or more Employment Regions).

55.3 If the Department takes any action under this clause 55:

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

56. Performance under other Commonwealth agreements

56.1 Where the Provider was or is engaged to deliver employment services, or employment related services, under any agreement between the Provider and the Commonwealth at any time after seven years prior to the Deed Commencement Date (another Commonwealth agreement), and the Department determines that the Provider:

- (a) has failed to fulfil, or was or is in breach of, any of its obligations under another Commonwealth agreement; or
- (b) without limiting clause 56.1(a), claimed any payment under another Commonwealth agreement and the requirements under that Commonwealth agreement to be entitled to, or to qualify for, the payment were not fully or properly satisfied by the Provider,

the Department may, at its absolute discretion and by Notice to the Provider:

- (c) exercise any remedies specified in clause 55.2; or

- (d) terminate this Deed, if the failure, breach, or conduct under clause 56.1(a) or 56.1(b) permitted the Commonwealth to terminate the relevant Commonwealth agreement.

57. Liquidated Damages

57.1 If the Provider:

- (a) ceases to deliver Services at a Site, or Notifies the Department that it is not willing or able to deliver the Services at a Site, and the Provider has not either:
 - (i) obtained the consent of the Department for the cessation of the Services at the Site (such consent must not be unreasonably withheld by the Department); or
 - (ii) secured an alternative EST Provider, acceptable to the Department, to provide the Services at the relevant Site from the date on which the Provider ceases, or will cease, to deliver the Services; or
- (b) has made Invalid Claims as specified in this clause 57 at any time in the relevant Financial Year,

the Provider must, if required by the Department, pay Liquidated Damages to the Department in the amount of:

- (c) where clause 57.1(a) applies, \$60,000 per open tender, and \$30,000 per limited tender or other process (excluding an open tender) used for sourcing an alternative arrangement acceptable to the Department; and/or
- (d) where clause 57.1(b) applies:
 - (i) \$3,095 where the Department identifies that the Provider has made 25 to 49 Invalid Claims in the relevant Financial Year;
 - (ii) \$6,191 where the Department identifies that the Provider has made 50 to 99 Invalid Claims in the relevant Financial Year;
 - (iii) \$12,383 where the Department identifies that the Provider has made 100 to 149 Invalid Claims in the relevant Financial Year;
 - (iv) \$18,574 where the Department identifies that the Provider has made 150 to 199 Invalid Claims in the relevant Financial Year;
 - (v) \$24,766 where the Department identifies that the Provider has made 200 to 249 Invalid Claims in the relevant Financial Year; and
 - (vi) \$30,957 where the Department identifies that the Provider has made 250 or more Invalid Claims in the relevant Financial Year, and for every 50 Invalid Claims the Department identifies that the Provider has made in excess of 250 in the relevant Financial Year, an additional amount of \$6,191 per 50 such Invalid Claims will apply.

Note 1: For the purposes of clause 57.1(b), and by way of example, the total amount payable for 350 Invalid Claims made in the relevant Financial Year would be \$43,339.

Note 2: For the purposes of clause 57.1(b), the amount of Liquidated Damages that the Department may require the Provider to pay at a particular time will depend on the total number of Invalid Claims identified by the Department throughout the relevant Financial Year. For example, the Department could identify that the Provider has made 100 Invalid Claims during the first three months of a Financial Year and require the Provider to pay Liquidated Damages in the amount of \$12,383 as specified in clause 57.1(d)(iii). The Department could then identify that the Provider made an additional 100 Invalid Claims within the relevant Financial Year, bringing the total number of Invalid Claims to 200. The Department may only require the Provider to pay the difference between the amounts specified at clauses 57.1(d)(iii) and 57.1(d)(v). The Provider would be liable to pay \$24,766 to the Department for that Financial Year in total.

57.2 Where clause 57.1(a) or 57.1(b) applies, the Parties agree that all relevant loss will, having regard to the governmental and non-commercial nature of the Services and their significance to the Commonwealth's provision of employment services, be impossible, complex or expensive to quantify accurately in financial terms, and therefore the Parties agree that the Liquidated Damages are a reasonable and genuine pre-estimate of the Commonwealth's Loss in relation to:

- (a) in the case of clause 57.1(a), identifying, selecting and entering into a contract with an alternative EST Provider to provide services at any relevant Site, and transferring Participants, Records, monies and relevant materials to the alternative EST Provider; and
- (b) in the case of clause 57.1(b), the administrative costs in processing and resolving Invalid Claims.

57.3 For the avoidance of doubt:

- (a) clause 57.1(a) does not apply where the Department reallocates the relevant Participants (and any related business at any relevant Site) without going to tender;
- (b) clause 57.1(b) does not apply where the Provider self identifies Invalid Claims through its internal compliance practices and Notifies the Department of those Invalid Claims; and
- (c) the Department may, at its absolute discretion, recover the amount of Liquidated Damages from the Provider as a debt for the purposes of clause 23, if and when the Commonwealth Notifies the Provider that it elects to recover the Liquidated Damages as a debt under clause 23.

58. Termination or reduction in scope with costs

58.1 The Department may, at its absolute discretion, at any time by Notice to the Provider, terminate or reduce the scope this Deed.

58.2 If this Deed is terminated or reduced in scope under clause 58.1, the Department is only liable:

- (a) to make Payments as specified in clauses 58.3 and 58.4; and
- (b) subject to clauses 58.6, 58.7 and 58.8, for any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination or reduction in scope of this Deed.

Limitation on Payments in the case of termination

58.3 Where the Department terminates this Deed under clause 58.1:

- (a) subject to clause 58.3(c), the Department will only be liable to make Payments that are properly due to the Provider before the date on which the termination takes effect;
- (b) any Payments that are due after the Provider receives the relevant Notice issued by the Department under clause 58.1, but before the date on which the termination takes effect, will, as determined by the Department at its absolute discretion, abate to the extent that they relate to the conduct of the Services after the date on which the termination takes effect; and
- (c) the Department will only be liable to pay any Reimbursement to the Provider to the extent that the Provider legally committed the relevant monies before the Provider received the relevant Notice issued by the Department under clause 58.1.

Limitation of Payments in the case of reduction in scope

58.4 Where the Department reduces the scope of this Deed under clause 58.1, with respect to the Services that cease after the reduction in scope ('Ceased Services'):

- (a) subject to clause 58.4(d), the Department will only be liable to make Payments that are properly due to the Provider before the date on which the reduction in scope takes effect;
- (b) any Payments that are due after the Provider receives the relevant Notice issued by the Department under clause 58.1, but before the date on which the reduction in scope takes effect, will, as determined by the Department at its absolute discretion, abate to the extent that they relate to the Ceased Services after the date on which the reduction in scope takes effect;
- (c) the Department's liability to pay any part of the Payments after the date on which the reduction in scope takes effect will, to the extent determined by the Department at its absolute discretion, abate proportionately to the reduction in the Provider's obligations under this Deed; and
- (d) the Department will only be liable to pay any Reimbursement in respect of relevant monies legally committed by the Provider:
 - (i) before the Provider receives the relevant Notice issued by the Department under clause 58.1; or
 - (ii) after the Provider receives the relevant Notice issued by the Department under clause 58.1 to the extent that the commitment of the relevant monies does not relate to the Ceased Services.

Provider's obligations

58.5 Upon receipt of a Notice of termination or reduction in scope under clause 58.1, the Provider must:

- (a) cease or reduce the performance of this Deed in accordance with the Notice;
- (b) not legally commit any further monies in connection with the Services;

- (c) immediately return to the Department any Payments that the Department is entitled to recover under this Deed;
- (d) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope referred to in the Notice; and
- (e) in the case of a reduction in scope, continue to deliver the Services in accordance with this Deed up to and following the date on which the reduction in scope takes effect, except for the Services that will cease after the reduction in scope.

Limit on liability

58.6 The Department's liability to pay under this clause 58 is subject to the Provider's:

- (a) strict compliance with this clause 58; and
- (b) full and proper substantiation, to the Department's complete satisfaction, of any amounts claimed under clause 58.3 or 58.4.

58.7 The Department will not be liable under this clause 58 to pay any amounts for, or in connection with:

- (a) any loss of the Provider's prospective profits attributable to the termination or reduction in scope under this clause 58;
- (b) any loss of any benefits that would have been conferred on the Provider had the termination or reduction in scope under this clause 58 not occurred; or
- (c) any amounts that would, in aggregate, exceed the maximum Payments that would have been payable by the Department under this Deed in respect of the relevant Services, but for a termination or a reduction in scope under this clause 58.

58.8 In addition, the Department will not be liable to pay the Provider, and the Provider agrees that its reasonable costs do not include:

- (a) any amounts owed by the Provider under any contract of employment or to any of its Subcontractors; and
- (b) payment of any liabilities arising from commitments the Provider has made in relation to the conduct of the Services beyond the end of the Financial Year in which the termination or reduction in scope takes place.

59. Termination or reduction in scope for default

59.1 The Department may terminate or reduce the scope of this Deed, by giving Notice to the Provider, if:

- (a) the Provider is in breach of any of its obligations under this Deed that are not capable of being rectified (as determined by the Department);
- (b) the Provider is in breach of any of its obligations under this Deed that are capable of being rectified, and fails to rectify the breach, or pattern of breaches, within 10 Business Days, or such other period specified by the Department, of receiving a Notice from the Department to do so;

- (c) to the extent permitted by law, any Insolvency Event occurs;

Note: For the avoidance of doubt, clause 59.1(c) does not apply where a Provider has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.

- (d) the Department determines at its absolute discretion that, prior to or during the Term of this Deed, the Provider has:
 - (i) engaged in misleading or deceptive conduct;
 - (ii) made a statement that is incorrect or incomplete; or
 - (iii) omitted to provide information to the Department; or
- (e) the Department becomes expressly entitled to terminate this Deed under any other provision of this Deed (excluding clause 58) including under any other provision of this Deed giving the Department the right to terminate under this clause 59.

Section A4.4 – Other matters

60. Transition out leading up to expiry, termination or reduction in scope of this Deed

Transition Period

- 60.1 The Department may Notify the Provider of a Transition Period at any time and for any reason.
- 60.2 If the Department Notifies the Provider of a Transition Period under clause 60.1, the Department may, at its absolute discretion, Notify the Provider that:
 - (a) the Department is ceasing or reducing the number of Referrals to the Provider;
 - (b) the Provider must stop delivering the Services, or a part of the Services; and/or
 - (c) certain provisions of this Deed do not apply to the provision of Services,during the Transition Period, and where the Provider receives any such Notice, the Provider must comply with the Notice.
- 60.3 Unless Notified otherwise by the Department, the Provider must, during the Transition Period, continue to provide all Services that it is required to provide under this Deed.
- 60.4 If the Provider will be providing services to the Department similar to the Services after the Transition Period, the Department may, during the Transition Period:
 - (a) increase the number of Referrals and/or transfers of Participants to the Provider; and
 - (b) take any other action to facilitate transition of business or Participants to the Provider, or to transition the Provider to services after the Transition Period.

61. Acknowledgement and promotion

61.1 The Provider must:

- (a) in relation to all publications, and in all promotional, publicity and advertising Materials or activities of any type undertaken by, or on behalf of, the Provider relating to the Services or this Deed:
 - (i) comply with any Guidelines or Notice from the Department relating to promotion, style, badging or signage; and
 - (ii) acknowledge the financial and other support the Provider has received from the Commonwealth, in the manner consistent with any Guidelines; and
- (b) deliver to the Department (at the Department's request and at the Provider's own cost) copies of all promotional, publicity and advertising Materials that the Provider has developed for the purposes of this Deed.

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

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

62.1 The Department may, by any means, publicise and report on the Services and on the awarding of this Deed to the Provider, including:

- (a) the name of the Provider;
- (b) the amounts paid, or expected to be paid, to the Provider under this Deed; and
- (c) a description of the Services.

62.2 Where the Department identifies best practice on the part of the Provider, the Department may disseminate advice of such best practice to any other entity, including EST Providers.

63. Conflict of interest

63.1 The Provider warrants that, to the best of its knowledge and belief, after making diligent inquiries, at the Deed Commencement Date, no Conflict exists, or is anticipated.

63.2 The Provider must not enter into any arrangement that may cause a Conflict.

63.3 If a Conflict arises, or is anticipated to arise, including as determined and Notified by the Department, the Provider must:

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

63.4 If the Provider:

- (a) fails to take action in accordance with this clause 63; and/or
- (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department,

the Department may terminate this Deed under clause 59.

64. Negation of employment, partnership and agency

64.1 The Provider, its Personnel, agents, Host Organisations, Subcontractors and Third Party IT Vendors are not, by virtue of this Deed or any other arrangement, or for any purpose, Department Employees, or employees or agents of the Commonwealth or otherwise able to bind or represent the Commonwealth.

64.2 Subject to this Deed, the Provider must not represent itself, and must ensure that its Personnel, agents, Subcontractors and Third Party IT Vendors do not represent themselves, as being Department Employees, or employees or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

65. Protection of rights

65.1 If a Party:

- (a) does not exercise, or delays in exercising, any right under this Deed; or
- (b) exercises any right on a single occasion or partially,

that act or omission will not prevent the Party from exercising the right in the future, or from exercising any other right.

65.2 Waiver of any provision of, or right under, this Deed must be in writing signed by the Party entitled to the benefit of that provision or right and is effective only to the extent set out in the written waiver.

66. Severance

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

67. Entire agreement

67.1 Except where expressly stated to the contrary, this Deed records the entire agreement between the Parties in relation to its subject matter and supersedes all communications, negotiations, arrangements, representations and agreements, whether oral or written, between the Parties about the subject matter of this Deed.

68. Variation of Deed

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

69. The Department may vary certain terms

69.1 The Department may, at any time, vary:

- (a) Payments and Payment related provisions under this Deed;
 - (b) Employment Regions and/or Sites of the Provider;
 - (c) any aspect of the Services; and/or
 - (d) any provision of this Deed relating to the way in which the Services are to be delivered, for all or part of the Term of this Deed:
 - (e) based on the Department's assessment of:
 - (i) projected changes to labour market conditions in an Employment Region (including projected Participant demand); or
 - (ii) the extent to which the Services are meeting the Objectives; or
 - (f) acting reasonably, for any other reason as determined by the Department at its absolute discretion,
- by providing Notice to the Provider.

69.2 If the Department exercises its rights under clause 69.1:

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

70. Applicable law and jurisdiction

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

70.2 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.

71. Compliance with laws and government policies

71.1 The Provider must:

- (a) in carrying out its obligations under this Deed; and
- (b) ensure that its Personnel, Subcontractors, Third Party IT Vendors and agents, in carrying out activities related to this Deed,

comply with:

- (c) all relevant laws and requirements of any Commonwealth, state, territory or local authority, including the WHS Laws, the *Workplace Gender Equality Act 2012* (Cth) and anti-discrimination legislation, including the *Disability Discrimination Act 1992* (Cth); and

- (d) any Commonwealth policies Notified by the Department to the Provider, referred to or made available by the Department to the Provider (including by reference to an internet site), including any listed in this Deed.
- 71.2 The Provider must, when using the Department's premises or facilities, comply with all reasonable directions and procedures relating to work health, safety and security in effect at those premises or in regard to those facilities, as advised by the Department or as might reasonably be inferred from the use to which the premises or facilities are being put.

Workplace Gender Equality Act 2012 (Cth)

- 71.3 Clauses 71.4 to 71.5 apply only to the extent that the Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) ('the WGE Act').
- 71.4 The Provider must:
- (a) Notify the Department as soon as practicable if the Provider becomes non-compliant with the WGE Act during the Term of this Deed; and
 - (b) provide a current letter of compliance issued to the Provider by the Commonwealth Workplace Gender Equality Agency within 18 months from the Deed Commencement Date, and following this, annually, to the Department.
- 71.5 For the avoidance of doubt, compliance with the WGE Act does not relieve the Provider from its responsibility to comply with its other obligations under this Deed.

Work health and safety

- 71.6 The Provider must at all times:
- (a) ensure that the Services are carried out in a safe manner;
 - (b) comply with any reasonable instruction from the Department relating to work health and safety and any directions issued by any entity having authority under the WHS Laws to do so;
 - (c) 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 and communicating any issues or concerns, or any specific requirements applying to the Services under or arising from the WHS Laws, as soon as practicable);
 - (d) if the Provider is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Services:
 - (i) at the same time, or as soon as is possible in the circumstances, give Notice of such incident, and a copy of any written notice provided to the Regulator, to the Department; and
 - (ii) provide to the Department, within such time as the Department specifies, a Report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future;

- (e) within 24 hours of becoming aware of such circumstances, inform the Department of the full details of:
 - (i) any suspected or actual contravention of the WHS Laws relating to the Services;
 - (ii) any workplace entry by a WHS Entry Permit Holder, or an inspector appointed under the WHS Act, to any place where the Services are being performed or undertaken;
 - (iii) any proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws; and
 - (iv) any cessation or direction to cease work relating to the Services, due to unsafe work, immediately upon the Provider being informed of any such cessation or direction; and
 - (f) provide the Department with copies of all notices and correspondence issued to the Provider by any entity under the WHS Laws, within 24 hours of receiving any such notice or correspondence.
- 71.7 The Provider must cooperate with any investigation undertaken by the Department concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, or any audit of the Provider's work health and safety performance, arising out of, or in respect of, the Services.

72. Checks and reasonable care

Personnel and Supervisors

- 72.1 Before arranging for any of its Personnel, any Subcontractor or any potential Supervisor to be involved in the Services, the Provider must arrange and pay for all checks or similar, and comply with any other requirements, to ensure that the relevant Personnel or potential Supervisor's involvement does not breach:
- (a) any relevant legislation, and in particular, any Working with Children Laws, in effect in the jurisdiction(s) in which the Services are conducted; and
 - (b) any Guidelines.

Child Safety

- 72.2 The Provider must:
- (a) 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 72.2(a) 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

72.3 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 72.3(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 72.3(c);
 - (iii) applicable Working with Children Laws, including in relation to 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 the Department with an annual statement of compliance with the Child Safety Obligations, in such form as may be specified by the Department.

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

72.5 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.

72.6 Wherever Child Safety Obligations may be relevant to a Subcontract, the Provider must ensure that:

- (a) any Subcontract imposes on the Subcontractor the same Child Safety Obligations that the Provider has under this Deed; and

- (b) each Subcontract also requires the same Child Safety Obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.
- 72.7 The Provider must not allow any of its Personnel, any Subcontractor or any potential Supervisor to participate in the Services:
 - (a) if any relevant legislation or any Guidelines provide or mean that the individual must not be allowed to be so involved; or
 - (b) if:
 - (i) a relevant check shows that they have been convicted of a crime and a reasonable individual would consider that the conviction means that the individual would pose a risk to other individuals involved in the Services; or
 - (ii) there is otherwise a reasonably foreseeable risk that the individual may cause loss or harm to any other individual,

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

Participants

- 72.8 If the Services involve close proximity with people who are elderly, disabled or otherwise vulnerable or Children (excluding other Participants), before arranging for a Participant to participate in the relevant Services, the Provider must, unless Notified otherwise:
 - (a) confirm with the Referring Provider, or the DSCC, as relevant, whether the relevant checks have been conducted in relation to the Participant;
 - (b) if the Referring Provider, or the DSCC, as relevant, has not conducted the relevant checks in relation to the Participant, arrange with the Referring Provider or the DSCC, as relevant, for the relevant checks to be conducted; and
 - (c) comply with any other requirements, to ensure that the Participant's involvement does not breach:
 - (i) any relevant legislation, and in particular, any Working with Children Laws, in effect in the jurisdiction(s) in which the Services are being conducted; and
 - (ii) any Guidelines.
- 72.9 The Provider must not allow a Participant to be involved in the Services:
 - (a) if any relevant legislation or Guidelines provide or mean that the Participant 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 other individuals involved in the Services,

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

73. Indigenous Procurement Policy

Note: The Indigenous Procurement Policy is the Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. Information about the Indigenous Procurement Policy was included in the request for proposal for this Deed and is available from the National Indigenous Australians Agency.

73.1 The Provider must use reasonable endeavours to increase its:

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

73.2 For the purposes of clause 73.1(a), the Provider may use an Indigenous Enterprise as a Subcontractor, and/or in the Provider's supply chain.

High Value Deed

73.3 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 73.4 to 73.15.

73.4 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.

73.5 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.

73.6 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

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

- 73.8 The Provider may meet the Mandatory Minimum Requirements either directly and/or through Subcontracts under this Deed.
- 73.9 The Provider must submit written reports on its compliance with the Indigenous Participation Plan to the Department via the IPPRS, as follows:
- (a) at least once every quarter during the Term of this Deed; and
 - (b) within 10 Business Days after the Deed Completion Date.
- 73.10 The reports specified in clause 73.9 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) where 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.
- 73.11 Notwithstanding any other clause of this Deed, the Provider acknowledges and agrees that all reports it submits under clause 73.9:
- (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.
- 73.12 Throughout the Term of this Deed, 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).
- 73.13 If at any time during the Term of this Deed, 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.

- 73.14 The Provider must comply with all directions issued by the Department in relation to the Provider's implementation of the Indigenous Participation Plan.
- 73.15 The Department may terminate this Deed in accordance with clause 59, 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 73.14.

74. Aboriginal and Torres Strait Islander peoples

- 74.1 If this Deed is not a High Value Deed, the Provider must:
- (a) within three months after the Deed Commencement Date, develop an Aboriginal and Torres Strait Islander employment strategy which is designed to:
 - (i) attract, develop, and retain Aboriginal or Torres Strait Islander persons as employees within the Provider's Own Organisation; and
 - (ii) encourage the procurement of goods and services, as relevant, from Indigenous Enterprises; and
 - (b) implement and maintain that strategy for the Term of this Deed.

75. Modern slavery

- 75.1 In this clause 75:
- (a) 'Modern Slavery' has the meaning given to that term in the Modern Slavery Acts and includes all other slavery-like practices;
 - (b) 'Modern Slavery Acts' means the *Modern Slavery Act 2018* (Cth) and any State or Territory legislation relating to the same or similar subject matter;
 - (c) 'Modern Slavery Law' means any law in connection with Modern Slavery in force in Australia from time to time, including:
 - (i) if and to the extent applicable, the Modern Slavery Acts; and
 - (ii) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);
 - (d) 'Modern Slavery Offence' means any:
 - (i) offence set out in, or other conduct or practices which amount to an offence under, any Modern Slavery Law; or
 - (ii) conduct which constitutes Modern Slavery;
 - (e) 'Modern Slavery Statement' means a statement within the meaning of section 12 of the *Modern Slavery Act 2018* (Cth);
 - (f) 'Modern Slavery Statements Register' means the register established under section 18 of the *Modern Slavery Act 2018* (Cth); and

- (g) 'Reporting Period' means a reporting period within the meaning of section 4 of the *Modern Slavery Act 2018* (Cth).
- 75.2 The Provider represents and warrants to the Department that, as at the Deed Commencement Date, the Provider has no knowledge of any Modern Slavery Offence that has occurred or is occurring in its operations or supply chains.
- 75.3 The Provider must at all times during the Term of this Deed and in performing the Services:
- (a) take reasonable steps to identify the risk, and prevent the occurrence, of any Modern Slavery Offence in its operations and supply chains; and
 - (b) comply with any Modern Slavery Law.
- 75.4 The Provider must Notify the Department as soon as practicable, and no later than five Business Days after becoming aware, of any Modern Slavery Offence or alleged Modern Slavery Offence in its operations or supply chains.
- 75.5 If for a Reporting Period the Provider's consolidated revenue is \$100 million or more, the Provider must for that Reporting Period prepare a Modern Slavery Statement and submit it to the Australian Government's Modern Slavery Statements Register at <https://modernslaveryregister.gov.au/>.

76. Reserved

77. Black Economy Procurement Connected Policy

- 77.1 The Provider warrants that at the Deed Commencement Date it holds a Valid and Satisfactory Statement of Tax Record.
- 77.2 The Provider must hold a Valid and Satisfactory Statement of Tax Record at all times during the Term of this Deed and, on request by the Department, provide to the Department a copy of any such Statement of Tax Record.
- 77.3 The Provider warrants in relation to any Subcontractor it has engaged to deliver the Services with an estimated value of over \$4 million (GST inclusive) that the Provider holds a Valid and Satisfactory Statement of Tax Record for the Subcontractor that was valid at the time of entry into the relevant Subcontract.
- 77.4 The Provider must ensure that any Subcontractor engaged to deliver 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 term of the relevant Subcontract.
- 77.5 The Provider must retain an up-to-date copy of any Valid and Satisfactory Statement of Tax Record held by any Subcontractor in accordance with clause 77.4 and must, on request by the Department, provide to the Department a copy of any such Valid and Satisfactory Statement of Tax Record.
- 77.6 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 that partner is provided to the Department as soon as possible after that individual becomes a partner to the partnership.

78. Notices

78.1 A Notice must:

- (a) be given to a Party using:
 - (i) one of the following methods (and no other method):
 - (A) email;
 - (B) pre-paid post; or
 - (C) hand delivery; and
 - (ii) the email address, postal address or physical address of the Party as set out in items 1 and 2 of SCHEDULE 1 – DEED AND BUSINESS DETAILS;
- (b) be in legible writing and in English;
- (c) clearly indicate that it relates to this Deed;
- (d) in the case of email, state the name of the sending Party or an individual duly authorised by the sending Party; and
- (e) in the case of communications other than email, be signed by the sending Party or by an individual duly authorised by the sending Party.

78.2 A Notice given in accordance with clause 78.1 is taken to be received:

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

PART B - SERVICES REQUIREMENTS

CHAPTER B1 – GENERAL REQUIREMENTS FOR EST SERVICES AND PLACEMENT MANAGEMENT SERVICES

79. Objectives

- 79.1 The Provider acknowledges that the EST program has the following objectives:
- (a) EST will be contextualised to the local labour market and in particular any growth industry or industries;
 - (b) EST will assist Participants to understand and meet the expectations of Employers;
 - (c) EST will assist Participants to build employability skills;
 - (d) EST will assist Participants to build digital literacy skills relevant to the workplace;
 - (e) EST will assist Participants to identify and explore career options that suit their aptitude and interests;
 - (f) EST will assist Participants to improve job search, job application and interview skills; and
 - (g) EST will assist Participants to experience work trials with a genuine prospect of Employment.

80. Services to be delivered

- 80.1 Subject to this Deed, the Provider must provide high-quality:
- (a) EST Services; and
 - (b) where applicable, Placement Management Services,
- to all Participants during the Term of this Deed.
- 80.2 The Provider must leverage its connections and linkages with industry and Employers to arrange quality Industry Awareness Experiences and Placements for Participants to ensure the successful implementation of the Services.
- 80.3 The Provider must:
- (a) support Participants; and
 - (b) ensure Participants are safe,
- during the delivery of the Services to the Participants.

81. Service Guarantee and Service Delivery Plan(s)

Approval of a Service Delivery Plan

- 81.1 The Department and the Provider acknowledge and agree that:
- (a) the aim of a Service Delivery Plan is to communicate to Eligible EST Participants, Participants, Host Organisations, Referring Providers and Employers, the Services they can expect to receive from the Provider;
 - (b) a Service Delivery Plan must, in accordance with any Guidelines:
 - (i) capture the commitments made by the Provider in its response to the request for proposal for this Deed; and
 - (ii) detail the Provider's service offer and strategies in delivering the Services, that are relevant to the target audience of the Service Delivery Plan specified in clause 81.1(a); and
 - (c) the Provider's compliance with the commitments in each Service Delivery Plan and the Service Guarantee is an integral part of the Department's assessment of the Provider's performance.
- 81.2 The Provider must not commence delivering the Services until:
- (a) it has developed and submitted any draft service delivery plans for the Department's approval, in a manner and within the timeframe advised by the Department or as otherwise specified in any Guidelines; and
 - (b) the Provider's draft service delivery plans have been approved by the Department in accordance with clause 81.3.
- 81.3 The Department may, in its absolute discretion:
- (a) approve a draft service delivery plan as a Service Delivery Plan; or
 - (b) direct the Provider to:
 - (i) amend a draft service delivery plan; and
 - (ii) resubmit a draft service delivery plan to the Department for its approval, in the manner and within the timeframe specified by the Department, and the Provider must comply with any such direction.
- 81.4 The Parties agree that on Notification by the Department of its approval of a draft service delivery plan, that plan becomes a Service Delivery Plan.
- 81.5 The Department may immediately exercise its rights under clause 48.1 or clause 59 if the Provider fails to comply with clause 81.2 or clause 81.3(b).
- 81.6 The Provider must not make any changes to a Service Delivery Plan without the prior written agreement of the Department.

Conduct of the Services

81.7 The Provider must:

- (a) conduct the Services at or above the minimum standards in the Service Guarantee and in accordance with the Service Delivery Plans and the Provider's response to the request for proposal for this Deed (including any representation made by the Provider with regards to the Services specified in those documents); and
- (b) prominently display the Service Guarantee and each Service Delivery Plan in its offices and at all Sites, and make these available to Eligible EST Participants, Participants, Host Organisations, Referring Providers and Employers serviced by the Provider.

CHAPTER B2 – EST SERVICES

82. Provision of EST Services

82.1 Unless otherwise directed by the Department and subject to this Deed, in respect of EST Participants:

- (a) the Provider must provide Training Block 1 Courses, or Training Block 2 Courses, or both, as specified in item 4.3 of SCHEDULE 1 – DEED AND BUSINESS DETAILS to this Deed;
- (b) if the Provider is not a Registered Training Organisation, the Provider must ensure that the content of each Course is endorsed by a Registered Training Organisation that the Provider has partnered with under clause 82.6, as being of adequate quality prior to it being delivered to any EST Participants;
- (c) if the Provider is contracted to deliver Training Block 1 Courses, then in delivering such Training Block 1 Courses the Provider:
 - (i) must deliver Youth Courses and 25 Plus Courses; and
 - (ii) subject to clause 82.2, may arrange Industry Awareness Experiences for EST Participants (either individually or in a group setting); and
- (d) if the Provider is contracted to deliver Training Block 2 Courses, then in delivering such Training Block 2 Courses the Provider:
 - (i) must deliver Generalist Courses and Specialist Courses;
 - (ii) subject to clause 82.2, may deliver Youth Courses and/or 25 Plus Courses;
 - (iii) must, where any Training Block 2 Course includes the delivery of accredited training, ensure that the relevant training and any relevant certification is delivered by a Registered Training Organisation; and
 - (iv) must arrange Industry Awareness Experiences for all EST Participants (either individually or in a group setting),

in accordance with this Deed, including SCHEDULE 1 – DEED AND BUSINESS DETAILS (as relevant), each Service Delivery Plan, its response to the request for proposal for this Deed, and any Guidelines.

Note: Generalist Courses and Specialist Courses can be provided to EST Participants of all ages, unless the Provider chooses to deliver a Youth Course or 25 Plus Course in accordance with clause 82.1(d)(ii).

- 82.2 The Provider must arrange the Industry Awareness Experiences and deliver the Courses (as applicable) specified at clauses 82.1(c)(ii) or 82.1(d)(ii) (as applicable) if it is required to do so under a Service Delivery Plan.
- 82.3 The Provider must, in accordance with any Guidelines, work with Referring Providers, the Department, Host Organisations, Employers and peak industry bodies and their representatives in each Employment Region so as to ensure the successful implementation of the EST Services.
- 82.4 If the Provider is a Registered Training Organisation at the Deed Commencement Date, the Provider must:
- (a) maintain its registration during the Term of this Deed and provide the Department with evidence of that registration upon request; and
 - (b) Notify the Department:
 - (i) within five Business Days after becoming aware of any circumstances that may lead to the Provider's registration lapsing or being revoked; and
 - (ii) immediately upon the actual lapsing or revocation of such registration.
- 82.5 If the Provider fails to maintain its registration under clause 82.4(a) at any time during the Term of this Deed, the Department may terminate this Deed under clause 59.
- 82.6 If the Provider is not a Registered Training Organisation at the Deed Commencement Date, the Provider must:
- (a) partner with one or more Registered Training Organisations in relation to the delivery of the Courses;
 - (b) ensure that any Registered Training Organisation that the Provider partners with maintains its registration during the Term of this Deed and that the Provider provides the Department with evidence of that registration upon request;
 - (c) Notify the Department:
 - (i) within five Business Days after becoming aware of any circumstances that may lead to the registration of any Registered Training Organisation that the Provider partners with lapsing or being revoked; and
 - (ii) immediately upon the actual lapsing or revocation of such registration; and
 - (d) unless otherwise Notified by the Department, if the registration of any Registered Training Organisation that the Provider partners with lapses or is revoked:
 - (i) terminate that partnership arrangement;
 - (ii) enter into a partnership arrangement with a new Registered Training Organisation prior to delivering any future Courses; and
 - (iii) otherwise ensure the ongoing provision of the Services in accordance with this Deed.

- 82.7 The Registered Training Organisation(s) (if any) that the Provider uses in relation to the delivery of the Courses, including for the delivery of accredited training in accordance with clause 82.1(d)(iii) and any Registered Training Organisation(s) that the Provider partners with, at the Deed Commencement Date, are identified at item 6 of SCHEDULE 1 – DEED AND BUSINESS DETAILS.
- 82.8 Following the Deed Commencement Date, the Provider must Notify the Department of any changes to the Registered Training Organisation(s) specified in item 6 of SCHEDULE 1 – DEED AND BUSINESS DETAILS, including any changes to the Provider’s partnership arrangements and/or the addition or removal of Registered Training Organisation(s).
- 82.9 The Department may issue an updated SCHEDULE 1 – DEED AND BUSINESS DETAILS to reflect any changes Notified under clause 82.8.
- 82.10 Any Registered Training Organisation engaged by the Provider will be deemed to be a Subcontractor for the purposes of this Deed unless the Registered Training Organisation only:
- (a) delivers accredited training in respect of a Course; and/or
 - (b) endorses the content of a Course.
- 82.11 The Department may monitor data for a Course, including (without limitation) for the purpose of ensuring that the Services are being delivered in accordance with this Deed including any Guidelines.

83. WHS, Supervision and incidents - EST Services

- 83.1 Without limiting clause 71, the Provider must, in performing the Services in accordance with this CHAPTER B2 – EST SERVICES, comply with the work health and safety, Supervision and incidents requirements specified in CHAPTER B4 – WHS, SUPERVISION AND INCIDENTS REQUIREMENTS.

84. Referrals

- 84.1 The Provider acknowledges and agrees that, unless otherwise specified in any Guidelines, where:
- (a) the DSCC, a Workforce Australia Employment Services Provider, Workforce Australia - TtW Provider or the Yarrabah Provider chooses to Refer an Eligible EST Participant to the Provider, they will do so through the Department’s IT Systems in accordance with any Guidelines; and
 - (b) a DES Provider chooses to Refer an Eligible EST Participant to the Provider, they will contact the Provider directly.
- 84.2 The Provider must not:
- (a) accept a Referral of an Eligible EST Participant; or

- (b) allow a Prospective EST Participant to start in a Course or an Industry Awareness Experience (as applicable),

where the Department Notifies the Provider, or specifies in any Guidelines or otherwise, that the Provider must not accept the Referral or allow the Prospective EST Participant to start in the Course or Industry Awareness Experience.

- 84.3 Where an Eligible EST Participant is Referred to the Provider in the circumstances described in clause 0, the Provider must immediately, and in accordance with any Guidelines, inform the Referring Provider or the DSCC (as relevant) that it cannot accept the Referral.
- 84.4 Where a Provider accepts a Referral from a Referring Provider (excluding the Yarrabah Provider) for a Prospective EST Participant, the Provider must charge the Referring Provider the applicable EST Charge, in accordance with any Guidelines.

85. Course start, monitoring and attendance

- 85.1 Subject to clause 0, the Provider must, in relation to each Prospective EST Participant, in accordance with any Guidelines;
 - (a) conduct pre-commencement activities to determine whether the Prospective EST Participant is Eligible and Suitable for a Course; and
 - (b) start the Prospective EST Participant in the Course if the pre-commencement activities confirm that the Prospective EST Participant is Eligible and Suitable for the Course.
- 85.2 The Provider must, in accordance with any Guidelines:
 - (a) record each EST Participant's start in a Course;
 - (b) regularly and actively monitor the participation of each EST Participant in a Course;
 - (c) record the attendance of each EST Participant in a Course in the Department's IT Systems or as otherwise directed by the Department;
 - (d) where a Prospective EST Participant fails to attend and start the relevant Course within the timeframe specified in any Guidelines, notify the Prospective EST Participant's Referring Provider or the DSCC (as relevant) within one Business Day; and
 - (e) provide Records of each EST Participant's attendance to the Department, the EST Participant's Referring Provider or the DSCC (as relevant) on request.

86. Course Commencement

- 86.1 Subject to clause 85.1 and any Guidelines, a Prospective EST Participant is deemed to 'Commence' a Course, or have 'Commenced' in a Course, on the first day the Prospective EST Participant attends the Course, if the Prospective EST Participant's initial attendance is within the timeframe specified in any Guidelines of the start of the Course.

87. Specific requirements for each Course

- 87.1 Unless agreed in writing by the Department, the Provider must not:
- (a) at any time, allow the number of EST Participants undertaking a Course to exceed the Maximum Participant Number; or
 - (b) cancel a Course that has started if an EST Participant is undertaking that Course.
- 87.2 Subject to clause 87.3, the Provider must ensure that each Course:
- (a) is delivered to EST Participants for 25 hours per week over three consecutive weeks; or
 - (b) is delivered to EST Participants for 15 hours per week over five consecutive weeks; and
 - (c) is 75 hours in duration.
- 87.3 If directed to do so by the Department, the Provider must make a Course available to be undertaken for either 15 hours per week over five consecutive weeks or 25 hours per week over three consecutive weeks.
- 87.4 The Provider must record each Course in the Department's IT Systems and do so in accordance with any Guidelines.
- 87.5 The Provider must conduct an Assessment for each EST Participant as part of delivering a Course, and provide a copy of the Assessment in accordance with any Guidelines to the EST Participant or the Referring Provider (as applicable) and, if requested, the Department.

88. Course content

- 88.1 The Provider must develop the content for all Courses in accordance with SCHEDULE 1 – DEED AND BUSINESS DETAILS (as relevant), its response to the request for proposal for this Deed, the Service Delivery Plans and any Guidelines.
- 88.2 If requested by the Department, the Provider must submit to the Department within three Business Days, an outline of the content developed by the Provider for the Course(s) specified by the Department and where the content of the Course is required to be endorsed by a Registered Training Organisation under clause 82.1(b), evidence of the endorsement.
- 88.3 The Provider must, throughout the Term of this Deed and in accordance with any Guidelines:
- (a) conduct quality assurance activities on each Course type;
 - (b) without limiting clause 88.3(a), regularly monitor and review:
 - (i) the content and effectiveness of each Course type, including the extent to which Courses are achieving the Objectives; and
 - (ii) the delivery of Courses, including the effectiveness of Facilitators and equipment; and

- (c) continuously seek to improve the content for Courses, having regard to the Objectives and taking into account any feedback received from Employers.

Note: in this clause 88.3, the Course types referred to are Training Block 1 Courses, Specialist Courses and Generalist Courses.

- 88.4 The Provider must Notify the Department prior to making any significant changes to the content of a Course.
- 88.5 The Department may at any time give a direction to the Provider to make changes to the content of one or more Courses, and if the Provider receives such a direction, the Provider must:
 - (a) immediately comply with the direction; and
 - (b) otherwise continue to perform the Services in accordance with this Deed.

89. Mode of delivery

- 89.1 The Provider must ensure that each Course is delivered:
 - (a) by a Facilitator who is appropriately qualified and, at minimum, meets the requirements specified in any Guidelines;
 - (b) either in person or through an online medium (or via a combination of in person and online, as the case may be) in accordance with any Guidelines;
 - (c) in an interactive and collaborative manner;
 - (d) in a group setting; and
 - (e) otherwise in accordance with any Guidelines.

90. Course demand and scheduling

- 90.1 Subject to clause 82.1, the Provider must schedule Courses regularly so as to meet local demand for Courses in its contracted Employment Region(s) from Eligible EST Participants, having regard to relevant age cohorts, industries and Employers.
- 90.2 If, at any time, the Department reasonably considers that:
 - (a) there is legitimate demand for a Course; and/or
 - (b) the Provider is not conducting the Services in accordance with this Deed,the Department may direct a Provider to make a particular Course available at a particular time and/or Site, and the Provider must comply with any such direction.
- 90.3 If the Provider fails to comply with a direction under clause 90.2, the Department may exercise any remedies specified in clause 55.2.

91. Industry Awareness Experiences

- 91.1 The Provider must provide Industry Awareness Experiences in accordance with this Deed including any Guidelines.

91.2 The Department may at any time give a direction to the Provider in relation to an Industry Awareness Experience, including a direction that the Industry Awareness Experience:

- (a) be discontinued and/or not occur in the future; or
 - (b) be provided and/or occur within a specific timeframe,
- and if the Provider receives such a direction, the Provider must:
- (c) immediately comply with the direction; and
 - (d) otherwise continue to perform the Services in accordance with this Deed.

92. Exits

92.1 An EST Participant is deemed to have 'Exited' a Course when the EST Participant:

- (a) voluntarily withdraws from a Course; or
 - (b) is withdrawn from a Course by the Provider, Referring Provider or the Department in accordance with any Guidelines,
- and 'Exit' has a corresponding meaning.

92.2 If an EST Participant Exits a Course, the Provider must:

- (a) on the same Business Day as the Exit:
 - (i) record the EST Participant's Exit on the Department's IT Systems in accordance with any Guidelines; and
 - (ii) Notify the EST Participant's Referring Provider or the DSCC (as relevant) that the EST Participant has Exited; and
- (b) take any other action specified in any Guidelines.

93. Completion

93.1 An EST Participant is deemed to 'Complete' or have 'Completed' a Course, and a 'Completion' will have occurred, when:

- (a) the Provider has delivered the Course to the EST Participant in accordance with this Deed including any Guidelines;
- (b) an Assessment has been conducted for the EST Participant;
- (c) the Provider has provided a copy of the Assessment in accordance with any Guidelines to the EST Participant or the Referring Provider (as applicable) and, if requested, the Department;
- (d) the Provider has recorded the attendance of the EST Participant on the Department's IT Systems in accordance with clause 85.2;

- (e) the EST Participant has:
 - (i) completed at least 80 per cent of the total hours for the Course specified in clause 87.2, as recorded in the Department's IT Systems, in accordance with any Guidelines; or
 - (ii) unless otherwise Notified by the Department, met any alternative measure for Course completion specified in any Guidelines; and
- (f) the Provider has otherwise fully satisfied the requirements in this Deed including any Guidelines for a Completion.

94. EST Payments

94.1 Clause 94.2 applies to payments in respect of the delivery of EST Services to EST Participants, except in relation to EST Participants who are Referred by a DES Provider, and in these clauses:

- (a) 'EST Commencement Payment' means:
 - (i) for a Training Block 1 Course, the amount of \$875 (GST inclusive) for a Workforce Australia Services Online Participant or an EST Participant who is Referred by the Yarrabah Provider; and
 - (ii) for a Training Block 2 Course, the amount of:
 - (A) \$875 (GST inclusive) for a Workforce Australia Services Online Participant or an EST Participant who is Referred by the Yarrabah Provider; and
 - (B) \$575 (GST inclusive) for an EST Participant who is Referred by a Workforce Australia Employment Services Provider or Workforce Australia - TtW Provider; and
- (b) 'EST Final Payment' means:
 - (i) for a Training Block 1 Course, the amount of \$375 (GST inclusive) for a Workforce Australia Services Online Participant or an EST Participant who is Referred by the Yarrabah Provider; and
 - (ii) for a Training Block 2 Course, the amount of \$375 (GST inclusive) for a Workforce Australia Services Online Participant or an EST Participant who is Referred by a Workforce Australia Employment Services Provider, Workforce Australia - TtW Provider or the Yarrabah Provider.

Note: For the avoidance of doubt, EST Commencement Payments and EST Final Payments are not payable in respect of the delivery of a Training Block 1 Course to an EST Participant who is Referred by a Workforce Australia Employment Services Provider or Workforce Australia - TtW Provider.

94.2 Subject to the terms of this Deed including any Guidelines, the Department will pay the Provider:

- (a) an EST Commencement Payment for each EST Participant who:
 - (i) is a Workforce Australia Services Online Participant or Referred by the Yarrabah Provider and Commences in a Course; or

- (ii) is Referred by a Workforce Australia Employment Services Provider or a Workforce Australia - TtW Provider and Commences in a Training Block 2 Course; and
 - (b) an EST Final Payment for each EST Participant who:
 - (i) is a Workforce Australia Services Online Participant or Referred by the Yarrabah Provider and Completes a Course; or
 - (ii) is Referred by a Workforce Australia Employment Services Provider or a Workforce Australia - TtW Provider and Completes a Training Block 2 Course.
- 94.3 Subject to any Notice from the Department, the amounts specified in clause 94.1 for the EST Commencement Payment and the EST Final Payment will be increased by 6.8% at the end of each three year period following 1 July 2022.

Note: The Provider will also be eligible for an EST Placement Payment in accordance with clause 100.2(c) where it arranges a Placement for an Eligible Placement Participant who Commenced a Training Block 2 Course delivered by the Provider in accordance with any Guidelines.

CHAPTER B3 – PLACEMENT MANAGEMENT SERVICES

95. Placements

- 95.1 The Provider must promote and deal with enquiries from Eligible Placement Participants in relation to Placements, in accordance with this Deed including any Guidelines.
- 95.2 Subject to this Deed, and in respect of Eligible Placement Participants who:
- (a) are assessed as Suitable by the Provider; and
 - (b) have agreed to be placed in a Placement,
- the Provider:
- (c) must arrange PaTH Internships with Host Organisations for Youth Workforce Australia Services Online Participants in accordance with any Guidelines; and
 - (d) without limiting clause 95.2(c), may arrange Placements with Host Organisations for Eligible Placement Participants who have Commenced an EST Course (whether a Training Block 1 Course or a Training Block 2 Course) in accordance with any Guidelines.
- 95.3 The Provider must, where the Provider arranges Placements for Placement Participants, manage and report on the Placements in accordance with this Deed including any Guidelines.
- 95.4 The Provider must not arrange a Placement for an Eligible Placement Participant if:
- (a) the Host Organisation and/or Placement does not meet the requirements specified in this Deed including any Guidelines;
 - (b) the Provider is not reasonably satisfied that there is a reasonable prospect of Employment with the Host Organisation; and/or
 - (c) the Department has directed the Provider not to arrange the Placement.

- 95.5 If the Provider becomes aware that a Host Organisation has used a Placement to displace paid workers or to reduce the amount of paid work available to its workers, the Provider must:
- (a) immediately advise the Department of the same; and
 - (b) terminate or not renew any Host Organisation Agreement with the Host Organisation in accordance with any Guidelines and/or as directed by the Department.

96. WHS, Supervision and incidents - Placements

- 96.1 Without limiting clause 71, the Provider must, in performing any Services in accordance with this CHAPTER B3 – PLACEMENT MANAGEMENT SERVICES, comply with the work health and safety, Supervision and incidents requirements specified in CHAPTER B4 – WHS, SUPERVISION AND INCIDENTS REQUIREMENTS.

97. Host Organisation Agreement

- 97.1 Subject to the Provider meeting all other requirements in this Deed including any Guidelines in respect of Placements, the Provider must, before an Eligible Placement Participant starts in a Placement, negotiate and execute a Host Organisation Agreement in accordance with any Guidelines.
- 97.2 If the Provider suspects or becomes aware that a Host Organisation has breached a Host Organisation Agreement, the Provider must immediately Notify the Department and provide information about the relevant breach as required by the Department in accordance with any Guidelines.

98. Placement Commencement

- 98.1 If, in respect of a Placement:
- (a) the relevant vacancy meets the requirements of a Placement as specified in this Deed including any Guidelines;
 - (b) the relevant Host Organisation is eligible to host the Placement in accordance with this Deed including any Guidelines;
 - (c) the Risk Assessments have been conducted before the start of the Placement in accordance with clauses 101.3(a) and 101.3(b);
 - (d) the Provider has executed a Host Organisation Agreement for the Placement; and
 - (e) the Provider has fully satisfied the requirements in this Deed including any Guidelines in relation to arranging the Placement,

an Eligible Placement Participant is deemed to 'Commence' or have 'Commenced' the Placement when the Eligible Placement Participant starts in the Placement.

99. Other matters

- 99.1 The Provider must record the details of all Placements in the Department's IT Systems in accordance with any Guidelines.

- 99.2 The Department may, at any time and at its absolute discretion, give a direction to the Provider in relation to a Placement, a proposed Placement, or a type of Placement, including a direction that:
- (a) a Placement must not be undertaken, or continue as a Placement;
 - (b) a Placement must be varied;
 - (c) the Provider must arrange a Placement; or
 - (d) the Provider must not arrange a Placement.
- 99.3 If the Department gives the Provider a direction under clause 99.2, the Provider must:
- (a) immediately comply with the direction; and
 - (b) otherwise continue to perform the Services in accordance with this Deed.

100. Placements - Payments

- 100.1 Clauses 100.2 to 100.7 apply to Payments in respect of the delivery of Placement Management Services to Placement Participants who have Commenced a Placement, and in these clauses:
- (a) PaTH Internship Host Payment means \$1,000 (GST inclusive);
 - (b) PaTH Internship Provider Payment means \$1,000 (GST inclusive);
 - (c) NWEF Host Payment means \$1,000 (GST inclusive);
 - (d) NWEF Provider Payment means \$1,000 (GST inclusive); and
 - (e) EST Placement Payment means \$250 (GST inclusive).
- 100.2 Subject to clause 100.5, the Provider may claim the following Payments from the Department for each Placement Participant who has Commenced:
- (a) a PaTH Internship arranged by the Provider:
 - (i) subject to clauses 100.3 and 100.4, one PaTH Internship Host Payment as a Reimbursement; and
 - (ii) one PaTH Internship Provider Payment; or
 - (b) an NWEF Placement arranged by the Provider:
 - (i) subject to clauses 100.3 and 100.4, one NWEF Host Payment as a Reimbursement; and
 - (ii) one NWEF Provider Payment; and

- (c) a Placement, one EST Placement Payment in addition to the Payment under clause 100.2(a) or 100.2(b), if:
 - (i) the relevant Placement Participant Commenced a Training Block 2 Course delivered by the Provider;
 - (ii) the Provider has subsequently arranged a Placement for the relevant Placement Participant in accordance with the requirements of this Deed including any Guidelines; and
 - (iii) the relevant Placement Participant has Commenced in the Placement in accordance with any Guidelines.
- 100.3 Where the Provider arranges a Placement for a Participant with the Provider's Own Organisation, a Related Entity or a Subcontractor, the Provider must not claim, and the Department will not pay the Provider, a Reimbursement of a PaTH Internship Host Payment or an NWEF Host Payment in relation to that Placement.
- 100.4 The Provider must pay the relevant Host Organisation the PaTH Internship Host Payment or NWEF Host Payment (as applicable) from the Provider's own funds no later than five Business Days after the Placement Participant Commences in the Placement, unless otherwise agreed by the Host Organisation.
- 100.5 The Provider must only:
- (a) pay a PaTH Internship Host Payment or NWEF Host Payment (as applicable) to a Host Organisation under clause 100.4, and claim a Reimbursement from the Department;
 - (b) claim a PaTH Internship Provider Payment or NWEF Provider Payment (as applicable) from the Department; or
 - (c) claim an EST Placement Payment from the Department,
- if the Provider has confirmed that:
- (d) the Placement Participant has Commenced in the relevant Placement;
 - (e) a PaTH Internship Host Payment or NWEF Host Payment, PaTH Internship Provider Payment, NWEF Provider Payment or EST Placement Payment (as applicable) has not been paid or claimed by the Provider, any Referring Provider or EST Provider where the Placement Participant has previously undertaken a Placement with the Host Organisation, unless otherwise specified in any Guidelines; and
 - (f) the Provider is entitled to claim the Payment in accordance with this Deed including any Guidelines.
- 100.6 The Provider may, after it has properly paid a PaTH Internship Host Payment or NWEF Host Payment (as applicable) in accordance with clauses 100.2 and 100.5, submit a claim for Reimbursement through the Department's IT Systems in accordance with this clause 100 and any Guidelines.
- 100.7 The Provider must render each claim for Reimbursement under this clause 100 to the Department within 56 days after the end of the relevant Placement.

- 100.8 Subject to any Notice given by the Department, the amounts specified in clause 100.1 for the PaTH Internship Host Payment, PaTH Internship Provider Payment, NWEF Host Payment, NWEF Provider Payment and EST Placement Payment will be increased by 6.8% at the end of each three year period following 1 July 2022.

CHAPTER B4 – WHS, SUPERVISION AND INCIDENTS REQUIREMENTS

101. Work health and safety

- 101.1 The Provider must, in accordance with any Guidelines, ensure that there is a safe system of work in place for each Industry Awareness Experience and each Placement, both prior to the commencement of and throughout the Industry Awareness Experience or Placement, including, where a Host Organisation is engaged by the Provider, that the relevant Host Organisation is complying with all work health and safety requirements in the jurisdiction in which the Industry Awareness Experience or Placement occurs.

Risk Assessments

- 101.2 To meet its obligations under clauses 101.3 to 101.5, the Provider must use a Competent Person.
- 101.3 The Provider must, in accordance with any Guidelines:
- (a) undertake an Activity Risk Assessment of every Specified Industry Awareness Experience, and Placement, it has arranged before the start of the Specified Industry Awareness Experience or Placement;
 - (b) undertake a Participant Risk Assessment for each Participant, with regard to their potential participation in any such Specified Industry Awareness Experience or Placement, before the Participant starts in the Specified Industry Awareness Experience or Placement; and
 - (c) retain Records of each Risk Assessment referred to in clause 101.3(a) and 101.3(b) and any action taken in accordance with the Risk Assessment, and provide the relevant Records to the Department upon request.
- 101.4 If the Provider has arranged a Placement or a Specified Industry Awareness Experience it must, in accordance with any Guidelines:
- (a) ensure that each Host Organisation is obliged to immediately advise the Provider of any proposed or actual changes to the tasks being undertaken by a Participant or the circumstances in which those tasks are being undertaken;
 - (b) prior to the start of any Placement or Specified Industry Awareness Experience, confirm with the Host Organisation:
 - (i) whether any required actions, identified in the relevant Risk Assessment, have not been undertaken; and
 - (ii) whether there have been any changes in relation to the relevant Placement or Specified Industry Awareness Experience, including work, health and safety issues, since the date of the relevant Risk Assessment;

- (c) ensure that all required action is taken:
 - (i) as identified in the relevant Risk Assessments; and
 - (ii) if there have been any changes in relation to the relevant Specified Industry Awareness Experience or Placement, to immediately review and update, as necessary, the relevant Risk Assessment and to address any such changes; and
 - (d) undertake ongoing work health and safety monitoring of the Specified Industry Awareness Experience or Placement.
- 101.5 Before any Participant starts in a Specified Industry Awareness Experience or Placement, and throughout the Specified Industry Awareness Experience or Placement, the Provider must, in accordance with any Guidelines:
- (a) ensure, with reference to the relevant Risk Assessments, that the Specified Industry Awareness Experience or Placement is appropriate for the Participant with regard to their health and safety, taking into consideration any relevant circumstances and work restrictions;
 - (b) identify any training, including work health and safety training, required to ensure that the Participant can participate in the Specified Industry Awareness Experience or Placement safely, and ensure that training of sufficient length and quality is provided to the Participant by the Host Organisation;
 - (c) ensure that the Participant will be provided with any specific equipment, clothing or materials required to participate safely in the relevant Specified Industry Awareness Experience or Placement;
 - (d) ensure that the Participant has been advised of the process for reporting any work health and safety issues regarding the Specified Industry Awareness Experience or Placement; and
 - (e) ensure that the Provider, and the Host Organisation, have sufficient and current insurances which insure any risk identified in the relevant Risk Assessments and any risk otherwise arising in relation to the relevant Specified Industry Awareness Experience or Placement, and purchase or fund additional insurance for the Specified Industry Awareness Experience or Placement, if required.

102. Incidents

- 102.1 The Provider must Notify the Department and notify the Referring Provider as soon as possible, and on the same day, of any incident involving the Services (including a Course, Industry Awareness Experience or Placement), including:
- (a) any accident, injury or death occurring during, or as a result of, the Services, including in relation to a Participant or a member of the public;
 - (b) any incident which relates to a work, health and safety issue; and
 - (c) any incident that may negatively impact upon the Department or bring the Provider or the Services into disrepute.

- 102.2 Where an incident falls within clause 102.1(a), the Provider must also, as soon as possible, and on the same day, give full details of the accident, injury or death to the Department in the form specified in any Guidelines.
- 102.3 The Provider must comply with any instructions issued by the Department or the Department's insurance broker, and any Guidelines, in relation to insurance purchased by the Department for Participants.

103. Supervision

Note: Supervisors may be engaged/employed by the Provider or a Subcontractor to supervise EST Services. Supervisors may be engaged/employed by the Provider or Host Organisations (as applicable) to supervise Specified Industry Awareness Experiences or Placements that they provide.

- 103.1 The Provider must, subject to and in accordance with any Guidelines, ensure that:
- (a) it or, where relevant, each Host Organisation, provides adequate and appropriate Supervision so that relevant Participants are undertaking appropriate tasks and operating in a healthy and safe environment;
 - (b) the Supervision provided is continuous over the entire duration of the Services where:
 - (i) the Services involve:
 - (A) people who are elderly, disabled or otherwise vulnerable; or
 - (B) Children (excluding other Participants); or
 - (ii) the Provider otherwise considers that Supervision should be continuous having regard to the nature of the tasks to be undertaken, the potential Participants in the Services and any risks identified in the relevant Risk Assessments; and
 - (c) where a Supervisor is providing continuous Supervision in accordance with clause 103.1(b), provide copies of Supervisor attendance Records to the Department on request.
- 103.2 The Provider must ensure that relevant checks have been conducted on all Participants and all relevant Personnel and Supervisors in accordance with clause 72.
- 103.3 The Provider must ensure that any:
- (a) Provider Personnel, any Host Organisation or any Subcontractor who has direct involvement in (including where they have close contact with Participants); and
 - (b) Supervisor for,
any aspect of the Services:
 - (c) is a fit and proper person to be involved in the Services; and
 - (d) has a high level of skill/knowledge, training and/or experience in:
 - (i) each part of the Services they are involved in; and
 - (ii) working with, training and supervising individuals in such activities.

- 103.4 The Department may give Notice, on reasonable grounds related to the performance of the Services, requiring the Provider to remove, or arrange for the removal of any:
- (a) Provider Personnel, any Host Organisation or any Subcontractor who has direct involvement in the Services (including where they have close contact with Participants); and/or
 - (b) Supervisor, whether engaged by the Provider, any Subcontractor or any Host Organisation,
- from work on the Services.
- 103.5 Where the Department gives Notice under clause 103.4, the Provider must, at its own cost, promptly arrange for:
- (a) the removal of the relevant Personnel or Supervisor from work on the Services; and
 - (b) their replacement with one or more Personnel or Supervisors acceptable to the Department.
- 103.6 The Provider must ensure that each Supervisor, whether engaged by the Provider, a Subcontractor or a Host Organisation, is aware of the requirement to notify the Provider of:
- (a) the non-attendance at the Services; and
 - (b) any other non-compliance in connection with the Services,
- of a Participant as soon as practicable, in accordance with any Guidelines.
- 103.7 All Supervisors who:
- (a) are contracted by the Provider in relation to the Services; and
 - (b) are not employees of the Provider,
- are deemed to be approved Subcontractors for the purposes of clause 51.

104. Other matters

- 104.1 The Provider must:
- (a) ensure that each Participant, Host Organisation, Employer and any Supervisor, are aware that the Host Organisation, the Provider or the Department may terminate a Course, Industry Awareness Experience or Placement at any time;
 - (b) reserve a right of termination in any relevant agreement to take account of these rights of termination and, where appropriate, make use of that right in the event of a termination of a Placement; and
 - (c) ensure that each Participant is aware of the process to lodge a complaint or voice safety concerns about a Course, Industry Awareness Experience or Placement.

104.2 The Provider must ensure that, to the extent allowed by law and unless otherwise expressly agreed by the Parties, there is no intention or understanding on the part of a Host Organisation, Employer or a Participant that any Course, Industry Awareness Experience or Placement will in and of itself create legal relations between the Participant and:

- (a) the Commonwealth;
- (b) the Provider;
- (c) Employer; or
- (d) the Host Organisation.

ATTACHMENT 1 – DEFINITIONS

'25 Plus Course' means a Course (delivered as either a Training Block 1 Course or a Training Block 2 Course) provided to EST Participants aged 25 years and older in accordance with any Guidelines.

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

'Aboriginal or Torres Strait Islander person' means an individual who:

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

'Access' includes access or facilitation of access (whether directly or indirectly), traverse, view, use, or interface with, Records or the Department's IT Systems.

'Account Manager' means the individual for the time being holding, occupying or performing the duties of the position specified in item 1 of SCHEDULE 1 – DEED AND BUSINESS DETAILS, who has authority to receive and sign Notices and written communications for the Department under this Deed.

'Activity Risk Assessment' means a risk assessment in relation to a potential or actual Placement or Specified Industry Awareness Experience, which is undertaken and/or updated in accordance with any Guidelines.

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

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

'Assessment' means an assessment conducted by the Provider for an EST Participant in relation to a Course against the Learning Outcomes as relevant to that Course:

- (a) following the EST Participant's attendance at that Course;
- (b) as specified in any relevant Service Delivery Plans for that Course; and
- (c) in accordance with any Guidelines.

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

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

'Authorised Officer' means an individual who is an 'authorised officer' as defined under the *Public Interest Disclosure Act 2013* (Cth).

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

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

'Change in Control' means:

- (a) subject to paragraph (b) below, in relation to a Corporation, a change in control of any of the following:
 - (i) 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) 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) 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; or
- (e) in relation to a Group Respondent, a Change in Control as defined in paragraphs (a) above to (d) above in any member of the Group Respondent.

'Child' means an individual under the age of 18 years.

'Child-Related Personnel' means any Personnel, Facilitator or Supervisor involved, or who may be involved, with the Services, 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 which are set out in clauses 72.2 and 72.3.

'Commence' or 'Commenced':

- (a) in relation to a Course, means the requirements in clause 86.1 have been met; and
- (b) in relation to a Placement, means the requirements in clause 98.1 have been met.

'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 in the Use of the Commonwealth Coat of Arms General Guidelines (available at <https://www.pmc.gov.au/government/commonwealth-coat-arms>).

'Commonwealth Material' means any Material:

- (a) provided by the Department to the Provider for the purposes of this Deed; or
 - (b) copied or derived from any Material referred to in paragraph (a),
- and includes Commonwealth Records.

'Commonwealth Records' means any Records:

- (a) provided by the Department to the Provider for the purposes of this Deed; or
- (b) copied or derived from any Records referred to in paragraph (a).

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

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

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

'Complete', 'Completed' or 'Completion' means in relation to a Course, that the requirements in clause 93.1 have been met.

'Conditions of Offer' means any conditions placed by the Department on its offer of this Deed to the Provider.

'Confidential Information' means any information that:

- (a) is by its nature confidential;
- (b) the Parties agree to treat as confidential or by Notice to each other; 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 otherwise than by breach of this Deed or any other confidentiality obligation;
- (e) is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt; or
- (f) has been independently developed or acquired.

'Conflict' means an actual, potential or perceived conflict between any interest of the Provider and the performance of the Provider's obligations under this Deed, including any interest that may interfere with or restrict the Provider in performing those obligations 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 individual specified in item 2 of SCHEDULE 1 – DEED AND BUSINESS DETAILS who has authority to receive and sign Notices and written communications for the Provider under this Deed and accept any request or direction in relation to the Services.

'Control' has the meaning given to that term in section 50AA of the Corporations Act.

'Corporation' has the meaning given to that term in section 57A of the Corporations Act.

'Corporations Act' means the *Corporations Act 2001* (Cth).

'Correctly Rendered Invoice' means an invoice that is:

- (a) rendered in accordance with all of the requirements of the relevant PT PCP Subcontract; and
- (b) for amounts that are correctly calculated and due for payment and payable under the PT PCP Subcontract.

'Course' means a Training Block 1 Course or a Training Block 2 Course.

'Customer' includes an Eligible EST Participant, Participant, Employer, Host Organisation or a Referring Provider, as relevant, and any other user of the Services.

'Cybersafety Policy' means the Department's policy of that name as specified at clauses 32.16 to 32.18.

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

'Deed Commencement Date' means the later of 1 July 2022, or the date on which this Deed is signed by the last Party to do so.

'Deed Completion Date' means either:

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

'Deed Material' means all Material:

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

includes all Deed Records.

'Deed Records' means all Records:

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

includes all Reports.

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

'Department Customer Service Officer' means any individual who is responsible on behalf of the Department for responding to calls to the Department's National Customer Service Line.

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

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

'Department of Social Services' means the Commonwealth department of that name, or such other agency or department as Notified by the Department from time to time, and includes its officers, delegates, employees, contractors and agents.

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

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

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

'Digital Services Contact Centre' or **'DSCC'** means the service managed by the Department to provide support to Workforce Australia Services Online Participants and Workforce Australia Services Participants that can be contacted on 1800 314 677, or such other number as Notified by the Department.

'Director' means any of the following:

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

'Disability Employment Services' means the services provided under the Disability Employment Services Grant Agreement 2018-2023 administered by the Department of Social Services.

'Disability Employment Services Grant Agreement 2018-2023' means the agreement for the provision of Disability Employment Services with the Department of Social Services.

'Disability Employment Services Provider' or **'DES Provider'** means a provider of services under the Disability Employment Services Grant Agreement 2018-2023.

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

'Eligible' means an individual who is eligible to undertake a Course in accordance with this Deed, including any Guidelines.

'Eligible EST Participant' means an individual who is eligible to undertake a Course in accordance with this Deed, including any Guidelines, but has not yet been Referred to the Provider.

'Eligible Placement Participant' means an individual who is eligible to undertake a Placement in accordance with this Deed, including any Guidelines.

'Employability Skills Training' or **'EST'** means the Commonwealth program of that name (or such other name as advised by the Department), administered by the Department.

'Employability Skills Training Services' or **'EST Services'** means the Services described in CHAPTER B2 – EST SERVICES of this Deed.

'Employer' means an entity that has the legal capacity to enter into a contract of employment with a Participant.

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

'Employment Region' means a geographical area:

- (a) identified and displayed at the Labour Market Information Portal Website (<https://lmip.gov.au/>), as varied by the Department at the Department's absolute discretion; and
- (b) that the Provider is contracted to service, either in whole or in part, under this Deed, as specified in item 4.1 of SCHEDULE 1 – DEED AND BUSINESS DETAILS.

'Employment Services Tip off Line' means a telephone and email service, developed primarily for current and former employees of employment services providers who suspect, or have evidence of incorrect claims or acceptance of Payments, or any other activities that may be a breach of the deeds that employment services providers have signed with the Department, and which allows those individuals to report their concerns to the Department.

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

'Entrusted Person' has the meaning given to this term in the PTR Act.

'EST Charge' means:

- (a) for a Referral of an Eligible EST Participant to a Training Block 1 Course, the amount of \$1,250 (GST inclusive); and
- (b) for a Referral of an Eligible EST Participant to a Training Block 2 Course, the amount of:
 - (i) \$1,250 (GST inclusive) in respect of a Referral by a DES Provider; and
 - (ii) \$300 (GST inclusive) in respect of a Referral by a Workforce Australia Employment Services Provider or Workforce Australia - TtW Provider.

'EST Commencement Payment' has the meaning given in clause 94.1(a).

'EST Final Payment' has the meaning given in clause 94.1(b).

'EST Participant' means an individual who is undertaking a Course in accordance with this Deed including any Guidelines.

'EST Placement Payment' has the meaning given in clause 100.1(e).

'EST Provider' means an entity that is a party to a Workforce Australia - Employability Skills Training Deed 2022-2027 with the Commonwealth, but does not include the Provider.

'Exempt Public Authority' has the meaning given to that term in section 9 of the Corporations Act.

'Existing Material' means all Material, except Commonwealth Material and Third Party Material, that is:

- (a) in existence at the Deed Commencement Date or is subsequently brought into existence other than as a result of the performance of this Deed; and
- (b) included in, embodied in, or attached to:
 - (i) the Deed Material; or
 - (ii) the Services or is otherwise necessarily related to the functioning or operation of the Services.

'Exit' means the exit of an EST Participant from a Course in accordance with clause 92.1.

'Extended Service Period' means any period of time after the end of the Service Period.

'External IT System' means any information technology system or service (including any cloud storage platform), 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.

'External Systems Assurance Framework' or **'ESAF'** means the framework, as specified in any Guidelines, by which the Department gains assurance over External IT Systems and includes requirements in relation to Provider IT System accreditation (such as Right Fit For Risk) and Third Party IT accreditation.

'Facilitator' means an individual who is Provider Personnel and who delivers a Course to EST Participants in accordance with this Deed including any Guidelines.

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

'Generalist Course' means a Training Block 2 Course which provides EST Participants with training in relation to a mix of industries and occupations that address the needs of a broad range of Employers, in accordance with any Guidelines. A Generalist Course may be a Youth Course or 25 Plus Course.

'Group Respondent' means a group of two or more entities, however constituted, other than a partnership, which have entered into an arrangement for the purposes of jointly delivering the Services, and which may have appointed a lead member of the group with authority to act on behalf of all members of the group for the purposes of this Deed, as specified in the Particulars.

'GST' has the meaning as given in section 195-1 of the GST Act.

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

'Guidelines' means any guidelines issued by the Department, as described in this Deed, as amended by the Department.

'High Value Deed' means, for the purposes of the Indigenous Procurement Policy, a Deed where:

- (a) the Services will be wholly delivered in Australia;
- (b) the value of the Services is \$7.5 million (GST inclusive) or more;
- (c) more than half the value of the Deed is being spent in one or more of the industry sectors specified at the Indigenous Procurement Policy website (<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>); and
- (d) the value of the Deed is not being spent in one of the sub-category industry sectors specified at the Indigenous Procurement Policy website (<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>).

Note: For the purposes of paragraph (c), employment services fall within the 'politics and civic affairs services' industry sector.

'Host Organisation' means an organisation other than the Provider that hosts a Placement or Specified Industry Awareness Experience.

'Host Organisation Agreement' means a written and signed agreement between the Provider, a Host Organisation and the Participant in relation to the provision of a Placement, in accordance with any Guidelines.

'Inbound Employer Visit' is a type of Industry Awareness Experience and means a visit by an Employer to the Provider's premises for the purpose of providing EST Participants with an insight into the tasks and duties of a particular occupation or industry.

'Indigenous Australian' means an individual who:

- (a) is identified as such on the Department's IT Systems; or
- (b) identifies as an Aboriginal person or a Torres Strait Islander, in each case, as defined in section 4(1) of the *Aboriginal and Torres Strait Islander Act 2005* (Cth).

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

'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: <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.

'Indigenous Procurement Policy Reporting Solution' or **'IPPRS'** means the online portal where the Provider reports on its compliance with the Indigenous Participation Plan, including the Provider's progress in meeting the Mandatory Minimum Requirements, for the purposes of the Indigenous Procurement Policy.

'Industry Awareness Experience' means an activity that exposes EST Participants to a work-like environment and includes any Inbound Employer Visit or Specified Industry Awareness Experience.

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

'Insolvency Event' means that the Provider, any Material Subcontractor, any entity giving the guarantee under clause 26.3(b), and/or any party having or exercising control over the Provider or any Material Subcontractor:

- (a) becomes externally administered for the purposes of:
 - (i) the Corporations Act or an external insolvency administrator is appointed to any such entity under the provisions of any companies or securities legislation of another jurisdiction;
 - (ii) any incorporated associations legislation of the Australian states and territories; or
 - (iii) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (b) fails to comply with a statutory demand in the manner specified in section 459F of the Corporations Act, and has not made an application to set aside such demand under section 459G of the Corporations Act;
- (c) has, or is reasonably likely to have, a controller (as that term is defined in the Corporations Act) or mortgagee in possession appointed to its assets;
- (d) if an individual, becomes bankrupt or has entered into a scheme of arrangement with their creditors;
- (e) if an unincorporated entity or trust:
 - (i) an event of the kind referred to in paragraphs (a), (b), (c) or (d) occurs in respect of any of the partners, joint venturers or proprietors of such entity; or

- (ii) a trustee in bankruptcy (or comparable person) is appointed to the assets and affairs of any of the partners, joint venturers or proprietors of such entity, or any of those partners, joint venturers or proprietors enter into an arrangement or composition with its or their creditors for the payment of their debts; or

(f) is otherwise unable to pay its debts as and when they fall due.

'Intellectual Property Rights' includes intellectual property rights, including the following rights:

- (a) rights in relation to patents, copyright (including Moral Rights), circuit layout rights, trade marks (including goodwill in those marks), business names and any right to have confidential information (including trade secrets and know-how) kept confidential and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

'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 23.3, 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 51.17, 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 where the Provider was not entitled to the payment under this Deed.

'Joint Charter' means the charter at ATTACHMENT 2 - JOINT CHARTER.

'Key Performance Indicators' or **'KPIs'** means the indicators of that name, as specified in any Guidelines.

'Learning Outcomes' means, in respect of a Course, the specifications of knowledge and skills expected to be attained by an EST Participant as a result of their participation in the Course, as specified in any Guidelines and the Service Delivery Plans.

'Liquidated Damages' means the amount that the Department may recover from a Provider in accordance with clause 57.

'Loss' means any liability, loss, damage, cost and/or expenses (including legal costs on a full indemnity basis) incurred or suffered.

'Mandatory Minimum Requirement' means any requirement of that name as set out in the Indigenous Participation Plan, or as otherwise advised by the National Indigenous Australians Agency.

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

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

'Maximum Participant Number' means 20 EST Participants or any other number of EST Participants specified in any Guidelines or Notified by the Department.

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

'National Principles for Child Safe Organisations' means the National Principles for Child Safe Organisations, endorsed by the Council of Australian Governments as published by the Commonwealth available at: <https://humanrights.gov.au/about/news/coag-endorses-national-principles-child-safe-organisations>.

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

'National Work Experience Program Placement' or **'NWEP Placement'** means a short-term unpaid work trial placement that meets the eligibility requirements for a National Work Experience Program Placement, as specified in any Guidelines.

'Notice' means a notice given in accordance with clause 78.

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

'NWEP Host Payment' has the meaning given in clause 100.1(c), unless otherwise specified in any Guidelines.

'NWEP Provider Payment' has the meaning given in clause 100.1(d).

'Objectives' means the objectives for the Services specified in clause 79.1 and any objectives specified in the request for proposal for this Deed.

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

'Participant' means any Prospective EST Participant, EST Participant, Eligible Placement Participant and Placement Participant, but does not include an Eligible EST Participant.

'Participant Risk Assessment' means a risk assessment in relation to a Participant's potential or actual involvement in a Placement or Specified Industry Awareness Experience (as applicable) undertaken and updated in accordance with any Guidelines.

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

'Party' means a party to this Deed.

'PaTH Internship' means an unpaid work trial placement that meets the eligibility requirements of a PaTH Internship as specified in any Guidelines.

'PaTH Internship Host Payment' has the meaning given in clause 100.1(a), unless otherwise specified in any Guidelines.

'PaTH Internship Provider Payment' has the meaning given in clause 100.1(b).

'Payment' means any payment by the Department, including a Reimbursement, under this Deed, and includes:

- (a) an EST Commencement Payment;
- (b) an EST Final Payment;
- (c) a PaTH Internship Host Payment;
- (d) an NWEF Host Payment;
- (e) a PaTH Internship Provider Payment;
- (f) an NWEF Provider Payment;
- (g) an EST Placement Payment; and
- (h) any Ancillary Payment,

but does not include an EST Charge.

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

'Personal Information' has the same meaning as under section 6 of the Privacy Act.

'Personnel' means:

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

'Placement' means an NWEF Placement or PaTH Internship, or both, as the context requires.

'Placement Management Services' means the Services described in CHAPTER B3 – PLACEMENT MANAGEMENT SERVICES.

'Placement Participant' means an Eligible Placement Participant who has started a Placement in accordance with clause 85.1.

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

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

'Prospective EST Participant' means an individual who is Referred to the Provider to undertake a Course but has not yet started in a Course.

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

'Provider' means the entity or entities specified in the Particulars and contracted under this Deed, and includes its or their Personnel, successors and assigns.

'Provider IT System' means an information technology system or service (including any cloud storage platform) used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems.

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

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

'PT PCP' means the Commonwealth's 'Payment Times Procurement Connected Policy'.

'PT PCP Evaluation Questionnaire' means a questionnaire in substantially the form of Appendix C of the PT PCP.

'PT PCP Policy Team' means the Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.

'PT PCP Protected Information' has the meaning given to the term 'protected information' in the PTR Act.

'PT PCP Purpose' means:

- (a) the review, evaluation, monitoring, assessment and reporting on the PT PCP, including Reporting Entities' compliance with the PT PCP; or
- (b) improving payment times to PT PCP Subcontractors.

'PT PCP Remediation Plan' means a written remediation plan substantially in the form of Appendix D of the PT PCP.

'PT PCP Subcontract' means a Subcontract between the Provider and another party (Other Party), but only where the Provider is a Reporting Entity and:

- (a) the Subcontract is (wholly or in part) for the provision of goods or services for the purposes this Deed;
- (b) the parties are carrying on business in Australia; and
- (c) the component of the Subcontract for the provision of goods or services for the purposes of this Deed has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (GST inclusive) during the period of the Subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the Subcontract (but including work/official orders entered into that are valued up to \$1 million (GST inclusive) under standing offer (panel) arrangements),

but does not include the following Subcontracts:

- (d) Subcontracts entered into prior to the Provider's response to the request for proposal for this Deed;
- (e) Subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Provider; or
- (f) Subcontracts for the purposes of:
 - (i) procuring and consuming goods or services overseas; or
 - (ii) procuring real property, including leases and licences.

'PT PCP Subcontractor' means any entity that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.

'PTR Act' means the *Payment Times Reporting Act 2020* (Cth), and includes a reference to any subordinate legislation made under the Act.

'Public Sector Data' has the meaning given to that term in section 10(2) of the *Data Availability and Transparency Bill 2020* (Cth).

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

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

'Referral' means the referral of an individual by a Referring Provider or the DSCC, or the self-referral of an individual, as relevant, to the Provider to undertake EST Services, as recorded in the Department's IT Systems.

'Referring Provider' means a Workforce Australia Employment Services Provider, DES Provider, Workforce Australia - TtW Provider, the Yarrabah Provider or any other type of employment services provider specified as a Referring Provider in any Guidelines who Refers an Eligible EST Participant.

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

'Registered Training Organisation' means a registered training organisation registered by either:

- (a) the Australian Skills Quality Authority (Commonwealth); or
- (b) the Registration and Qualifications Authority (Victoria); or
- (c) the Training Accreditation Council (Western Australia),

as recorded on the national register of registered training organisations contained at <https://training.gov.au/>.

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

'Reimbursement' means any amounts payable by the Department under this Deed as a reimbursement, or such other payments that may be Notified by the Department to be a reimbursement.

'Related Entity' means:

- (a) those parts of the Provider other than Own Organisation;
- (b) 'entities connected with a corporation' as defined in section 64B of the Corporations Act 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 paragraphs (d)(i) to (d)(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 individuals exists between that entity and the principals, owners, Directors, officers or like individuals of the Provider.

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

'Reporting Entity' has the meaning given to this term in the PTR Act.

'Reporting Entity Subcontract' means any Subcontract to which the Provider and/or a Reporting Entity Subcontractor are parties.

'Reporting Entity Subcontractor' means any entity that:

- (a) is a Reporting Entity; and
- (b) provides goods or services directly or indirectly to the Provider for the purposes of this Deed where the value of such goods or services are estimated to exceed \$4,000,000 (GST inclusive).

'RFFR Accreditation' means accreditation by the Department of the Provider or a Related Entity as meeting the requirements of RFFR.

'Right Fit For Risk' or **'RFFR'** means the Department's risk-based approach to cyber security for employment services providers. It includes requirements in relation to Provider IT System accreditation, associated timelines, standards and guidelines and is available on the Department's IT Systems or at such other location as advised by the Department from time to time. The RFFR approach forms part of the ESAF.

'Risk Assessment' means, as relevant, an Activity Risk Assessment and/or a Participant Risk Assessment.

'Satisfactory' means that a Statement of Tax Record meets the conditions set out in Part 6.b of the Black Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Black Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Black Economy Procurement Connected Policy.

'Schedule' means a schedule to this Deed.

'Security Contact' means one or more Personnel with responsibility:

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

'Service Delivery Plan' means a statement of representations made by the Provider to the Department regarding the Services it will deliver as specified in SCHEDULE 2 – SERVICE DELIVERY PLAN(S).

'Service Guarantee' means a set of minimum service standards for the Services as specified in ATTACHMENT 3 – SERVICE GUARANTEE.

'Service Period' means, subject to any contrary stipulation in this Deed, the period from the Deed Commencement Date to 30 June 2027.

'Services' means:

- (a) the EST Services;
- (b) the Placement Management Services;
- (c) any additional services to be provided by the Provider under clause 16; and
- (d) any other services reasonably related or required to be provided by the Provider for the proper provision of the Services under this Deed.

'Services Australia' means the Australian Government agency known as Services Australia, or any other name advised by the Department from time to time, and includes its officers, delegates, employees, contractors and agents.

'Site' means a physical location from which the Provider delivers the Services, and at a minimum includes the locations specified in item 4.4 of SCHEDULE 1 – DEED AND BUSINESS DETAILS.

'Specialist Course' means a Training Block 2 Course which provides EST Participants with training in the context of a particular industry's or industries' work environment (e.g. retail, hospitality, or construction), in accordance with any Guidelines. A Specialist Course may be a Youth Course or 25 Plus Course.

'Specified Industry Awareness Experience' means an Industry Awareness Experience that is hosted by a Host Organisation in accordance with any Guidelines and excludes an Inbound Employer Visit.

'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).

'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.

'Subcontract' means any arrangement entered into by the Provider under which some or all of the Services under this Deed are provided by another entity.

'Subcontractor' means any party which has entered into a Subcontract with the Provider, including a Material Subcontractor, and includes the party's Personnel, successors and assigns as relevant.

'Suitable' means

- (a) in relation to a Course, that the Provider considers, in accordance with any Guidelines, that the Prospective EST Participant will benefit from and is able to participate in the relevant Course; and
- (b) in relation to a Placement, that the Provider considers, in accordance with any Guidelines, that the Eligible Placement Participant will benefit from and is able to participate in the relevant Placement.

'Supervisor' means an individual who is engaged or employed by the Provider or by a Host Organisation (as applicable) and has responsibility for the Supervision of Participants engaged in EST Services or a Placement.

'Supervision' means the action or process of directly monitoring and managing Participants participating in the EST Services or any Placement.

'Suspend' or **'Suspended'** means the act of imposing a Suspension.

'Suspension' means a period of time of that name, as specified in the Department's IT Systems, during which the Provider will not be entitled to:

- (a) Payment from the Department; or
- (b) charge a Referring Provider,

as relevant, and the requirement to provide the Services to a Participant is Suspended in accordance with clause 55.2(a)(i).

'Tax Invoice' has the meaning given in section 195-1 of the GST Act.

'Taxable Supply' has the meaning given in section 195-1 of the GST Act.

'Term of this Deed' refers to the period described in clause 3.

'Third Party Employment System' means any Third Party IT used in association with the delivery of the Services, whether or not that Third Party IT Accesses the Department's IT Systems, and where that Third Party IT:

- (a) contains program specific functionality or modules; or
- (b) is used, in any way, for the analysis of Records relating to the Services, or any derivative thereof.

'Third Party IT' means any:

- (a) information technology system (including any cloud storage platform) developed and managed; or

(b) information technology service (including any cloud storage platform) provided,

by a Third Party IT Vendor and used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems. 'Third Party IT' includes a Third Party Employment System and a Third Party Supplementary IT System.

'Third Party IT Vendor' means an entity contracted by the Provider to provide information technology systems or services to the Provider in association with the delivery of the Services, whether or not the entity is a Subcontractor, and includes as relevant, its Personnel, successor and assigns, and any constituent entities of the Third Party IT Vendor's organisation. A 'Third Party IT Vendor' includes a cloud services vendor, an infrastructure as a service vendor, a software as a service vendor, a platform as a service vendor, an applications management vendor, and also any vendor of infrastructure (including servers and network hardware) used for the purpose of Accessing or storing Records.

'Third Party IT Vendor Deed' means an agreement between a Third Party IT Vendor that provides or uses a Third Party Employment System and the Department in the terms and form as specified by the Department from time to time.

'Third Party Material' means Material that is:

- (a) owned by any entity other than a Party; and
- (b) included in, embodied in, or attached to:
 - (i) the Deed Material; or
 - (ii) the Services or is otherwise necessarily related to the functioning or operation of the Services.

'Third Party Supplementary IT System' or 'TPSITS' means any Third Party IT used in association with the delivery of the Services, where that Third Party IT:

- (a) does not Access the Department's IT Systems;
- (b) does not contain program specific functionality or modules; and
- (c) is not used, in any way, for the analysis of Records relating to the Services, or any derivative thereof.

'Training Block 1 Course' means the Course(s) specified in item 4.3 of SCHEDULE 1 – DEED AND BUSINESS DETAILS and described in a Service Delivery Plan, which meets the requirements specified in any Guidelines.

'Training Block 2 Course' means the Course(s) specified in item 4.3 of SCHEDULE 1 – DEED AND BUSINESS DETAILS and described in a Service Delivery Plan, which meets the requirements specified in any Guidelines. A 'Training Block 2 Course' includes Generalist Courses and Specialist Courses.

'Transition Period' means any period of time leading up to the expiry, termination or reduction in scope of this Deed, and Notified by the Department to the Provider under clause 60.1.

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

'Valid' means valid in accordance with Part 7.e of the Black Economy Procurement Connected Policy.

'Warranted Material' means any:

- (a) Existing Material;
- (b) Third Party Material; and
- (c) Deed Material.

'WHS Act' means the *Work Health and Safety Act 2011* (Cth) and any 'corresponding WHS law' as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

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

'WHS Laws' means the WHS Act, WHS Regulations and all relevant state and territory work, health and safety legislation.

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

'Workforce Australia' means the Australian Government's single consolidated masterbrand for employment services.

'Workforce Australia Employment Services Provider' means any entity contracted by the Commonwealth to provide services under the Workforce Australia Services Deed of Standing Offer 2022-2028.

'Workforce Australia Services Online Participant' means an individual who is identified as a Workforce Australia Services Online Participant in the Department's IT Systems.

'Workforce Australia Services Participant' means a Participant who is identified as a Workforce Australia Services Participant in the Department's IT Systems.

'Workforce Australia - Transition to Work Deed' or **'Workforce Australia - TtW Deed'** means the Workforce Australia - Transition to Work Deed 2022 – 2027, being an agreement for the provision of the Transition to Work Service with the Department.

'Workforce Australia - Transition to Work Provider' or **'Workforce Australia - TtW Provider'** means any entity that is a party to a Workforce Australia – Transition to Work 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.

'Yarrabah Provider' means the entity contracted by the Commonwealth to provide services under the Employment Services Deed (Yarrabah Pilot) 2018 - 2022.

'Youth Course' means a Course (delivered as either a Training Block 1 Course or a Training Block 2 Course) provided to EST Participants aged under 25 in accordance with any Guidelines.

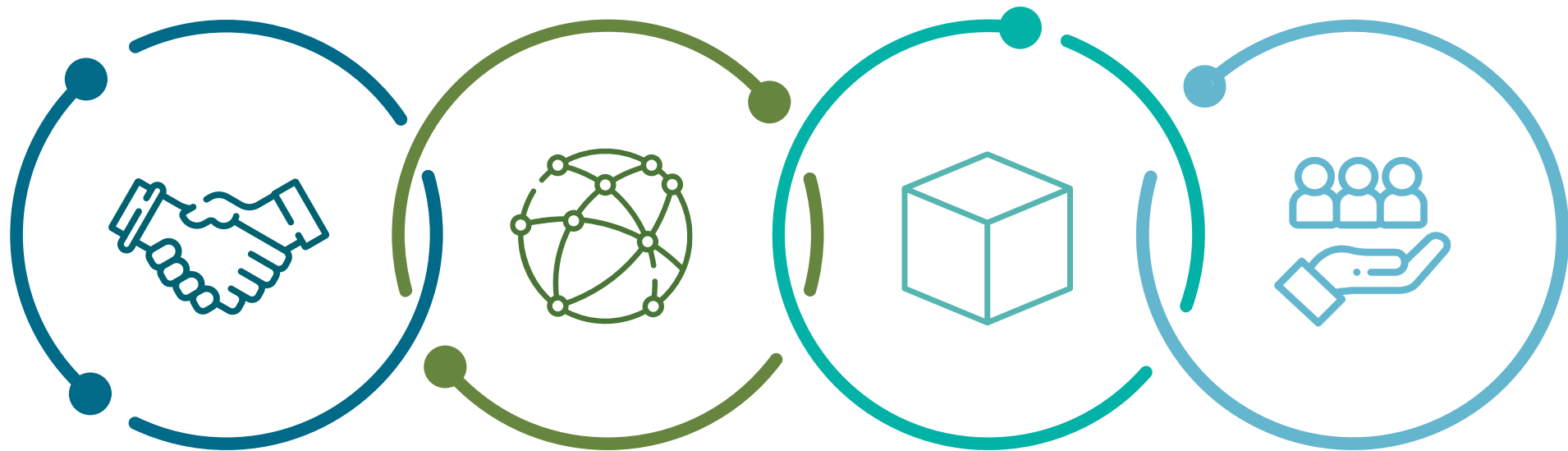
'Youth Workforce Australia Services Online Participant' means a Workforce Australia Services Online Participant who is under 25 years old.

Joint Charter – Workforce Australia

The department and providers contracted to deliver employment and related services agree to act in accordance with the principles and joint expectations in this Charter.

We will work together to deliver quality services that are **respectful**, **connected**, **simple** and **supported**.

These principles will apply to the way we work together, and how we all contribute to high quality, tailored and effective employment and related services for individuals and employers.



Respectful

Providers are empowered to deliver personalised, innovative and flexible services that are culturally appropriate and tailored to the needs of individuals and businesses.

Local and national experience and expertise is recognised and harnessed to deliver effective services to individuals and businesses.

Service quality is valued, with integrity and respect afforded to all stakeholders.

Actions are taken in good faith, including the exercise of rights and responsibilities under deeds and guidelines.

Issues are resolved collaboratively through cooperation and informal dispute resolution processes in the first instance.

Connected

Engagement is proactive, timely and fit for purpose to support the objective of the services.

Digital delivery supports service delivery to individuals and employers, and maximise return on investments.

Technology is used to:

- deliver quality services and timely information;
- share performance and caseload data;
- streamline communications.

Innovative ideas and solutions are encouraged to deliver sustained benefits to individuals, employers and businesses.

Decisions are transparent and informed by evidence and data intelligence.

Simple

Service delivery is tailored and outcome focused, considering individual and employer needs, and local job opportunities.

Activities are safe, efficient and effective by ensuring they meet work health and safety requirements and contribute to individuals' job readiness.

Automation supports streamlined processes and workflows.

Outcome focused delivery and decisions consider the needs of the individuals and employers.

Complexity is reduced by recognising and acting on opportunities to cut red tape and ensuring quality, timely and relevant support.

Supported

Greater flexibility and choice supports individuals in how they engage with employment services.

Collaborative partnerships with employment services, industry, businesses, state/territory and local governments, community organisations and support services are leveraged to benefit individuals and businesses.

Stakeholder needs are met responsively by actively contributing to the resolution of issues and delivery of solutions.

Service delivery and decision making is informed through regular consultation, engagement and leveraging of new and emerging approaches.

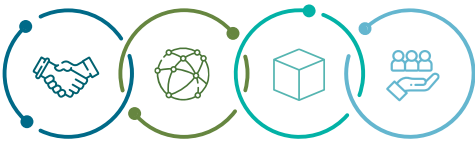
Improvements are continuous by building staff capabilities and sharing feedback and ideas to better meet the needs of individuals and businesses.

ATTACHMENT 3 – SERVICE
GUARANTEE



Service Guarantee
Workforce Australia
– Employability
Skills Training

Workforce Australia aims to provide employment services that are



simple, supported, connected and **respectful**.

This Service Guarantee reflects the Australian Government’s expectations for Workforce Australia delivering tailored services to support individuals towards employment. It sets out the minimum level of service each individual can expect, including elements unique to different types of Workforce Australia services, as well as the requirements that need to be met while participating in employment services.

What you can expect from
Workforce Australia:

To receive services tailored to your needs that **support** you to build your job readiness.

To be treated fairly and **respectfully** and in a culturally sensitive way.

To be **connected** to flexible service delivery methods that adapt to changing circumstances and **support** accessibility.

To have information provided in a **simple** and clear manner.

Access to a **simple** self-managed digital platform and **support** to link your MyGov account to use self-help job search facilities and online information.

These are the standards and actions providers and participants are expected to follow in Employability Skills Training.

What you can expect from
your Provider
Your Provider will:

Respectfully deliver individually tailored servicing, considering your strengths and any challenges.

Support you to better understand and meet the expectations of employers.

Support you to build your employability skills.

Support you to build your digital literacy skills relevant to the workplace.

Connect you to opportunities in your local labour market.

Support you to identify and explore career options that suit your abilities and interests.

Support you to improve your job search, job application and interview skills.

Connect you to a work trial that can lead to a job, where appropriate.

What is expected of you
As a participant in
Employability Skills Training
you need to:

Stay **connected** by making every effort to attend, participate in and complete the course or work trial.

Connect with your Provider to let them know as soon as possible if you are unable to attend and why.

Behave **respectfully** towards staff and other participants.

Connect with your Provider and let them know if your circumstances change, such as if your contact details change.

Not meeting any of these responsibilities may impact your income support payments.

Compliments, suggestions or complaints

Your views about the service you receive are important. The Department of Education, Skills and Employment and your Provider value any feedback you may have.

If you don’t think you are receiving the right help and would like to make a complaint, please talk to your Provider first. Your Provider will offer a feedback process which is fair and will try to resolve your concerns.

If you feel you can’t talk to your Provider, or you are still not happy, you can contact the Department of Education, Skills and Employment National Customer Service Line on 1800 805 260 (free call from land lines) or email nationalcustomerservice@des.gov.au.

If you have suggestions to improve the service that you are getting or would like to make a compliment about the help you have received, please let your Provider know or call the National Customer Service Line.

If you have any concerns about your income support payments, you should contact Services Australia (<https://www.servicesaustralia.gov.au/>)

Your personal information is confidential

Your Personal information is protected by law, including the *Privacy Act 1988* (Cth). Your Provider will only tell employers things about you that relate to job opportunities or, with your permission, your employment with them.

You can ask to get access to any information your Provider holds about you, and have it corrected if needed.

SCHEDULE 1 – DEED AND BUSINESS DETAILS

Item 1	Account Manager (clauses 13.2 and 78.1 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)		
Contact	<Account Manager Title> <Account Manager First Name> <Account Manager Surname>		
Telephone	<Account Manager Phone>	Mobile	<Account Manager Mobile>
Email	<Account Manager Email>		
Physical Address	<Account Manager Physical Address Line1>	Postal Address	<Account Manager Postal Address Line1>
	<Account Manager Physical Address Line2>		<Account Manager Postal Address Line2>
	<Account Manager Physical Address Line3>		<Account Manager Postal Address Line3>
	<Suburb> <State> <Postcode>		<Suburb> <State> <Postcode>
Item 2	Contact Person (clauses 13.2 and 78.1 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)		
Contact	<Contact Person Title> <Contact Person First Name> <Contact Person Surname>		
Position	<Contact Person Position>		
Telephone	<Contact Person Phone>	Mobile	<Contact Person Mobile>
Email	<Contact Person Email>		
Physical Address	<Contact Person Physical Address Line1>	Postal Address	<Contact Person Postal Address Line1>
	<Contact Person Physical Address Line2>		<Contact Person Postal Address Line2>

<Contact Person Physical Address Line3>

<Suburb> <State> <Postcode>

<Contact Person Postal Address Line3>

<Suburb> <State> <Postcode>

Item 3 Account details for payment (clause 18.1 of the Deed)

BSB Number	Bank Account Number	Bank Account Name
«BankDetailsBSB»	«BankDetailsAccountNumber»	«BankDetailsAccountName»
Bank Name		Bank Branch
«BankDetailsBankName»		«BankDetailsBranch»

Item 4 Employment Regions, Courses and Sites (clauses 5.1(b) and 82.1 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)

Item 4.1 Employment Region (Clause 5.1(b), Attachment 1)	Item 4.2 Part of Employment Region (Clause 5.1(b), Attachment 1)	Item 4.3 Type of Course (Clause 82.1, Attachment 1)	Item 4.4 Site(s) (Clause 5.1(b), Attachment 1)

Item 5 **Subcontractors approved by the Department** (clause 51 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)

Item 5.1 Employment Region (clause 5.1(b), Attachment 1)	Item 5.2 Subcontractor(s) (if relevant) (clause 51.3 of the Deed, Attachment 1)	Items 5.3 Terms and conditions relating to the use of each Subcontractor (if relevant) (clause 51.3 of the Deed)	Item 5.4 Subcontractor is a Registered Training Organisation Y/N

Item 6 **Registered Training Organisations** (clause 82)

Item 6.1 Provider is a Registered Training Organisation Y/N

Item 6.2 Employment Region (clause 5.1(b), Attachment 1)	Item 6.3 Registered Training Organisation Legal Name (clause 82.7)	Item 6.4 Registered Training Organisation ABN (clause 82.7)	Item 6.5 Registered Training Organisation is a partner (clause 82.7) Y/N	Item 6.6 Registered Training Organisation is delivering accredited training (clause 82.1(d)(iii)) Y/N

SCHEDULE 2 – SERVICE DELIVERY PLAN(S)