

Workforce Australia – Workforce Specialists Deed of Standing Offer 2023 - 2028

Effective 1 January 2024

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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 – CO-DESIGN SERVICES
4. PART C – WORKFORCE SPECIALIST PROJECTS
5. THE ATTACHMENTS AND THE SCHEDULE – DEED AND PANEL MEMBER DETAILS
6. 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 is 1 CHAPTER in PART B – CO-DESIGN SERVICES:

CHAPTER B1 – CO-DESIGN SERVICES

There is 1 CHAPTER in PART C – WORKFORCE SPECIALIST PROJECTS:

CHAPTER C1 – WORKFORCE SPECIALIST PROJECTS

There are 5 ATTACHMENTS to this Deed:

ATTACHMENT 1 – DEFINITIONS

ATTACHMENT 2 – JOINT CHARTER

ATTACHMENT 3 – TEMPLATE WORK ORDER

ATTACHMENT 4 – WORK HEALTH AND SAFETY REQUIREMENTS

ATTACHMENT 5 – WORKFORCE SPECIALIST PROJECT FEE METHODOLOGY

There is one SCHEDULE to this Deed, SCHEDULE – DEED AND PANEL MEMBER DETAILS, which contains details which are particular to the Panel Member.

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 and any Contract, 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 or any Contract;
- (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 or any Contract;
- (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 Panel Member agrees that:
- (a) Conditions of Offer form part of this Deed and any Contract;
 - (b) Guidelines form part of this Deed and any Contract;
 - (c) it must perform all obligations in this Deed and any Contract 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 and/or any Contract, 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 or any Contract does not in any way limit the Department's other rights under this Deed, any Contract or the law.
- 1.5 For avoidance of doubt, the Department's exercise of any right under this Deed or any Contract, except under clause 64, 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 105, ATTACHMENT 1 – DEFINITIONS and ATTACHMENT 4 – WORK HEALTH AND SAFETY REQUIREMENTS;
 - (c) any annexures to this Deed;
 - (d) the SCHEDULE – DEED AND PANEL MEMBER DETAILS;
 - (e) the Particulars;
 - (f) any Guidelines;
 - (g) ATTACHMENT 2 – JOINT CHARTER; and
 - (h) any document 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 Panel Member an extension of the Term of this Deed:
- (a) for one or more Extended Service Periods up to a maximum total period of four 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 Panel Member not less than 20 Business Days prior to the Deed Completion Date.
- 3.3 If:
- (a) the Department offers the Panel Member an extension of the Term of this Deed under clause 3.2; and
 - (b) the Panel Member accepts the offer,
- the Term of this Deed will be extended in accordance with the offer.

Note: The Term of this Deed differs from the Term of a Contract. The Term of a Contract is covered by clause 9.3.

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 17 (Information provided to the Department), 18 (Records to be provided), 19 (General reporting), 23 (Workforce Specialist's obligation to assist and cooperate with the Department and others), 25 (Evidence to support entitlement to Payments), 28 (Overpayment and double payment), 29 (Debts and offsetting), 33 (Evaluation activities), 36 (General), 37 (Access and information security assurance), 38 (Intellectual Property Rights), 39 (Moral Rights), 40 (Personal and Protected Information), 41 (Confidential Information), 42 (Records the Workforce Specialist must keep), 43 (Public Sector Data), 44 (Access by Participants and Employers to Records held by the Workforce Specialist), 45 (Access to documents for the purposes of the *Freedom of Information Act 1982* (Cth)), 46 (Program Assurance Activities and audits), 49 (Access to Material), 50 (Indemnity), 51 (Insurance), 52 (Liability of the Workforce Specialist to the Department), 60 (Dispute Resolution), 61 (Workforce Specialist suspension), 62 (Remedies), 66 (Transition out leading up to expiry, termination or reduction in scope of this Deed), 71 (Protection of rights) and 76 (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.
- 4.2 Clause 49 (Access to Material) survives for seven years from the expiry or earlier termination of this Deed.

Section A2.2 - Formation of Panel and refresh

5. Formation of the Panel and standing offer

- 5.1 The Department has established the Panel for the Co-design and delivery of Workforce Specialist Projects with Panel Members.
- 5.2 Under the Deed, a Panel Member may be required to work with the Department to:
 - (a) participate in a Concept Discussion and develop a Project Concept in accordance with clause 86; and
 - (b) further develop the Project Concept and Co-design a proposed Workforce Specialist Project in accordance with clause 87,together, the **Co-design Services**.
- 5.3 By entering into this Deed, the Panel Member makes an irrevocable standing offer to supply the Services to the Department in accordance with any Contract.
- 5.4 Under a Contract, a Panel Member will be required to deliver a Workforce Specialist Project in accordance with PART C – WORKFORCE SPECIALIST PROJECTS and as otherwise specified in this Deed.

6. Minimum requirements for maintaining Panel membership

- 6.1 In order to maintain its membership of the Panel, the Panel Member must:
 - (a) if it does not have a Contract:
 - (i) be ready, willing and able to comply with clause 37, including by obtaining and maintaining accreditation for any Workforce Specialist IT System in accordance with the requirements and timeframes set out in the ESAF, if it enters into a Contract;
 - (ii) effect and maintain or cause to be effected and maintained, the insurances specified at clauses 51.1(a) and 51.1(b); and
 - (iii) provide the financial statements specified at clause 32.1(b);
 - (b) if it has a Contract, comply with:
 - (i) clause 37, including by obtaining and maintaining accreditation for any Workforce Specialist IT System in accordance with the requirements and timeframes set out in the ESAF; and
 - (ii) clause 32.1(a), in relation to the provision of financial statements;

- (c) maintain its capacity and capability to provide the Services for which the Panel Member has been appointed to the Panel, as specified in its response to any request for proposal relating to any Services under this Deed, including with regard to its financial viability;
 - (d) continue to comply with all relevant laws and Commonwealth policies, including:
 - (i) Procurement Connected Policies (specified at <https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-connected-policies>); and
 - (ii) any Commonwealth policy related to secure work, so far as it applies to the Panel Member's engagement of its Personnel and the employment of Participants through Workforce Specialist Projects; and
 - (e) not hold, and any Related Entity must not hold, a caseload as an employment services provider.
- 6.2 The Panel Member must immediately Notify the Department if the Panel Member or any Related Entity intends to hold a caseload as an employment services provider, including where the Panel Member or any Related Entity submits a response to an approach to market (whether that be in the form of a request for proposal, request for tender or otherwise) for a procurement in which the Panel Member or any Related Entity could potentially become an employment services provider.
- 6.3 To avoid doubt, clause 6.1(c), 6.1(d) and 6.1(e) applies whether or not the Panel Member has a current Contract.
- 6.4 The Department may conduct an assessment of whether the Panel Member is compliant with clause 6.1 at any time.
- 6.5 The Department may:
- (a) remove the Panel Member from the Panel (by terminating this Deed under clause 65); and/or
 - (b) terminate any Contract,
- if at any time the Panel Member fails to comply with clause 6.1 as determined by the Department at its absolute discretion.
- 6.6 For avoidance of doubt, every clause in this Deed applies to the Panel Member if it does not have a Contract, except for the following clauses:
- (a) those clauses in PART A – GENERAL TERMS AND CONDITIONS which relate solely to the Services; and
 - (b) all the clauses in PART C – WORKFORCE SPECIALIST PROJECTS.

7. Panel refresh

- 7.1 The Department may, at its absolute discretion, at any time during the Term of this Deed, refresh the Panel, including where the Department identifies the need to add Panel Members due to:
- (a) past or anticipated changes to the membership of the Panel including where it is anticipated that a Panel Member will no longer be on the Panel in the future, and/or where it is anticipated that the scope of the Workforce Specialist Services provided by a Panel Member will change;
 - (b) changes to:
 - (i) the make-up and/or operation of the labour market; or
 - (ii) an industry workforce need identified in the Workforce Connections: Workforce Specialist Project Framework,

resulting in the Department seeking greater diversity of Panel Members;
 - (c) the current or anticipated demand for Workforce Specialist Services not being met by existing Panel Members;
 - (d) one or more Panel reviews demonstrating that value for money is not being provided by existing Panel Members for Workforce Specialist Services; or
 - (e) specific skill sets required for Workforce Specialist Services being unavailable from existing Panel Members.
- 7.2 A Panel refresh may result in one or more of the following:
- (a) adding new types of Workforce Specialist Services to the services being delivered by the Panel; or
 - (b) adding Panel Members.
- 7.3 All responses to any approach to market as part of a Panel refresh will be evaluated in accordance with the same or substantively equivalent evaluation process used when evaluating responses to the initial request for proposal for the establishment of a panel of Workforce Specialists.
- 7.4 To avoid doubt, the Department will not require the Panel Member to respond to an invitation to participate in a Panel refresh unless the Panel refresh is to add new types of services to those already being delivered by the Panel, and the Panel Member wishes to be considered for delivery of services of that type.

8. Issuing a Work Order

Note: 'Co-design Phase' means the phase described in clause 87 in which Co-design occurs.

- 8.1 Following the Co-design Phase, subject to this Deed, the Department may issue the Panel Member with a Work Order, in accordance with the process set out in this clause 8.

- 8.2 The Panel Member acknowledges and agrees that:
- (a) the issuing of Work Orders by the Department during the Term of this Deed is subject to sufficient funding for Workforce Specialist Projects being available at the time; and
 - (b) once the total available funding for Workforce Specialist Projects has been reached for a relevant period, the Department will:
 - (i) advise all Panel Members of this event in writing; and
 - (ii) not issue any Work Orders for approved Workforce Specialist Projects unless sufficient additional funding becomes available.
- 8.3 The Panel Member acknowledges and agrees that the Department has absolute discretion about whether to issue a Work Order and that:
- (a) the Department is not obliged to issue a Work Order following completion of a Co-design Phase;
 - (b) in considering whether to issue a Work Order following completion of a Co-design Phase, the Department may request the Panel Member to:
 - (i) clarify any information provided during the Co-design Phase or in its Workforce Specialist Project Plan; or
 - (ii) provide further information to support the Co-design Phase or its Workforce Specialist Project Plan; and
 - (c) if the Panel Member fails to comply with a request from the Department under clause 8.3(b), including within the requested timeframe(s), the Department may decide not to issue a Work Order.
- 8.4 In determining whether to issue a Work Order, the Department will make a value for money assessment and may have regard to any information available to it and any matter it considers relevant, including:
- (a) the extent to which the relevant Workforce Specialist Project Plan meets:
 - (i) the Core Project Criteria; and
 - (ii) the Department's priorities and the Objectives;
 - (b) the performance and engagement of the Panel Member during the Co-design Phase;
 - (c) the performance of the Panel Member in providing services under any previous or current Contract(s);
 - (d) the capacity of the Panel Member (including if relevant, of any nominated Subcontractors) to provide the relevant Workforce Specialist Project to particular groups of Participants, as demonstrated by:

- (i) the Department's assessment of the Panel Member's capacity in any procurement process leading to the execution of this Deed;
- (ii) the Department's assessment of the Panel Member's capacity to provide the Workforce Specialist Project; and
- (iii) the Department's assessment of risk for the Commonwealth in issuing a Work Order and managing any ensuing Contract;
- (e) government priorities; and
- (f) labour market conditions and employment opportunities.

8.5 The Department will, following:

- (a) consideration of the relevant matters in accordance with clause 8.4;
- (b) approval of the Panel Member's draft workforce specialist project plan as the Workforce Specialist Project Plan in accordance with clause 87; and
- (c) consideration of any clarifications or additional information provided by the Panel Member in response to a request made by the Department under clause 8.3(b) or 87.6,

either:

- (d) issue a Work Order; or
- (e) determine not to issue a Work Order.

8.6 If the Parties agree to a Work Order by executing it, the Panel Member must provide the relevant Workforce Specialist Project in accordance with PART C – WORKFORCE SPECIALIST PROJECTS and as otherwise specified in this Deed.

9. Formation of Contracts

9.1 The Panel Member acknowledges and agrees that:

- (a) a Contract is formed between the Department and the Panel Member when:
 - (i) the Department issues a Work Order under clause 8; and
 - (ii) both Parties execute the Work Order; and
- (b) the terms and conditions of each Contract are:
 - (i) clause 4, clauses 12 to 105, and all the clauses in PART C – WORKFORCE SPECIALIST PROJECTS, and ATTACHMENT 1 – DEFINITIONS, except that any references in those clauses to 'this Deed' are taken to be a reference to 'this Contract'; and
 - (ii) the provisions of the Work Order.

- 9.2 The Department is not liable for any services provided, or expenditure incurred by the Panel Member outside the scope of a Work Order that has been signed, issued and executed in accordance with this clause 9.
- 9.3 Each Contract formed under clause 9.1 begins on the Contract Start Date and continues for the duration of the Initial Contract Term unless terminated earlier in accordance with the terms of the Contract.
- 9.4 The Department may, in its absolute discretion, extend the Initial Contract Term for the further period(s) specified in the Work Order by giving at least 20 Business Days' Notice to the Workforce Specialist before the expiry of the Contract Term.
- 9.5 To the extent that the Parties have not completed the details of particular items in a Work Order, unless otherwise stated in the Work Order or this Deed, those items will be taken to be 'not applicable' for the purposes of the relevant Contract.
- 9.6 To the extent of any inconsistency between two or more documents which form part of a Contract, those documents will be interpreted in the following descending order of priority:
- (a) the relevant Work Order;
 - (b) the applicable provisions of this Deed, as specified in clause 9.1(b)(i); and
 - (c) any other document referred to in the relevant Work Order.

10. Consequences of earlier termination of this Deed

- 10.1 Unless otherwise directed by the Department in writing, the earlier termination of this Deed will not affect the validity of any Contracts between the Parties and each Contract will continue in accordance with its terms until its expiry or termination.

11. No guarantee or exclusivity

- 11.1 Despite any other provision of this Deed:
- (a) the Department does not guarantee or make any assurance that it will issue any Work Orders to the Panel Member under this Deed; and
 - (b) the Panel Member agrees that there is no maximum or minimum number of Contracts that may be created during the Term of this Deed.

Section A2.3 – Some basic rules about Services

12. General Requirements

- 12.1 The Workforce Specialist must carry out the Services:
- (a) in accordance with:
 - (i) this Deed, as relevant to the Services;
 - (ii) any Contract for the relevant Contract Term; and

- (iii) any representation or undertaking made by the Workforce Specialist in its response to any request for proposal relating to the Services, unless otherwise agreed with the Department;
 - (b) in a manner which meets the objectives of the Services as specified in any request for proposal for this Deed; and
 - (c) so as to achieve optimum performance when measured against the KPIs.
- 12.2 Subject to the express provisions of this Deed, the Workforce Specialist 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 Workforce Specialist's obligations under this Deed, notwithstanding any other matter or arrangement, including any Subcontract or Host Organisation Agreement.

13. Accessibility

- 13.1 The Workforce Specialist must ensure that:
- (a) any location from which the Services are provided, and any information delivered by electronic means that forms part of the delivery of the Services (such as online information or information delivered by telephone), is:
 - (i) accessible to people with a disability; and
 - (ii) presented in a manner that upholds and maintains the good reputation of the Services, as determined by the Department; and
 - (b) it takes all reasonable steps to avoid acts or omissions which the Workforce Specialist could reasonably foresee would be likely to cause injury to Participants or any other individuals at the locations referred to in clause 13.1(a).
- 13.2 In designing and developing any Deed Material, the Workforce Specialist must comply with Australian Government accessibility standards as specified in any Guidelines.

14. Use of interpreters

- 14.1 The Workforce Specialist must, when carrying out the Services, provide an interpreter to facilitate communication between the Workforce Specialist and Participants wherever necessary, including where a Participant requires assistance:
- (a) to communicate comfortably and effectively with the Workforce Specialist, 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.

- 14.2 The Workforce Specialist must provide access to interpreter services fairly and without discrimination, based on a proper assessment of a Participant's needs.
- 14.3 Where a Participant requests the use of an interpreter and the Workforce Specialist refuses to provide one, the Workforce Specialist must record the reason for the Workforce Specialist's decision.
- 14.4 The Workforce Specialist must ensure that those of its Personnel and Subcontractors who, when providing Services, engage with Participants who may require interpreter services, have received training in the use of interpreters in accordance with the training requirements specified in any Guidelines or as otherwise advised by the Department.

15. Workforce Specialist's conduct

- 15.1 The Workforce Specialist must:
- (a) at all times, act in good faith towards the Department and Participants, and in a manner that does not bring the Services, the Workforce Specialist 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 Workforce Specialist or the Department should it become publicly known.
- 15.2 The Workforce Specialist 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) Deliverables or the achievement of Milestone(s) and any related KPIs;
 - (iii) Payment or Payment related process;
 - (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 Workforce Specialist 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 Workforce Specialist is not in breach of clause 15.2(a); and

- (ii) Notify the Department of the practice identified and the action taken by the Workforce Specialist under clause 15.2(b)(i), and provide all information in relation to the situation as required by the Department.
- 15.3 The Workforce Specialist must not have a remuneration or rewards structure that encourages its Personnel to act in a manner that is inconsistent with:
 - (a) the objectives of the Services as specified in any request for proposal for this Deed; or
 - (b) the requirements of this Deed.
- 15.4 Where the Department determines that the Workforce Specialist has breached clause 15.2 or 15.3, the Department may, at its absolute discretion and by Notice to the Workforce Specialist:
 - (a) exercise any remedies specified in clause 62.2; or
 - (b) terminate this Deed under clause 65.
- 15.5 The Workforce Specialist 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 Workforce Specialist, or to an Authorised Officer of the Department as specified on the Department's website (<https://www.dewr.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 Workforce Specialist, 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.
- 15.6 For the avoidance of doubt, no right or obligation arising from this Deed is to be read or understood as limiting the Workforce Specialist's right to enter into public debate regarding policies of the Australian Government, its agencies, employees, servants or agents.

16. Joint Charter

- 16.1 The Department and the Workforce Specialist agree to conduct themselves in accordance with the Joint Charter.

17. Information provided to the Department

17.1 The Workforce Specialist must ensure that:

- (a) all information it provides to the Department (including the DSCC) and any Employment Services Provider, 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 17.1(a); and
- (c) any data entered into the Department's IT Systems or otherwise provided to the Department is consistent with any associated Documentary Evidence held by the Workforce Specialist.

18. Records to be provided

18.1 Without limiting its obligations under clause 49, when requested by the Department, the Workforce Specialist must provide to the Department, or the Department's nominee, any Records in the possession or control of the Workforce Specialist 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.

19. General reporting

19.1 Without limiting any other provisions of this Deed, the Workforce Specialist must provide:

- (a) to the Department a Workforce Specialist Profile within 20 Business Days after the day on which the Workforce Specialist executes the Deed and at any other times requested by the Department and specified in any Guidelines; and
- (b) as required by the Department:
 - (i) specific Reports on:
 - (A) 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; and
 - (B) the financial status of the Workforce Specialist; and

- (ii) a suitably qualified, informed and authorised representative at any meeting arranged by the Department, in order to discuss and accurately answer questions relating to any Report provided under this clause 19.

19.2 In addition to the Reports referred to in clause 19.1, the Workforce Specialist 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.

19.3 The Workforce Specialist 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 Workforce Specialist must submit a revised Report to the Department's complete satisfaction within 10 Business Days of Notice to the Workforce Specialist from the Department to do so.

20. Liaison and directions

Note: Pursuant to clause 9.1, this clause also applies to a Contract and all references to 'this Deed' are taken to be a reference to 'Contract'.

20.1 The Workforce Specialist 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 20.1(a) includes, for example, an auditor appointed by the Department.

20.2 For the day to day management of, and communication under, this Deed, the Department and the Workforce Specialist must respectively nominate a Provider Lead 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.

20.3 The Workforce Specialist must:

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

- 20.4 The Workforce Specialist must notify a Participant's Employment Services Provider, or the DSCC (in the case of a Workforce Australia Services Online Participant), of:
- (a) any change in the circumstances of the Participant, within 5 Business Days of becoming aware of the change; and
 - (b) any incident involving the Participant occurring during, or as a result of, the Services, including:
 - (i) any accident, injury or death; and
 - (ii) any incident which relates to a work, health and safety issue.
- 20.5 The Workforce Specialist must immediately Notify the Department of any incident occurring that is referred to in clause 20.4(b).
- 20.6 The Workforce Specialist must respond within five Business Days to any request for information by the Employment Services Provider or the Department (including the DSCC) about any change in circumstances referred to in clause 20.4.

21. Business level expectations

- 21.1 The Department provides no guarantee of:
- (a) the volume or type of business the Workforce Specialist will receive, including the number of Referrals;
 - (b) the numbers of Participants for any Services; or
 - (c) the accuracy of market and other information provided in any request for proposal for this Deed.

22. Additional Services

- 22.1 The Department and the Workforce Specialist may agree to the provision of other Workforce Specialist Services or related services by the Workforce Specialist to the Department, including applicable terms and conditions.

23. Workforce Specialist's obligation to assist and cooperate with the Department and others

- 23.1 The Workforce Specialist 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, including where a Workforce Specialist Project ends or this Deed and/or the relevant Contract is novated.
- 23.2 The assistance and cooperation the Workforce Specialist must provide under clause 23.1 includes complying with the Department's directions in relation to:
- (a) the transfer of Deed Material and Commonwealth Material in the Workforce Specialist'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 A2.4 – Some basic rules about financial matters

24. General

- 24.1 Subject to sufficient funds being validly appropriated for the Services and the Workforce Specialist's compliance with this Deed to the Department's complete satisfaction, the Department will make Payments to the Workforce Specialist, at the times and in the manner specified in this Deed, to the account specified in any Contract.
- 24.2 The Workforce Specialist 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.
- 24.3 Where the Department determines that the Workforce Specialist is in breach of clause 24.2, the Department may recover some or all of the amount of the relevant Payment, at its absolute discretion, from the Workforce Specialist as a debt in accordance with clause 29, and exercise any other remedies specified in clause 62.2.
- 24.4 Subject to any Guidelines, the Workforce Specialist 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 Workforce Specialist:
 - (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.
- 24.5 If the Workforce Specialist 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.
- 24.6 The Workforce Specialist 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.

25. Evidence to support entitlement to Payments

25.1 The Workforce Specialist 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 or in such other manner Notified by the Department or specified in any Guidelines; and
- (b) otherwise, within five Business Days of any request by the Department to do so.

25.2 If:

- (a) the Workforce Specialist does not comply with a request by the Department under clause 25.1, including if the Documentary Evidence provided is not true, complete and accurate; and
- (b) the Department has already paid the Workforce Specialist the relevant Payment,

the Department may recover some or all of the amount of the relevant Payment, at its absolute discretion, from the Workforce Specialist as a debt in accordance with clause 29, and exercise any other remedies specified in clause 62.2.

25.3 The Department may contact Employment Services Providers, Employers, Host Organisations or Participants or any other relevant parties to verify Documentary Evidence provided by the Workforce Specialist.

26. Exclusions

26.1 The Department will not pay any money to the Workforce Specialist in excess of the Payments.

26.2 The Workforce Specialist 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.

26.3 The Workforce Specialist 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.

27. Ancillary Payments

27.1 The Department may pay the Workforce Specialist 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.

28. Overpayment and double payment

Overpayment

28.1 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 Workforce Specialist, at its absolute discretion, as a debt in accordance with clause 29.

Double payment

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

- (a) the Workforce Specialist warrants that neither it, nor any Related Entities, are entitled to payment from:
 - (i) the Department or other Commonwealth sources;
 - (ii) state, territory or local government bodies; or
 - (iii) any other entity (including any Employer),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 Workforce Specialist to provide evidence, in a form acceptable to the Department, proving that neither the Workforce Specialist, nor any Related Entities, are so entitled.

28.3 Throughout the Term of this Deed, the Workforce Specialist must Notify the Department if it or any Related Entity intends to deliver services that are, or could be perceived to be, the same as or similar to, the Services provided under this Deed.

28.4 For the purposes of clause 28.2, if the Department determines, at its absolute discretion, that the Workforce Specialist, or any Related Entity, is entitled to payment from the Department, other Commonwealth sources, state, territory or local government bodies, or any other entity (including any Employer) 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 29.

- 28.5 Regardless of any action the Department may take under clause 28.4, 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 28.4.

29. Debts and offsetting

- 29.1 If the Workforce Specialist 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 Workforce Specialist 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 Workforce Specialist if it exercises its rights under clause 29.1(b) within 10 Business Days after having exercised those rights; and
 - (d) the Workforce Specialist must continue to perform its obligations under this Deed despite any action taken by the Department under clause 29.1(a) and/or 29.1(b).
- 29.2 Unless otherwise agreed by the Department in writing, the Workforce Specialist must pay to the Department any debt due to the Commonwealth from the Workforce Specialist within 30 calendar days of receipt of a Notice from the Department requiring payment.
- 29.3 Where the Workforce Specialist owes any debt to the Commonwealth under this Deed, Interest is payable by the Workforce Specialist 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.

30. Taxes, duties and government charges

- 30.1 Unless expressly stated to the contrary, all dollar amounts in this Deed are inclusive of GST.
- 30.2 If a Payment is not in relation to a Taxable Supply, the Workforce Specialist must only claim or accept an amount exclusive of GST.
- 30.3 Unless otherwise advised by the Department or specified in any Guidelines, the Workforce Specialist must give to the Department a Tax Invoice for any Taxable Supply before any Payments are made to the Workforce Specialist as consideration for the Taxable Supply.
- 30.4 The Workforce Specialist must not claim or accept from the Department any amount for which it can claim an Input Tax Credit.
- 30.5 Where any debt is repaid, including by offset under clause 29.1(b), an Adjustment Note must be provided to the Department if required by the GST Act.

- 30.6 Subject to this clause 30, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the Workforce Specialist.

31. Fraud

- 31.1 The Workforce Specialist 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.

- 31.2 If, after investigation, the Department considers that the Workforce Specialist has failed to comply with clause 31.1, the Department may:

- (a) exercise any remedies specified in clause 62.2; or
- (b) terminate this Deed under clause 65,

by providing Notice to the Workforce Specialist.

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

32. Financial statements and guarantees

- 32.1 Subject to clause 32.3:

- (a) where the Workforce Specialist has a Contract it must, for the Contract Term for each Contract, provide to the Department audited financial statements:
 - (i) 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
 - (ii) no later than 120 Business Days after the end of its financial year, where during part or all of that financial year, the Workforce Specialist had a Contract; and
- (b) the Panel Member must, for the Term of this Deed while it does not have a Contract, provide to the Department either audited or unaudited financial statements:
 - (i) 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
 - (ii) no later than 120 Business Days after the end of its financial year, where during all of that financial year the Panel Member did not have a Contract; and

- (c) for avoidance of doubt, once a Panel Member has a Contract, it must provide the Department with audited financial statements in accordance with clause 32.1(a) above.
- 32.2 If the Workforce Specialist or Panel Member is a Group Respondent or a partnership, then the Workforce Specialist or Panel Member must provide to the Department one copy of the consolidated financial statements specified in clause 32.1 for the Group Respondent or partnership, if available, and individual annual financial statements for each member of the Group Respondent.
- 32.3 If directed by the Department, the Workforce Specialist or Panel Member 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 Workforce Specialist,in a form and in terms satisfactory to the Department.
- 32.4 The Workforce Specialist must ensure that any guarantee provided in accordance with clause 32.3(b) remains in place until the Department Notifies the Workforce Specialist that it is no longer required.
- 32.5 If an Insolvency Event occurs in relation to the Related Entity that has provided the guarantee under clause 32.3(b)(ii), the Workforce Specialist must replace the performance guarantee to the Department's complete satisfaction within five Business Days of such an event occurring.
- 32.6 Any guarantee provided under clause 32.3(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 Workforce Specialist 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.
- 32.7 If the Workforce Specialist fails to provide or maintain any guarantee required by clause 32.3(b), the Department may withhold all or part of any Payment until the Workforce Specialist meets that obligation.
- 32.8 If the Department exercises any or all of its rights under any guarantee provided under clause 32.3(b), the Department will not be liable for, and the Workforce Specialist releases the Department from liability for, any resultant Loss by the Workforce Specialist.

Section A2.5 – Assessment and management of Workforce Specialist's performance

33. Evaluation activities

- 33.1 The Workforce Specialist agrees that:
- (a) evaluation activities may be undertaken by the Department for the purposes of evaluating the Services, including the Workforce Specialist's performance, and may include:
 - (i) the Department monitoring, measuring and evaluating the delivery of the Services by the Workforce Specialist;
 - (ii) the Workforce Specialist's Personnel and Subcontractors being interviewed by the Department or an independent evaluator nominated by the Department; and
 - (iii) the Workforce Specialist giving the Department or the Department's evaluator access to its premises and Records in accordance with clause 49; and
 - (b) it will fully cooperate with the Department in relation to all such activities.

34. Sample reviews

- 34.1 The Workforce Specialist acknowledges and agrees that:
- (a) the Department may conduct sample reviews of claims for payments made by the Workforce Specialist, 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 62.2 in relation to the Deemed Invalid Claims.
- 34.2 The Department may engage in any form of sampling activity, including:
- (a) evaluating how the Workforce Specialist has claimed payments from the Department by reviewing and investigating only a sample of the Workforce Specialist'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.
- 34.3 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 34.5, all, or that proportion of, the Workforce Specialist'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').

34.4 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 62.2; or
- (b) exercise any of its rights under clause 65.

Sampling methodology

34.5 For the purposes of clause 34.3, 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 34; and
- (b) will provide at least a 95 per cent confidence level that the proportion and/or value of Invalid Claims identified in the Sample Review can be extrapolated as specified in clause 34.3.

34.6 The Department must disclose the methodology used in a Sample Review to the Workforce Specialist before exercising the Department's rights under clause 34.4.

Section A2.6 – Customer feedback

35. Customer feedback process

35.1 The Workforce Specialist 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 Workforce Specialist'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 Workforce Specialist;

- (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.
- 35.2 If a Customer is dissatisfied with the results of the Customer feedback process, the Workforce Specialist must refer the Customer to the Department's National Customer Service Line for further investigation of the matter.
- 35.3 Upon request, the Workforce Specialist must give to the Department and Customers copies and details of the process it has established to manage Customer feedback.
- 35.4 The Workforce Specialist 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

36. General

- 36.1 Unless otherwise Notified by the Department or specified in any Guidelines, the Workforce Specialist must conduct the Services by Accessing the Department's IT Systems provided by the Department for that purpose.
- 36.2 The Department may require that data relating to specific transactions must only be stored on the Department's IT Systems, and the Workforce Specialist must comply, and ensure that all Subcontractors and Third Party IT Vendors comply, with any such requirements.
- 36.3 The Workforce Specialist must not allow any Workforce Specialist Personnel, Third Party IT Vendors 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.
- 36.4 The Workforce Specialist is responsible for all costs of meeting its obligations under this clause 36.

37. Access and information security assurance

Access to the Department's IT Systems

- 37.1 Unless otherwise Notified by the Department or specified in any Guidelines, the Workforce Specialist 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 37.

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 Workforce Specialist or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems. 'External IT System' includes a Workforce Specialist IT System and any Third Party IT.

- 37.2 The Workforce Specialist 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 Workforce Specialist IT System are outlined in the Department's Right Fit For Risk program under the ESAF.
- 37.3 The Workforce Specialist must:
- (a) advise the Department by email to securitycompliancesupport@dewr.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).

37.4 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 Workforce Specialist; and

the Workforce Specialist:

- (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 Workforce Specialist arising from such changes.

Workforce Specialist IT System accreditation

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

37.5 Subject to the requirements of the ESAF, the Workforce Specialist must:

- (a) obtain RFFR Accreditation for any Workforce Specialist 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 Contract End Date.

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

37.7 If the Workforce Specialist does not obtain accreditation or reaccreditation within the timeframes specified in the ESAF or this clause 37, the Workforce Specialist must immediately cease using, and ensure that any relevant Subcontractor ceases using, the relevant Workforce Specialist 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 Workforce Specialist 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.

37.8 The Workforce Specialist 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 Employment System:
 - (i) ensure that the relevant Third Party IT Vendor has entered into a current Third Party IT Vendor Deed with the Department in relation to the Third Party Employment System; and
 - (ii) only allow Access in accordance with the terms of the relevant Third Party IT Vendor Deed and any Guidelines;
- (c) where the Third Party IT is a Third Party Supplementary IT System:
 - (i) ensure that the Workforce Specialist has included the Third Party Supplementary IT System as part of its Workforce Specialist 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.

37.8A.1 The Workforce Specialist acknowledges and agrees that the Department:

- (a) does not warrant that any Third Party Employment System that is accredited in accordance with a Third Party IT Vendor Deed is:
 - (i) fit for its intended use or for a Workforce Specialist's specific business processes; or
 - (ii) free from error or security weaknesses; and
- (b) is not liable or responsible for any Loss incurred by the Workforce Specialist in connection with its use of a Third Party IT Vendor in connection with this Deed.

37.8A.2 In addition to any applicable requirements under clause 58, the Workforce Specialist must ensure that any arrangement with a Third Party IT Vendor includes a right of termination for the Workforce Specialist to take account of the Department's:

- (a) right to revoke accreditation of a Third Party Employment System under any Third Party IT Vendor Deed; and
- (b) right of termination under clauses 64 and 65 of this Deed,

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

Technical advice

37.9 The Workforce Specialist must:

- (a) nominate Personnel ('IT Contact') by email to their Provider Lead 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

37.10 The Workforce Specialist must comply, and ensure that its Subcontractors and Third Party IT Vendors comply, with the Department's Security Policies, as relevant.

37.11 The Workforce Specialist 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.

37.12 The Workforce Specialist 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.

37.13 Where the Department considers that the Workforce Specialist may be in breach of this clause 37, or there is a risk of such a breach, the Department may, at its absolute discretion, immediately suspend Access, or require the Workforce Specialist 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 Workforce Specialist; or
- (e) any External IT System,

by providing Notice to the Workforce Specialist.

37.14 Where the Department determines that the Workforce Specialist is in breach of, or has previously breached, this clause 37, the Department may immediately exercise any remedies specified in clause 62.2.

- 37.15 If the Department gives Notice to the Workforce Specialist that Access to the Department's IT Systems is terminated for any particular Workforce Specialist Personnel, Subcontractor or Third Party IT Vendor, the Workforce Specialist 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

- 37.16 For the purposes of clauses 37.17 to 37.18:

'Clients' means entities who may use the Workforce Specialist's computers and/or other digital technology that is supported through public funding provided pursuant to this Deed, and includes Participants, the Workforce Specialist, 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.

- 37.17 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.
- 37.18 The Workforce Specialist must take Reasonable Steps to protect its Clients' cybersafety.

Section A3.2 – Intellectual Property Rights and Moral Rights

38. Intellectual Property Rights

- 38.1 This clause 38 does not affect the ownership of the Intellectual Property Rights in any Commonwealth Material incorporated into Deed Material, any Existing Material or Third Party Material.
- 38.2 Without affecting the Workforce Specialist's ownership of any applicable Intellectual Property Rights, the Workforce Specialist acknowledges and agrees that the Department may utilise ideas and learnings arising out of a Concept Discussion and/or a Co-design Phase, and may use, adapt and share any such ideas and learnings for any purpose connected with Workforce Specialists and any other Department employment services program or initiative.
- 38.3 The Workforce Specialist 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.
- 38.4 Subject to clause 38.5, all:
- (a) Intellectual Property Rights in; and
 - (b) rights of ownership of any physical documents comprising,

any Deed Material vest in the Workforce Specialist on creation.

- 38.5 The Workforce Specialist 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) any 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 Workforce Specialist:
 - (i) in connection with the Services; or
 - (ii) for any other Commonwealth purpose,that Material.
- 38.6 To the extent that the Workforce Specialist needs to use any of the Commonwealth Material for the purpose of performing its obligations under this Deed, the Department grants to the Workforce Specialist, 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.
- 38.7 On the expiration or earlier termination of this Deed or on such earlier date as may be specified by the Department, the Workforce Specialist must deliver to the Department a copy of any:
- (a) Deed Material; and
 - (b) Commonwealth Material,
- in the possession or control of the Workforce Specialist, any of its Personnel or any Subcontractor, or deal with the Material as otherwise directed by the Department.
- 38.8 The Workforce Specialist 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 38.
- 38.9 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 Workforce Specialist must promptly, at the Workforce Specialist'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.

39. Moral Rights

- 39.1 To the extent permitted by law and for the benefit of the Department, the Workforce Specialist must use its best endeavours to ensure that each of the Workforce Specialist'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.
- 39.2 In this clause 39, '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

- 39.3 The Workforce Specialist 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/resources/commonwealth-coat-arms-information-and-guidelines>).

Section A3.3 – Control of information

40. Personal and Protected Information

- 40.1 Clauses 40.2 to 40.7 apply only where the Workforce Specialist 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.
- 40.2 The Workforce Specialist 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 40 expressly requires the Workforce Specialist to comply with an APP that applies only to an organisation, and subject to clause 40.3, to carry out and discharge the obligations contained in the APPs as if it were an agency;
- (c) subject to clause 40.3, 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 Workforce Specialist 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 Workforce Specialist;
- (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 40;
- (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 Workforce Specialist suspends or terminates any of its relevant Personnel, or if any of its relevant Personnel resign, the Workforce Specialist must immediately:
 - (i) remove any access that the Personnel have to any relevant Personal Information;

- (ii) require that the Personnel return to the Workforce Specialist 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);
 - (ii) are made aware of their obligations in this clause 40, including to undertake in writing to comply with the APPs (or a registered APP code, where applicable); and
 - (iii) otherwise comply with any Guidelines.
- 40.3 The Workforce Specialist will not, by reason of this clause 40, be bound by any provision of the *Privacy (Australian Government Agencies – Governance) APP Code 2017*.
- 40.4 Unless such act or practice is expressly authorised by this Deed, no clause in this Deed will be interpreted so as to authorise the Workforce Specialist or its Subcontractors to engage in an act or practice that would breach an APP if done or engaged in by the Department.
- 40.5 The Workforce Specialist 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 40 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 Workforce Specialist by the Australian Information Commissioner or by an individual claiming that their privacy has been interfered with.

Notifiable data breaches

- 40.6 If the Workforce Specialist 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 Workforce Specialist holds as a result of this Deed or its performance of the Services, the Workforce Specialist must:
- (a) Notify the Department in writing no later than the Business Day after the Workforce Specialist 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.

40.7 Where the Workforce Specialist is aware that there are reasonable grounds to believe that there has been, or where the Department Notifies the Workforce Specialist that there has been an eligible data breach in relation to any Personal Information the Workforce Specialist holds as a result of this Deed or its performance of the Services, the Workforce Specialist 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

40.8 The Workforce Specialist 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).

41. Confidential Information

Confidential information not to be disclosed

- 41.1 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.
- 41.2 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

- 41.3 The obligations on the Parties under this clause 41 will not be breached to the extent that Confidential Information is disclosed:
 - (a) unless otherwise Notified by the Department, by the Workforce Specialist to its Personnel to enable the Workforce Specialist to comply with its obligations, or to exercise its rights, under this Deed;
 - (b) unless otherwise Notified by the Department, by the Workforce Specialist 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

- 41.4 Where the Workforce Specialist discloses Confidential Information to its Personnel pursuant to clause 41.3(a) or 41.3(b), the Workforce Specialist must notify the Personnel that the information is Confidential Information.

No reduction in privacy obligations

- 41.5 Nothing in this clause 41 limits the obligations of the Workforce Specialist under clauses 40, 46 or 47.

Section A3.4 – Records management

42. Records the Workforce Specialist must keep

- 42.1 The Workforce Specialist 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.
- 42.2 Notwithstanding this clause 42, if the Department considers it appropriate, the Department may, at its absolute discretion, impose special conditions in relation to Records management, and the Workforce Specialist must comply with those special conditions as directed by the Department.

Financial Accounts and Records

- 42.3 The Workforce Specialist 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 Workforce Specialist; and
 - (ii) an auditor or other entity may examine them at any time and thereby ascertain the Workforce Specialist's financial position.

Records Management Instructions

- 42.4 Without limiting the Workforce Specialist's other obligations under this Deed, including in relation to Personal Information, the Workforce Specialist 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.

42.5 The Workforce Specialist 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.

42.6 All Records must be retained by the Workforce Specialist 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

42.7 If any Third Party IT Vendor creates or maintains Records in association with the delivery of the Services by the Workforce Specialist, the Workforce Specialist must comply, and must ensure that the Third Party IT Vendor complies, with the requirements in this clause 42 in respect of any such Records.

43. Public Sector Data

43.1 The Department may at any time require the Workforce Specialist 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 *Data Availability and Transparency Act 2022* (Cth) ('**DAT Act**').

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

43.2 Where Notified under clause 43.1, the Workforce Specialist must:

- (a) provide the required Public Sector Data to the Department or a third party nominated by the Department within the timeframe and in the manner and form specified by the Department; and
- (b) in providing the required Public Sector Data to the Department or a third party, comply with the relevant data breach provisions of the DAT Act.

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

- 43.4 The Workforce Specialist agrees that compliance with this clause 43 is at the Workforce Specialist's own cost.

44. Access by Participants and Employers to Records held by the Workforce Specialist

- 44.1 Subject to this clause 44, the Workforce Specialist 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 44.3.
- 44.2 The Workforce Specialist must, in providing access to the requested Records in accordance with clause 44.1:
- (a) ensure that the relevant Participant or Employer requesting the access in clause 44.1 provides proof of identity to the Workforce Specialist before access is given to the requested Records;
 - (b) ensure that any third party requesting the access in clause 44.1 on behalf of a Participant or Employer provides to the Workforce Specialist 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.
- 44.3 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 Workforce Specialist to the Department for consideration.
- 44.4 The Workforce Specialist must comply with any direction given by the Department in relation to the provision, or refusal, of access to Records held by the Workforce Specialist to a Participant or Employer.

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

- 45.1 In this clause 45, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 45.2 The Workforce Specialist agrees that:
- (a) where the Department has received a request for access to a document created by, or in the possession of the Workforce Specialist, 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 Workforce Specialist to provide the document to the Department and the Workforce Specialist must, at no additional cost to the Department, promptly comply with the Notice;
 - (b) the Workforce Specialist 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 Workforce Specialist must include in any Subcontract, or contract with a Third Party IT Vendor, provisions that will enable the Workforce Specialist to comply with its obligations under this clause 45.

46. Program Assurance Activities and audits

- 46.1 The Department may conduct Program Assurance Activities and audits relevant to the performance of the Workforce Specialist's obligations under this Deed including in relation to:
- (a) the Workforce Specialist'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 Workforce Specialist's invoices and reports provided, or claims for payments made, under this Deed;
 - (c) the Workforce Specialist's compliance with its confidentiality, privacy and security obligations under this Deed;
 - (d) Material (including Records) in the possession of the Workforce Specialist relevant to the Services or this Deed;
 - (e) the financial statements of the Workforce Specialist and the financial capacity of the Workforce Specialist to perform the Services; and
 - (f) any other matters determined by the Department to be relevant to the Services or this Deed.
- 46.2 Each Party must bear its own costs in relation to any action under this clause 46.
- 46.3 The Workforce Specialist's compliance with this clause 46 does not in any way reduce the Workforce Specialist's responsibility to perform its obligations in accordance with this Deed.

47. Performance assessments

- 47.1 The Department will monitor, measure and evaluate the Workforce Specialist's performance against the requirements of this Deed and any Contract throughout the Term of the Deed, including, and as relevant, the KPIs, the achievement of Milestones by the applicable Milestone Dates, and any other factors as specified in any Guidelines.
- 47.2 For the purposes of clause 47.1, the Department may rely on data collected from any source, including, feedback from Participants, Employers, employment services providers and other key stakeholders, and intelligence from the Department's Employment Services Tip off Line.
- 47.3 At any time during the Term of the Deed, the Department may provide feedback to the Workforce Specialist on the Department's assessment of its performance.
- 47.4 The Workforce Specialist agrees that the Department may publish information that the Department holds concerning the Workforce Specialist's performance of the Services.

48. Action about performance

Note: Clause 62 provides that the Department may exercise certain remedies, including reducing or not paying specific Payments that would otherwise have been payable in respect of a relevant obligation, where the Workforce Specialist's performance of any of its obligations under this Deed is less than satisfactory to the Department.

- 48.1 If:
 - (a) both:
 - (i) the Workforce Specialist fails to meet a Milestone Date or achieve a Milestone and any related KPI; and
 - (ii) the Department is not satisfied that the failure to meet the Milestone Date or achieve the Milestone and the related KPI is due to exceptional circumstances beyond the Workforce Specialist's reasonable control; or
 - (b) the Workforce Specialist otherwise fails to perform to the Department's satisfaction,

the Department may issue a Remediation Plan Notice to the Workforce Specialist specifying the details of the underperformance and requiring the Workforce Specialist to submit a draft remediation plan in accordance with the time period specified in the Remediation Plan Notice.
- 48.2 Unless otherwise advised by the Department, the draft remediation plan must set out how and when the Workforce Specialist will address the underperformance in performing the Services and address, at a minimum, the following items:
 - (a) an analysis of the root cause of the underperformance;
 - (b) current mitigations in place to ensure no escalation of the underperformance;
 - (c) the key activities to be completed to resolve the underperformance;
 - (d) the date of completion of the key activities;
 - (e) the resources dedicated to the rectification of the underperformance;

- (f) the action taken, or to be taken, to ensure there will be no recurrence of the underperformance; and
 - (g) any other items specified in the Remediation Plan Notice.
- 48.3 The Department must, within five Business Days following the date on which a draft remediation plan is received by the Department:
- (a) approve the draft remediation plan, in which case the draft Remediation Plan will become the Remediation Plan; or
 - (b) acting reasonably, request amendments to the draft remediation plan, in which case the Workforce Specialist must make the amendments and resubmit the draft remediation plan for the Department's approval, within two Business Days following receiving the request. If approved by the Department, the amended draft remediation plan will become the Remediation Plan.
- 48.4 The Workforce Specialist must comply with the Remediation Plan.
- 48.5 If the Workforce Specialist fails to comply with the terms of a Remediation Plan, the Department may terminate the Contract under clause 65.

49. Access to Material

- 49.1 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.
- 49.2 For the purposes of clauses 46.1 and 49.1, the Workforce Specialist must, in accordance with any request by the Department, give or arrange:
- (a) unfettered access for the Department to:
 - (i) any of its 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 Workforce Specialist'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 46.1;
 - (ii) inspect its premises and those of any Subcontractor or Third Party IT Vendor;
 - (iii) inspect the performance of Services;
 - (iv) access any External IT System, including through the Department's IT Systems; and
 - (v) locate, inspect, copy and remove, any Records including data stored on any External IT System.

49.3 Subject to clause 49.4, the obligations referred to in clause 49.2 are subject to the Department providing reasonable prior notice to the Workforce Specialist and compliance with the Workforce Specialist's reasonable security procedures.

49.4 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 Workforce Specialist; 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 49.3 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 49.4, provided that, in the case of clauses 49.4(a) and 49.4(b), the Department returns a copy of all such Records to the Workforce Specialist 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).

49.5 Each Party must bear its own costs in relation to any action under this clause 49.

49.6 The Workforce Specialist's compliance with this clause 49 does not in any way reduce the Workforce Specialist's responsibility to perform its obligations in accordance with this Deed.

CHAPTER A4 – DEED ADMINISTRATION

Section A4.1 – Indemnity and insurance

50. Indemnity

- 50.1 The Workforce Specialist 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 Workforce Specialist;
 - (ii) a Subcontractor (whether or not the relevant entity is a current Subcontractor); or
 - (iii) 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 Workforce Specialist of this Deed or failure to meet an undertaking given under this Deed;
 - (c) publication of the information referred to in clauses 47.4 or 68, where the published information was provided by the Workforce Specialist 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.
- 50.2 The liability of the Workforce Specialist to indemnify the Department under this clause 50 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant Loss.
- 50.3 The Department's right to be indemnified under this clause 50 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

- 50.4 In this clause 50, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

51. Insurance

51.1 Subject to this clause 51 and unless the Department otherwise agrees in writing, the Workforce Specialist 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 51.1(b)(i)(A) and the professional indemnity insurance or errors and omissions insurance at clause 51.1(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 Workforce Specialist'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 52; and
 - (ii) the vicarious liability of the Department in respect of the acts or omissions of the Workforce Specialist, 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 Workforce Specialist); 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 51.1(b)),

arising out of, or in connection with, the Workforce Specialist'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 Workforce Specialist 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 51.1(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 Workforce Specialist's or the Workforce Specialist'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 Contract End 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 Workforce Specialist at general law and additionally as assumed under the terms of clause 52 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 Workforce Specialist, 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 Workforce Specialist'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 52; and
 - (ii) the vicarious liability of the Department in respect of the acts or omissions of the Workforce Specialist, 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 Workforce Specialist, 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 51.1(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 Workforce Specialist's premises;
 - (ii) participating in a Workforce Specialist Project; and
 - (iii) travelling between:
 - (A) the Workforce Specialist's premises and the Participant's home following Referral;
 - (B) the Workforce Specialist's premises and locations where the Participant is participating in a Workforce Specialist Project; and
 - (C) the Participant's home and locations where the Participant is participating in a Workforce Specialist Project, other than at the Workforce Specialist's premises;

- (g) if the Workforce Specialist 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 Workforce Specialist, marine liability and/or aircraft liability insurance, as is appropriate, covering the liability of the Workforce Specialist, 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 51.1(a); and
- (h) cyber risk insurance of at least \$500,000 per claim or loss, or such higher amount as appropriate for the Workforce Specialist's business and the Services provided under this Deed, covering:
 - (i) the Workforce Specialist, 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 Workforce Specialist 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.

- 51.2 The Workforce Specialist must also effect and maintain, or cause to be effected and maintained, any other insurance policies required to adequately cover the Workforce Specialist's business risk that a similar entity delivering the Services, acting reasonably, would acquire, and any other insurance cover required by law.
- 51.3 Unless otherwise agreed by the Department in writing, all insurances required under this clause 51 (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.

- 51.4 Each of the insurances required by this clause 51 (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 notices of a claim given to the insurer by any insured entity will be accepted by the insurer as notice of a claim given by all the entities insured under the policy.
- 51.5 Clauses 51.4(a), 51.4(c) and 51.4(e) do not apply to any personal accident insurance required by this clause 51, and clause 51.4(a) does not apply to any professional indemnity or errors and omissions insurance.
- 51.6 In relation to the insurances specified in this clause 51, the Workforce Specialist 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.
- 51.7 The Workforce Specialist must Notify the Department immediately if it:
- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Workforce Specialist 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 Workforce Specialist which would be insured under the insurance referred to in clause 51.1(d)); or
 - (b) receives a notice of cancellation in respect of any of the insurances that the Workforce Specialist is obliged to effect and maintain.

- 51.8 The Workforce Specialist 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 51, 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

- 51.9 Subject to clause 51.10, the Workforce Specialist must obtain written independent professional advice that the insurances obtained by it and any Subcontractors pursuant to this clause 51 meet the requirements of this Deed:

- (a) before commencing the performance of any Services and in any event within 20 Business Days after the Contract Start Date;
- (b) within 10 Business Days of the date of commencement of a policy, where the Workforce Specialist has changed any policy or its insurer(s); and
- (c) within 10 Business Days of the date of renewal of each of the insurances required under this Deed.

- 51.10 Where the advice referred to in clause 51.9 relates to insurances obtained by a Subcontractor, the written independent professional advice in relation to that insurance may be obtained by either the Workforce Specialist or the Subcontractor.

- 51.11 Clause 51.9 does not apply to statutory workers compensation insurance or compulsory third party motor vehicle insurance.

- 51.12 The Workforce Specialist 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.

- 51.13 In relation to each insurance policy relied upon by the Workforce Specialist in compliance with the Workforce Specialist's obligations to effect and maintain, or cause to be effected and maintained, insurance as required by this Deed, the Workforce Specialist 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 51.9,

at any time that the Department requests.

Note: Clause 51.13 allows the Department to request information relating to the insurances of any Subcontractor of the Workforce Specialist.

- 51.14 Reserved.

Assistance to the Department

51.15 The Workforce Specialist 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.

51.16 For the avoidance of doubt, the provisions of this clause 51 are not to be read so as to reduce a Party's liability under any other provision of this Deed, and compliance by the Workforce Specialist with the provisions of this clause 51 does not limit its liability under any other provision of this Deed.

52. Liability of the Workforce Specialist to the Department

Joint and several liability

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

Proportionate liability

52.2 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 76, this clause 52.2 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 76 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.

53. Special rules about Group Respondents

53.1 If the Workforce Specialist is a Group Respondent, the Workforce Specialist:

- (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 Workforce Specialist 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

54. Corporate governance

54.1 The Workforce Specialist 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 Workforce Specialist'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.

Workforce Specialist Personnel

- 54.2 Unless otherwise agreed by the Department in writing at its absolute discretion, the Workforce Specialist 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 or Workforce Specialist; and
 - (ii) if clause 54.2(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 or Workforce Specialist Services provided to the Commonwealth;
 - (b) make a written Record of the result of the enquiry described in clause 54.2(a); and
 - (c) if clause 54.2(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.
- 54.3 Unless otherwise agreed by the Department in writing at its absolute discretion, the Workforce Specialist 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 Workforce Specialist.

54.4 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 54.3(a) to 54.3(f) while employed or engaged by the Workforce Specialist, or elected as an officer of the Workforce Specialist, in a role in:

(a) its management or financial administration, the Workforce Specialist will be in breach of clause 54.3, if the Workforce Specialist 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 Workforce Specialist must Notify the Department on becoming aware that the individual falls or has been discovered as falling within any of clauses 54.3(a) to 54.3(f), and take any action in respect of that individual, that is Notified by the Department.

Note: For the avoidance of doubt, clause 54.4(b) will also apply where an individual is transferred in accordance with clause 54.4(a)(i), to a role in the performance of the Services.

55. Removal and training of Workforce Specialist and Subcontractor Personnel

55.1 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 Workforce Specialist to remove Personnel (including Subcontractor Personnel) from work on the Services. The Workforce Specialist 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.

55.2 For the purposes of clause 55.1, if the Workforce Specialist is unable to provide replacement Personnel (including Subcontractor Personnel) who are acceptable to the Department, the Department may terminate this Deed under clause 65.

- 55.3 The Workforce Specialist 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.

56. Change in Control of the Workforce Specialist or a Material Subcontractor

- 56.1 The Workforce Specialist must not, without the Department's prior written consent, cause or allow to occur a Change in Control of:
- (a) the Workforce Specialist; or
 - (b) any Material Subcontractor.
- 56.2 The Department may, at its absolute discretion, grant, or refuse to grant its consent to a Change in Control of the Workforce Specialist or any Material Subcontractor. If the Department grants its consent, the Department may do so on such conditions as the Department sees fit.
- 56.3 The Workforce Specialist 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 Workforce Specialist or any Material Subcontractor, including the dates of any changes to those matters.
- 56.4 If the Workforce Specialist breaches clause 56.1 or clause 56.3, the Department may:
- (a) exercise any remedies specified in clause 62.2; or
 - (b) terminate this Deed under clause 65,
- by providing Notice to the Workforce Specialist.
- 56.5 In determining whether to take action under clause 56.4, the Department may take into account any matter, including whether the Department considers, at its absolute discretion, that the relevant Change in Control presents a risk to the Commonwealth.

57. Notice regarding Insolvency Events

- 57.1 Without limiting any other provisions of this Deed, the Workforce Specialist 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 Workforce Specialist, a copy of any:
 - (i) record of a decision of the Workforce Specialist; 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 Workforce Specialist's winding up;
 - (v) decisions and orders of any court or tribunal made against the Workforce Specialist, or involving the Workforce Specialist, including an order for the Workforce Specialist'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 Workforce Specialist's winding up; or
 - (vii) notice that the Workforce Specialist has become bankrupt or has entered into a scheme of arrangement with their creditors (if the Workforce Specialist is an individual).

58. Subcontracting

- 58.1 The Workforce Specialist must not, without the Department's prior written approval, enter into, or terminate, a Subcontract.
- 58.2 In giving approval under clause 58.1, the Department may impose such terms and conditions as the Department thinks fit and the Workforce Specialist must comply with any such terms and conditions.
- Note: The Department will not approve a Subcontract for the provision of the whole of a Workforce Specialist Project to an employment services provider with a caseload.
- 58.3 The Subcontractors that the Department has approved, and any terms and conditions relating to their use, are identified in item 6 of Schedule 1 to any Contract.
- 58.4 If the Department gives any approval under clause 58.1 following the Contract Start Date, the Department may issue an updated Contract document or Schedule 1 to the Contract to reflect this approval.
- 58.5 The Workforce Specialist must ensure that any Subcontract is in writing.

- 58.6 The Workforce Specialist 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.
- 58.7 The Workforce Specialist 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.
- 58.8 The Workforce Specialist must:
- (a) ensure that any Subcontract requires the Workforce Specialist to pay the Subcontractor within 20 Business Days or less after the Subcontractor gives the Workforce Specialist a correctly rendered invoice under the Subcontract; and
 - (b) pay its Subcontractors in accordance with the terms of the relevant Subcontract.
- 58.9 The Department may revoke its approval of a Subcontractor on any reasonable ground by giving Notice to the Workforce Specialist, and, on receipt of the Notice, the Workforce Specialist must, at its own cost, promptly:
- (a) cease using that Subcontractor; and
 - (b) if the Workforce Specialist continues to require that the relevant function is Subcontracted, arrange for its replacement by another Subcontractor acceptable to, and approved by, the Department.
- 58.10 The Workforce Specialist must ensure that any Subcontract includes:
- (a) a right of termination for the Workforce Specialist to take account of the Department's right of termination under clauses 64 and 65 and the Department's right of revocation of approval of a Subcontractor under clause 58.9, and the Workforce Specialist 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 37.8(d) (Access and information security assurance); and

- (d) obligations on the Subcontractor that are the same as the obligations imposed on the Workforce Specialist 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 Workforce Specialist under clauses 40 (Personal and Protected Information), 41 (Confidential Information), 42 (Records the Workforce Specialist must keep), 43 (Public Sector Data), 46 (Program Assurance Activities and audits), 49 (Access to Material), 51 (Insurance), 70 (Negation of employment, partnership and agency), and 77 (Compliance with laws and government policies).
- 58.11 The Workforce Specialist 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 83).
- 58.12 The Department may publicly disclose the names of any Subcontractors.
- 58.13 The Workforce Specialist must inform all Subcontractors that their participation in performing any of the Workforce Specialist's obligations under this Deed may be publicly disclosed.
- 58.14 If the Workforce Specialist does not comply with this clause 58, the Department may:
- (a) exercise any remedies specified in clause 62.2; or
 - (b) terminate this Deed under clause 65.

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

- 58.15 Clauses 58.16 to 58.28 only apply to a Contract if:
- (a) the estimated value of the Contract is above \$4,000,000 (GST inclusive) as at the Contract Start Date, or the Department Notifies the Workforce Specialist that the Contract is of such value; and
 - (b) the Workforce Specialist is a Reporting Entity as at the date of the relevant request for proposal for this Deed.
- 58.16 The Workforce Specialist must comply with the PT PCP.

- 58.17 The Workforce Specialist must include in any PT PCP Subcontract:
- (a) a requirement for the Workforce Specialist to pay the PT PCP Subcontractor:
 - (i) subject to clause 58.19, 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 58.20, for payments made by the Workforce Specialist 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 58.17 have not been complied with.
- 58.18 The Workforce Specialist 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 58.17; 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 58.17; and
 - (ii) obligations equivalent to this clause 58.18(b) (such that the obligations in this clause 58.18(b) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 58.19 Clause 58.17(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 58.17(a)(i).
- 58.20 The Workforce Specialist is not required to pay Interest if:
- (a) the Commonwealth has failed to pay the Workforce Specialist in accordance with the timeframes and requirements under the relevant Contract; or
 - (b) the amount of the interest payable is less than \$100 (GST inclusive).

PT PCP Evaluation Questionnaire

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

Non-Compliance and Remediation

- 58.22 If the Commonwealth considers or becomes aware that the Workforce Specialist has not or may not have complied with:
- (a) the requirements of clauses 58.15 to 58.20; or
 - (b) the payment requirements of a PT PCP Subcontract,
- the Commonwealth may direct the Workforce Specialist 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 Workforce Specialist's compliance; or
 - (d) a properly completed PT PCP Remediation Plan.
- 58.23 The Workforce Specialist must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 58.22(d).
- 58.24 If the Commonwealth considers that the Workforce Specialist has failed to comply with any of its obligations under clauses 58.15 to 58.28, the Commonwealth may:
- (a) take the failure to comply into account as part of the Commonwealth's monitoring of the Workforce Specialist'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.
- 58.25 If the Workforce Specialist is the subject of a complaint in relation to its compliance with clauses 58.15 to 58.20 or the associated payment provisions of a PT PCP Subcontract, the Workforce Specialist 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

- 58.26 For any PT PCP Purpose, the Workforce Specialist consents to the Commonwealth:
- (a) using and sharing with any other Commonwealth Entity the information provided by the Workforce Specialist 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.

- 58.27 Without limiting clause 40, the Workforce Specialist 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 58.26. The Workforce Specialist must provide evidence of such consents to the Commonwealth on request.

Interpretation

- 58.28 A reference to the Commonwealth in clauses 58.21, 58.22, 58.25(b), 58.26 and 58.27 includes the PT PCP Policy Team.

59. Assignment and novation

- 59.1 The Workforce Specialist must not assign any of its rights under this Deed without the Department's prior written approval.
- 59.2 The Workforce Specialist must not enter into an arrangement that will require the novation of this Deed, without the Department's prior written approval.
- 59.3 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 presents a risk to the Commonwealth.

Section A4.3 – Resolving Problems

60. Dispute Resolution

Best endeavours, good faith and cooperation

- 60.1 Subject to clause 60.7, 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 60.
- 60.2 Each Party must:
- (a) only seek to rely on this clause 60 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 60, in order to achieve a prompt and efficient resolution of any dispute.

Informal resolution

- 60.3 Subject to clause 60.7, 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

60.4 Subject to clause 60.7, if any dispute arising in relation to this Deed cannot be resolved using the process in clause 60.3, 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 60.4(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 60.4(c), the Parties will engage in a mediation in accordance with clause 60.5.

Mediation

60.5 If clause 60.4(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

60.6 Each Party must bear its own costs of complying with this clause 60, and the Parties must bear equally the cost of any Mediator engaged under clause 60.5.

60.7 This clause 60 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 24 (General), 25 (Evidence to support entitlement to Payments), 28 (Overpayment and double payment), 29 (Debts and offsetting), 31 (Fraud), 34 (Sample reviews), 37 (Access and information security assurance), 43 (Public Sector Data), 44 (Access by Participants and Employers to Records held by the Workforce Specialist), 46 (Program Assurance Activities and audits), 47 (Performance assessments), 48 (Action about performance), 49 (Access to Material), 54 (Corporate governance), 58 (Subcontracting), 61 (Workforce Specialist suspension), 62 (Remedies), 63 (Performance under other Commonwealth agreements), 64 (Termination or reduction in scope with costs), 65 (Termination or reduction in scope for default) or 75 (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 Workforce Specialist.

60.8 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.

61. Workforce Specialist suspension

61.1 The Department may take action under clause 62.2(a) by issuing a Notice to the Workforce Specialist if the Department is of the opinion that:

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

- 61.2 Notwithstanding any action taken by the Department under clause 61.1, the Workforce Specialist must continue to perform its obligations under this Deed, subject to any Notice under clause 62.2(a)(i) to suspend the Services, in whole or in part.
- 61.3 If the Department suspends the Workforce Specialist from delivering Services under clause 62.2(a)(i), in whole or in part, the Workforce Specialist must 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:
- (a) immediately cease delivering the Services in accordance with the relevant Notice; and
 - (b) not accept any new Referrals in accordance with the relevant Notice.

62. Remedies

Note: Pursuant to clause 9.1(b), this clause also applies to a Contract and all references to 'this Deed' are taken to be a reference to 'Contract'.

- 62.1 If:
- (a) the Workforce Specialist 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 Workforce Specialist 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 Workforce Specialist'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 65; or
 - (e) this Deed otherwise provides for the Department to exercise rights under clause 62.2,

the Department may, at its absolute discretion and by providing Notice to the Workforce Specialist, immediately exercise one or more of the remedies specified in clause 62.2.

- 62.2 The remedies that the Department may exercise are:
- (a) suspending any or all of the following, until otherwise Notified by the Department:
 - (i) the Workforce Specialist from delivering Services under this Deed, in whole or in part;
 - (ii) Referrals;
 - (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 Workforce Specialist and/or any Subcontractor, Third Party IT Vendor, External IT System and/or any other entity;
- (b) terminating, or requiring the cessation of all Access to the Department's IT Systems for any particular Personnel of the Workforce Specialist and/or any Subcontractor, Third Party IT Vendor, External IT System or any other entity;
- (c) requiring the Workforce Specialist to obtain new logon IDs for any Personnel of the Workforce Specialist and/or any Subcontractor, Third Party IT Vendor and/or other entity, and if so required, the Workforce Specialist 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 Workforce Specialist and/or any Subcontractor, Third Party IT Vendor, External IT System and/or other entity;
- (e) requiring the Workforce Specialist to prepare and implement an IT security plan to the Department's complete satisfaction, and if so required, the Workforce Specialist 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 Workforce Specialist 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 Workforce Specialist, recovering some or all of the relevant payment from the Workforce Specialist, at the Department's absolute discretion, as a debt in accordance with clause 29;
- (j) imposing additional financial or performance reporting requirements on the Workforce Specialist;
- (k) ending any Contract or not extending any Contract Term;
- (l) varying any other aspect of any Contract, including any Special Conditions applicable to any Contract; and/or
- (m) reducing the scope of this Deed.

- 62.3 If the Department takes any action under this clause 62:
- (a) where relevant, this Deed is deemed to be varied accordingly; and
 - (b) the Workforce Specialist is not relieved of any of its obligations under this Deed.

63. Performance under other Commonwealth agreements

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

- (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 63.1(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 Workforce Specialist,

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

- (c) exercise any remedies specified in clause 62.2; or
- (d) terminate this Deed, if the failure, breach, or conduct under clause 63.1(a) or 63.1(b) permitted the Commonwealth to terminate the relevant Commonwealth agreement.

64. Termination or reduction in scope with costs

Note: Pursuant to clause 9.1(b), this clause also applies to a Contract and all references to 'this Deed' are taken to be a reference to 'Contract'.

- 64.1 The Department may, at its absolute discretion, at any time by Notice to the Workforce Specialist, terminate or reduce the scope this Deed.
- 64.2 If this Deed is terminated or reduced in scope under clause 64.1, the Department is only liable:
- (a) to make Payments as specified in clauses 64.3 and 64.4; and
 - (b) subject to clauses 64.6, 64.7 and 64.8, for any reasonable, unavoidable costs actually incurred by the Workforce Specialist and directly attributable to the termination or reduction in scope of this Deed.

Limitation on Payments in the case of termination

64.3 Where the Department terminates this Deed under clause 64.1:

- (a) subject to clause 64.3(d), the Department will only be liable to make Payments that are properly due to the Workforce Specialist before the date on which the termination takes effect;
- (b) any Payments that are:
 - (i) Payments in advance; and
 - (ii) due after the Workforce Specialist receives the relevant Notice issued by the Department under clause 64.1, 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;
- (c) the Department will be entitled to recover from the Workforce Specialist any Payments that have been paid in advance that relate to the Services to be performed after the date on which the termination takes effect; and
- (d) the Department will only be liable to pay any Reimbursement to the Workforce Specialist to the extent that the Workforce Specialist legally committed the relevant monies before the Workforce Specialist received the relevant Notice issued by the Department under clause 64.1.

Limitation of Payments in the case of reduction in scope

64.4 Where the Department reduces the scope of this Deed under clause 64.1, with respect to the Services that cease after the reduction in scope ('Ceased Services'):

- (a) subject to clause 64.4(e), the Department will only be liable to make Payments that are properly due to the Workforce Specialist before the date on which the reduction in scope takes effect;
- (b) any Payments that are:
 - (i) Payments in advance; and
 - (ii) due after the Workforce Specialist receives the relevant Notice issued by the Department under clause 64.1, 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 will be entitled to recover from the Workforce Specialist any Payments paid in advance that relate to the conduct of the Ceased Services after the date on which the reduction in scope takes effect;

- (d) 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 Workforce Specialist's obligations under this Deed; and
- (e) the Department will only be liable to pay any Reimbursement in respect of relevant monies legally committed by the Workforce Specialist:
 - (i) before the Workforce Specialist receives the relevant Notice issued by the Department under clause 64.1; or
 - (ii) after the Workforce Specialist receives the relevant Notice issued by the Department under clause 64.1 to the extent that the commitment of the relevant monies does not relate to the Ceased Services.

Workforce Specialist's obligations

- 64.5 Upon receipt of a Notice of termination or reduction in scope under clause 64.1, the Workforce Specialist 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 clause 64.3(c) or clause 64.4(c);
 - (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

- 64.6 The Department's liability to pay under this clause 64 is subject to the Workforce Specialist's:
- (a) strict compliance with this clause 64; and
 - (b) full and proper substantiation, to the Department's complete satisfaction, of any amounts claimed under clause 64.3 or 64.4.
- 64.7 The Department will not be liable under this clause 64 to pay any amounts for, or in connection with:
- (a) any loss of the Workforce Specialist's prospective profits attributable to the termination or reduction in scope under this clause 64;

- (b) any loss of any benefits that would have been conferred on the Workforce Specialist had the termination or reduction in scope under this clause 64 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 64.

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

- (a) any amounts owed by the Workforce Specialist under any contract of employment or to any of its Subcontractors or Third Party IT Vendors; and
- (b) payment of any liabilities arising from commitments the Workforce Specialist 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.

65. Termination or reduction in scope for default

Note: Pursuant to clause 9.1(b), this clause also applies to a Contract and all references to 'this Deed' are taken to be a reference to 'Contract'.

65.1 The Department may terminate or reduce the scope of this Deed, by giving Notice to the Workforce Specialist, if:

- (a) the Workforce Specialist 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 Workforce Specialist 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 65.1(c) does not apply where a Workforce Specialist 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 Workforce Specialist 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;
- (e) any Contract is terminated for default by the Department; or

- (f) the Department becomes expressly entitled to terminate this Deed under any other provision of this Deed (excluding clause 64) including under any other provision of this Deed giving the Department the right to terminate under this clause 65.

Section A4.4 – Other matters

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

Transition Period

- 66.1 The Department may Notify the Workforce Specialist of a Transition Period at any time and for any reason.
- 66.2 If the Department Notifies the Workforce Specialist of a Transition Period under clause 66.1, the Department may, at its absolute discretion, Notify the Workforce Specialist that:
 - (a) the Department is ceasing or reducing the number of Referrals to the Workforce Specialist;
 - (b) the Workforce Specialist 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 Workforce Specialist receives any such Notice, the Workforce Specialist must comply with the Notice.
- 66.3 Unless Notified otherwise by the Department, the Workforce Specialist must, during the Transition Period, continue to provide all Services that it is required to provide under this Deed.
- 66.4 If the Workforce Specialist will be providing services to the Department similar to the Services after the Transition Period, the Department may, during the Transition Period take any action to facilitate transition of business or Participants to the Workforce Specialist, or to transition the Workforce Specialist to services after the Transition Period.

67. Acknowledgement and promotion

- 67.1 The Workforce Specialist must:
 - (a) in relation to all publications, and all promotional, publicity and advertising Materials or activities of any type undertaken by, or on behalf of, the Workforce Specialist 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 Workforce Specialist 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 Workforce Specialist's own cost) copies of all promotional, publicity and advertising Materials that the Workforce Specialist has developed for the purposes of this Deed.
- 67.2 The Workforce Specialist must market and promote the Services, as required by the Department, and deal with enquiries relating to the Workforce Specialist's provision of the Services, in accordance with any Guidelines.

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

- 68.1 The Department may, by any means, publicise and report on the Services and on the awarding of this Deed to the Workforce Specialist, including:
- (a) the name of the Workforce Specialist;
 - (b) the amounts paid, or expected to be paid, to the Workforce Specialist under this Deed; and
 - (c) a description of the Services.
- 68.2 Where the Department identifies best practice on the part of the Workforce Specialist, the Department may disseminate advice of such best practice to any other entity, including other Workforce Specialists and other employment services providers.

69. Conflict of interest

- 69.1 The Workforce Specialist 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.
- 69.2 The Workforce Specialist must not enter into any arrangement that may cause a Conflict.
- 69.3 If a Conflict arises, or is anticipated to arise, including as determined and Notified by the Department, the Workforce Specialist must:
- (a) immediately Notify the Department of the Conflict and the steps that the Workforce Specialist 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.

69.4 If the Workforce Specialist:

- (a) fails to take action in accordance with this clause 69; 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 65.

70. Negation of employment, partnership and agency

70.1 The Workforce Specialist, 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.

70.2 Subject to this Deed, the Workforce Specialist 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.

71. Protection of rights

71.1 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.

71.2 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.

72. Severance

72.1 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.

73. Entire agreement

73.1 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.

74. Variation of Deed

- 74.1 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.

75. The Department may vary certain terms

- 75.1 The Department may, at any time, vary:
- (a) Payments and Payment related provisions under this Deed;
 - (b) any other aspect of any Contract, including any Special Conditions applicable to any Contract; and/or
 - (c) 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:
- (d) based on the Department's assessment of:
 - (i) the extent to which the Services are meeting any objectives for the Services specified in this Deed; or
 - (ii) projected changes to labour market conditions; or
 - (e) acting reasonably, for any other reason as determined by the Department at its absolute discretion,
- by providing Notice to the Workforce Specialist.
- 75.2 If the Department exercises its rights under clause 75.1:
- (a) where relevant, this Deed is deemed to be varied accordingly; and
 - (b) the Workforce Specialist must perform all of its obligations under this Deed as varied.

76. Applicable law and jurisdiction

- 76.1 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.
- 76.2 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.

77. Compliance with laws and government policies

- 77.1 The Workforce Specialist 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 *Fair Work Act 2009* (Cth), 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 Workforce Specialist, referred to or made available by the Department to the Workforce Specialist (including by reference to an internet site), including:
 - (i) any Commonwealth policy related to secure work, so far as it relates to the Panel Member's engagement of its Personnel and the employment of Participants through Workforce Specialist Projects; and
 - (ii) any other policies listed in this Deed.

77.2 The Workforce Specialist 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)

77.3 Clauses 77.4 to 77.5 apply only to the extent that the Workforce Specialist is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) ('the WGE Act').

77.4 The Workforce Specialist must:

- (a) Notify the Department as soon as practicable if the Workforce Specialist becomes non-compliant with the WGE Act during the Term of this Deed; and
- (b) provide a current letter of compliance issued to the Workforce Specialist by the Commonwealth Workplace Gender Equality Agency within 18 months from the Deed Commencement Date, and following this, annually, to the Department.

77.5 For the avoidance of doubt, compliance with the WGE Act does not relieve the Workforce Specialist from its responsibility to comply with its other obligations under this Deed.

Work health and safety

77.6 The Workforce Specialist 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 Workforce Specialist 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 Workforce Specialist, or any decision or request by the Regulator given to the Workforce Specialist, under the WHS Laws; and
 - (iv) any cessation or direction to cease work relating to the Services, due to unsafe work, immediately upon the Workforce Specialist being informed of any such cessation or direction; and
- (f) provide the Department with copies of all notices and correspondence issued to the Workforce Specialist by any entity under the WHS Laws, within 24 hours of receiving any such notice or correspondence.

77.7 The Workforce Specialist 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 Workforce Specialist's work health and safety performance, arising out of, or in respect of, the Services.

78. Checks and reasonable care

Personnel and Supervisors

- 78.1 Before arranging for any of its Personnel, any Subcontractor or any potential Supervisor to be involved in any Workforce Specialist Project, the Workforce Specialist 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 Workforce Specialist Project is conducted; and
 - (b) any Guidelines.

Child Safety

- 78.2 The Workforce Specialist 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 Workforce Specialist's cost, all necessary Working With Children Checks however described; and
 - (b) ensure that Working With Children Checks obtained in accordance with clause 78.2(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

- 78.3 The Workforce Specialist 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 Workforce Specialist 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 78.3(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 Workforce Specialist's risk management strategy required under clause 78.3(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 Workforce Specialist'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.
- 78.4 With reasonable notice to the Workforce Specialist, the Department may conduct a review of the Workforce Specialist's compliance with the Child Safety Obligations.
- 78.5 The Workforce Specialist agrees to:
 - (a) promptly notify the Department of any failure by the Workforce Specialist 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 Workforce Specialist's implementation of the National Principles for Child Safe Organisations or compliance with the Child Safety Obligations; and
 - (c) promptly, and at the Workforce Specialist'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.
- 78.6 Wherever Child Safety Obligations may be relevant to a Subcontract, the Workforce Specialist must ensure that:
 - (a) any Subcontract imposes on the Subcontractor the same Child Safety Obligations that the Workforce Specialist 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.
- 78.7 The Workforce Specialist must not allow any of its Personnel, any Subcontractor or any potential Supervisor to participate in any Workforce Specialist Project:
 - (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 Workforce Specialist Project; or

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

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

Participants

78.8 If any Workforce Specialist Project involves close proximity with people who are elderly, disabled or otherwise vulnerable or Children (excluding other Participants), before arranging for a Participant to be involved in the Workforce Specialist Project or placed into Employment, the Workforce Specialist must, unless Notified otherwise, ensure that:

- (a) all checks or similar are arranged and paid for; and
- (b) any other requirements are complied with,

such that the Participant's involvement or placement does not breach:

- (c) any relevant legislation, and in particular, any Working with Children Laws, in effect in the jurisdiction(s) in which the Workforce Specialist Project is conducted; and
- (d) any Guidelines.

78.9 The Workforce Specialist must not allow a Participant to be involved in any Workforce Specialist Project or place a Participant into Employment:

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

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

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

79. 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 any request for proposal for this Deed and is available from the National Indigenous Australians Agency.

79.1 The Workforce Specialist 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.

79.2 For the purposes of clause 79.1(a), the Workforce Specialist may use an Indigenous Enterprise as a Subcontractor, and/or in the Workforce Specialist's supply chain.

High Value Contract

79.3 If a Contract is a High Value Contract, or the Department Notifies the Workforce Specialist that a Contract is a High Value Contract, the Workforce Specialist must comply with clauses 79.4 to 79.15 in respect of each High Value Contract.

79.4 If the Workforce Specialist does not already have an Indigenous Participation Plan, the Workforce Specialist 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) a Contract becoming a High Value Contract; or
- (d) the Department Notifying the Workforce Specialist that a Contract is a High Value Contract,

whichever is applicable.

79.5 The Department may, at its absolute discretion, direct the Workforce Specialist 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 Workforce Specialist must comply with any such direction.

79.6 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

79.7 The Workforce Specialist must comply with, and report against, the Indigenous Participation Plan during the Contract Term.

- 79.8 The Workforce Specialist may meet the Mandatory Minimum Requirements either directly and/or through Subcontracts under the Contract.
- 79.9 The Workforce Specialist 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 Contract Term; and
 - (b) within 10 Business Days after the Contract End Date.
- 79.10 The reports specified in clause 79.9 must:
- (a) identify whether the Workforce Specialist has complied with the Indigenous Participation Plan;
 - (b) include the Workforce Specialist's progress in meeting the Mandatory Minimum Requirements; and
 - (c) where the Workforce Specialist identifies that it did not comply with the Indigenous Participation Plan or meet the Mandatory Minimum Requirements, provide an explanation for the non-compliance.
- 79.11 Notwithstanding any other clause of this Deed, the Workforce Specialist acknowledges and agrees that all reports it submits under clause 79.9:
- (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.
- 79.12 Throughout the Contract Term, the Workforce Specialist is responsible for managing the Workforce Specialist's access to the IPPRS, including enabling and/or disabling its authorised Personnel's access (as appropriate).
- 79.13 If at any time during the Contract Term, the Department considers, at its absolute discretion, that it has concerns in relation to the Workforce Specialist'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 Workforce Specialist's implementation of, and overall ability to meet, the Mandatory Minimum Requirements and/or compliance with the Indigenous Participation Plan; and

- (d) require the Workforce Specialist 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.
- 79.14 The Workforce Specialist must comply with all directions issued by the Department in relation to the Workforce Specialist's implementation of the Indigenous Participation Plan.
- 79.15 The Department may terminate this Deed in accordance with clause 65, if the Workforce Specialist 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 79.14.

80. Aboriginal and Torres Strait Islander peoples

- 80.1 For any Contract that is not a High Value Contract, the Workforce Specialist must:
 - (a) within three months after the Contract Start 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 Workforce Specialist'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.
- 80.2 The Workforce Specialist must work in partnership with Jobs, Land and Economy Program providers, Employers, and community service organisations, on employment related strategies or initiatives to maximise employment of Aboriginal and Torres Strait Islander peoples in local jobs.
- 80.3 The Workforce Specialist may enter into agreements with relevant Jobs, Land and Economy Program providers in locations where they are both operating for the purpose of maximising Employment Outcomes for Aboriginal and Torres Strait Islander peoples in relation to specific Jobs, Land and Economy Program projects.

81. Modern slavery

- 81.1 In this clause 81:
 - (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).
- 81.2 The Workforce Specialist represents and warrants to the Department that, as at the Deed Commencement Date, the Workforce Specialist has no knowledge of any Modern Slavery Offence that has occurred or is occurring in its operations or supply chains.
- 81.3 The Workforce Specialist 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.
- 81.4 The Workforce Specialist 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.
- 81.5 If for a Reporting Period the Workforce Specialist's consolidated revenue is \$100 million or more, the Workforce Specialist 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>.

82. Reserved

83. Shadow Economy Procurement Connected Policy

- 83.1 The Workforce Specialist warrants that at the Deed Commencement Date it holds a Valid and Satisfactory Statement of Tax Record.

- 83.2 The Workforce Specialist 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.
- 83.3 The Workforce Specialist 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 Workforce Specialist holds a Valid and Satisfactory Statement of Tax Record for the Subcontractor that was valid at the time of entry into the relevant Subcontract.
- 83.4 The Workforce Specialist 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.
- 83.5 The Workforce Specialist must retain an up-to-date copy of any Valid and Satisfactory Statement of Tax Record held by any Subcontractor in accordance with clause 83.4 and must, on request by the Department, provide to the Department a copy of any such Valid and Satisfactory Statement of Tax Record.
- 83.6 If the Workforce Specialist is a partnership, the Workforce Specialist 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.

84. Notices

- 84.1 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 the SCHEDULE – DEED AND PANEL MEMBER 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.

84.2 A Notice given in accordance with clause 84.1 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 – CO-DESIGN SERVICES

CHAPTER B1 – CO-DESIGN SERVICES

Reader's Guide

Project Concepts can be put forward by the Panel Member or the Department. The Department may approach one or more Panel Members with a Project Concept.

The Department in its initial assessment of a Project Concept will consider, among other things, whether the Project Concept aligns with the objectives of the Workforce Specialist initiative or would be best delivered through another existing government funded program. This will also include consideration of the likelihood of the Project Concept meeting the Core Project Criteria.

The Department and the Panel Member may agree to participate in a Concept Discussion. Concept Discussions are intended to provide the Department and Panel Members the opportunity to discuss and clarify any points of concern or seek further information. After a Concept Discussion, the Department may invite the Panel Member to engage with the Department in a Co-design Phase.

Each Co-design Phase is non-binding and will be an iterative process to further refine the Project Concept and develop a detailed Workforce Specialist Project Plan.

If, following the Co-design Phase, the Department is satisfied that, among other things, the Core Project Criteria are met, including that the Project Concept will deliver value for money, the Department may, in its absolute discretion, issue a Work Order to the Panel Member for the delivery of a Workforce Specialist Project. If the Department is satisfied with a draft workforce specialist project plan submitted by the Panel Member, the Department will approve the plan and it will become the Workforce Specialist Project Plan. The Workforce Specialist Project Plan will inform the drafting of a Work Order issued by the Department to the Panel Member. If the Panel Member wishes to proceed, the Panel Member may execute the Work Order. A Contract is formed between the Department and the Panel Member when they both execute a Work Order.

85. Provision of Co-design Services

- 85.1 Either Party may request a Concept Discussion in relation to a potential Workforce Specialist Project if the Workforce Connections: Workforce Specialist Project Framework identifies a need for such a Workforce Specialist Project. The requesting Party must provide the other Party with a Concept Template at the time of the request that includes the information set out in clause 86.1 or 86.2, as relevant.
- 85.2 Either Party may, after receiving a Concept Template from the other Party, agree to participate in a Concept Discussion with that other Party.
- 85.3 If the Parties participate in a Concept Discussion, and following the Concept Discussion:
 - (a) the Panel Member is in support of further designing the Project Concept in partnership with the Department; and

- (b) the Department and the Panel Member are satisfied that the Project Concept:
 - (i) will contribute to addressing an industry workforce need identified in the Workforce Connections: Workforce Specialist Project Framework;
 - (ii) is likely to meet the Core Project Criteria; and
 - (iii) otherwise aligns with the priorities of the Department and the Objectives,

the Department may, subject to clause 85.4, invite the Panel Member to engage with the Department in a Co-design Phase, as described in clause 87.

85.4 The Department may, when determining whether to invite a Panel Member to engage with the Department in a Co-design Phase, give preference to a Project Concept which has the potential to deliver:

- (a) large numbers of apprenticeships, traineeships and/or vacancies; or
- (b) vacancies that align with any Commonwealth policy related to secure work.

85.5 The Department reserves the right to invite multiple Panel Members to participate in a Concept Discussion and may seek to proceed to the Co-design Phase with a single Panel Member, or multiple Panel Members in an agreed collaborative approach.

85.6 If the Panel Member agrees to accept the Department's invitation under clause 85.3 to engage with the Department in a Co-design Phase in relation to the relevant Project Concept, the Panel Member:

- (a) may issue an invoice to the Department for the Co-design Fee and the Department will pay the Panel Member the Co-design Fee in accordance with clause 88.1; and
- (b) must participate in the Co-design Phase in accordance with clause 87, including by developing and submitting a draft workforce specialist project plan for the Department's review and approval in accordance with clause 87.1(b).

86. Concept Discussion

Initiation of a Concept Discussion by the Department

86.1 If the Department requests a Concept Discussion, the Department will, at the time of the request, provide one or more Panel Members with a Concept Template which identifies the proposed workforce specialist project concept for the Panel Members' consideration.

Initiation of a Concept Discussion by the Panel Member

- 86.2 If the Panel Member requests a Concept Discussion, the Panel Member must, at the time of the request, provide the Department with a Concept Template setting out, at a minimum, the following information:
- (a) the overall objectives and anticipated outcomes of the Project Concept, including with respect to:
 - (i) supporting Participants to meet the workforce needs of relevant industry(ies);
 - (ii) improving the employability of Participants; and/or
 - (iii) improving awareness of the employment opportunities and career pathways in the relevant industry(ies);
 - (b) the identified labour market opportunity for Participants and how that aligns with addressing an industry workforce need identified in the Workforce Connections: Workforce Specialist Project Framework and the Core Project Criteria;
 - (c) the Panel Member's intended approach to harnessing the labour market opportunity for Participants, including an overview of the key components and features of the Project Concept, the targeted industry and the proposed location/s for delivery of a resultant Workforce Specialist Project;
 - (d) the Panel Member's estimated number of:
 - (i) Participants that may access a resultant Workforce Specialist Project;
 - (ii) appropriate vacancies, apprenticeships and/or traineeships for suitable candidates that a resultant Workforce Specialist Project may provide, if relevant; and
 - (iii) vacancies identified in clause 86.2(d)(ii) that align with any Commonwealth policy related to secure work, if relevant;
 - (e) the scalability of the Project Concept;
 - (f) commitment by stakeholders, including Employers and Employment Services Providers, to the Project Concept; and
 - (g) the estimated cost of delivering a Workforce Specialist Project that may result from the Concept Discussion and successful completion of the Co-design Phase.

87. Co-design Phase

- 87.1 During the Co-design Phase, the Panel Member must, at a minimum:
- (a) participate in meetings with the Department to Co-design key elements of the Project Concept which may take place face-to-face or via videoconference or telephone, as agreed with the Department; and

- (b) develop and submit a draft workforce specialist project plan for the Department's review and approval in accordance with the requirements set out in clause 87.2.

87.2 The Panel Member's draft workforce specialist project plan must:

- (a) be in the form of the template provided by the Department;
- (b) reflect the outcomes agreed by the Parties during the Co-design Phase meetings referred to in clause 87.1(a); and
- (c) include, at a minimum, detailed information in relation to the following:
 - (i) the overall objectives and anticipated outcomes of the proposed Workforce Specialist Project, including with respect to:
 - (A) supporting Participants to meet the workforce needs of relevant industry(ies);
 - (B) improving the employability of Participants; and/or
 - (C) improving awareness of the employment opportunities and career pathways in the relevant industry(ies);
 - (ii) how the proposed Workforce Specialist Project will respond to the relevant workforce opportunity;
 - (iii) the proposed eligibility requirements for, and number of, Participants that will be able to participate in the proposed Workforce Specialist Project;
 - (iv) any proposed expression of interest process that will form part of the Referral process in the proposed Workforce Specialist Project, including how the Workforce Specialist proposes to assess expressions of interest;
 - (v) the design of the proposed Workforce Specialist Project and how the proposed Workforce Specialist Project addresses the requirements set out in clause 87.5;
 - (vi) any proposed subcontractor or partnering arrangements for delivery of the proposed Workforce Solution;
 - (vii) the Panel Member Personnel that will perform a key role in the delivery of the proposed Workforce Specialist Project;
 - (viii) the key activities, deliverables and associated Milestone Dates and other timeframes for delivery of the proposed Workforce Specialist Project;
 - (ix) how the Panel Member proposes to manage risk in relation to the proposed Workforce Specialist Project, including with respect to work health and safety and potential delays to the delivery of the Workforce Specialist Project; and

- (x) the proposed total Workforce Specialist Project Fee, including the proposed Milestone Payments payable by the Department on the Panel Member's achievement of Milestones to the Department's satisfaction in delivering the Workforce Specialist Project.
- 87.3 In determining the amount of the proposed total Workforce Specialist Project Fee, including the proposed Milestone Payments (referred to in clause 87.2(c)(x)), the Panel Member must, unless otherwise approved in writing by the Department, only apply rates up to a maximum of those specified in ATTACHMENT 5 – WORKFORCE SPECIALIST PROJECT FEE METHODOLOGY.
- 87.4 Notwithstanding clause 87.3, the total amount payable to the Panel Member as a Workforce Specialist Project Fee will be as specified in the relevant Contract.
- 87.5 The design of the proposed Workforce Specialist Project as identified in clause 87.2(c)(v) must address the following:
 - (a) the structure of the proposed Workforce Specialist Project;
 - (b) how the Department's programs will be used in delivering the proposed Workforce Specialist Project, and which particular programs will be leveraged;
 - (c) details of any Commonwealth, state or territory government funded programs that the Panel Member intends to access to deliver the proposed Workforce Specialist Project;
 - (d) if the Panel Member does not intend to use Commonwealth or state or territory government funded programs with similar objectives to deliver elements of the proposed Workforce Specialist Project, the Panel Member's reasons for doing so;
 - (e) how the proposed Workforce Specialist Project will achieve the overall objectives and anticipated outcomes referred to above in clause 87.2(c)(i);
 - (f) how the proposed Workforce Specialist Project will generate the estimated number of:
 - (i) appropriate vacancies, apprenticeships and/or traineeships referred to in clause 86.2(d)(ii), if applicable; and
 - (ii) vacancies referred to in clause 86.2(d)(iii), if applicable, including how those vacancies will align with any Commonwealth policy related to secure work;
 - (g) the potential risks associated with delivering the proposed Workforce Specialist Project and how the Panel Member intends to address these risks;
 - (h) how the Panel Member will enlist support and engagement from both Employment Service Providers and Employers;
 - (i) how the proposed Workforce Specialist Project will build in flexibility to respond to rapidly changing labour market conditions and other environmental factors, including health directions;

- (j) how the proposed Workforce Specialist Project will operate with an awareness that some Participants may have Vocational Barriers and Non-vocational Barriers that require additional support; and
- (k) how the Panel Member will include opportunities for promotion of the proposed Workforce Specialist Project as requested by the Department.

87.6 The Department may, at its absolute discretion:

- (a) approve or not approve the draft workforce specialist project plan as the Workforce Specialist Project Plan; or
- (b) direct the Panel Member to:
 - (i) clarify any aspect of the draft workforce specialist project plan;
 - (ii) provide further information to support the draft workforce specialist project plan; and/or
 - (iii) amend any aspect of the draft workforce specialist project plan, including as a result of the clarification or further information provided by the Panel Member, and resubmit the draft workforce specialist project plan to the Department for its approval,

in the manner and within the timeframe specified by the Department, and the Panel Member must comply with any such direction.

87.7 If the Department Notifies the Panel Member that it approves the draft workforce specialist project plan:

- (a) the draft workforce specialist project plan becomes the Workforce Specialist Project Plan;
- (b) the Department may then issue a Work Order, informed by the Workforce Specialist Project Plan, to the Panel Member in accordance with clause 8; and
- (c) upon formation of the Contract in accordance with clause 9.1, the Panel Member becomes the 'Workforce Specialist'.

87.8 The Workforce Specialist must not make any changes to a Workforce Specialist Project Plan or a Workforce Specialist Project without the prior written approval of the Department.

88. Co-design Fee

88.1 Subject to this Deed, the Department will pay the Panel Member the Co-design Fee, within 20 Business Days of receiving an invoice from the Panel Member in accordance with clause 85.6.

88.2 The Workforce Specialist agrees that:

- (a) the Co-design Fee is the maximum amount that the Department will pay the Panel Member for participating in the Co-design Phase; and

- (b) any additional costs and expenses, including any travel and accommodation costs incurred by the Panel Member for the purposes of participating in the Co-design Phase, are the sole responsibility of the Panel Member.

PART C – WORKFORCE SPECIALIST PROJECTS

CHAPTER C1 – WORKFORCE SPECIALIST PROJECTS

Section C1.1 – General requirements for Workforce Specialist Projects

89. Conduct of Workforce Specialist Projects

- 89.1 The Workforce Specialist must provide each Workforce Specialist Project to Employers, Participants, Employment Services Providers and other stakeholders identified in the Workforce Specialist Project Plan in accordance with:
- (a) the requirements, Milestone Dates and other timeframes set out in the relevant Contract;
 - (b) unless Notified by the Department, all representations made by the Workforce Specialist in:
 - (i) the Workforce Specialist's response to the request for proposal for this Deed; and
 - (ii) any Workforce Specialist Profile provided to the Department under clause 19.1(a); and
 - (c) the requirements set out in this Part C and any Guidelines.
- 89.2 The Workforce Specialist must identify, and work collaboratively with, relevant entities to deliver each Workforce Specialist Project.

Section C1.2 - Sourcing Participants

90. Promoting Workforce Specialist Projects to Employment Services Providers and Participants

- 90.1 The Workforce Specialist must, in accordance with any Guidelines:
- (a) develop and retain links with:
 - (i) Employers to access jobs; and
 - (ii) Employment Services Providers to attract and retain Participants for each Workforce Specialist Project; and
 - (b) promote each Workforce Specialist Project to Employers, Employment Services Providers and potential Participants, including by providing information to them about each Workforce Specialist Project directly and (unless otherwise Notified by the Department) recording information in the Department's IT Systems about each Workforce Specialist Project, including information regarding any expression of interest process that will form part of the Referral process.

- 90.2 The Workforce Specialist must engage in promotional activities for each Workforce Specialist Project as required by the Department, which may include:
- (a) attending jobs fairs and events hosted by the Department;
 - (b) hosting site visits from representatives of the government and/or the Minister's representatives, and supporting them to meet with Participants and Employers and understand the key operations, successes and challenges of the Workforce Specialist Project;
 - (c) responding to requests for information, such as good news stories or case studies, to support Workforce Specialists' promotional activities; and
 - (d) participating in interviews or helping to identify Participants and Employers to participate in interviews to support the production, by the Department, of promotional videos.

91. Referral of Participants

- 91.1 Where a Participant is Referred to the Workforce Specialist, the Workforce Specialist must, in accordance with any Guidelines:
- (a) assess the Participant's eligibility, capacity and suitability to participate in the relevant Workforce Specialist Project; and
 - (b) accept or reject the Participant's Referral.
- 91.2 The Workforce Specialist must only provide, facilitate or coordinate access to a Workforce Specialist Project for a Participant in respect of which the Workforce Specialist has accepted the Participant's Referral in accordance with clause 91.1(b).
- 91.3 Where the Workforce Specialist rejects the Referral of a Participant by:
- (a) an Employment Services Provider, the Workforce Specialist must, in accordance with any Guidelines, inform the Employment Services Provider of, and provide reasons for, the Workforce Specialist's decision to reject the Referral; or
 - (b) the Participant themselves, the Workforce Specialist must, in accordance with any Guidelines, inform the Participant of, and provide reasons for, the Workforce Specialist's decision to reject the Referral.
- 91.4 Where a person presents to the Workforce Specialist without a Referral, the Workforce Specialist must take the action specified in any Guidelines.

Section C1.3 - Workforce Specialist Activities

Reader's Guide

Workforce Specialists may provide, facilitate or coordinate Workforce Specialist Activities as part of a Workforce Specialist Project. Workforce Specialist Activities may be delivered by the Workforce Specialist using the Department's existing programs. The Department requires that these Workforce Specialist Activities to be managed by the Workforce Specialist. A Workforce Specialist Project may also involve the Workforce Specialist providing, facilitating or coordinating Workforce Specialist Activities that are not provided under an existing Department program, including Other Government Program Activities, Specified Training Activities (training activities with a work trial component), Non-Specified Training Activities (training activities without a work trial component and accredited training provided by RTOs) and other activities such as job fairs or assessment centres.

The Workforce Specialist will be responsible for ensuring that there is a safe system of work in place, performing the required risk assessments and relevant checks, and ensuring that adequate and appropriate Supervision is provided, in accordance with the requirements set out in ATTACHMENT 4 – WORK HEALTH AND SAFETY REQUIREMENTS in relation to any Work Trial Placement Activity or Specified Training Activity. The Workforce Specialist will also be responsible for ensuring that other Workforce Specialist Activities are carried out in a safe manner and for meeting any particular work health and safety requirements specified in the relevant Contract.

The specific Workforce Specialist Activities that the Workforce Specialist may provide, facilitate or coordinate for Participants as part of a Workforce Specialist Project will be agreed between the Parties during the Co-design Phase and set out in the relevant Contract.

92. Workforce Specialist Activities - General

- 92.1 If the Workforce Specialist provides, facilitates or coordinates access to a Workforce Specialist Activity for a Participant as part of a Workforce Specialist Project, the Workforce Specialist must ensure that the Workforce Specialist Activity complies with the relevant Contract and any Guidelines.
- 92.2 If a Workforce Specialist Activity is pursuant to an existing Department program, then the Workforce Specialist must comply with any Guidelines applicable to that existing Department program.
- 92.3 The Department may, at any time and at its absolute discretion, give a direction to the Workforce Specialist in relation to a Workforce Specialist Activity, proposed Workforce Specialist Activity or type of Workforce Specialist Activity, including a direction that:
 - (a) the Workforce Specialist must allow Participants to participate in a Workforce Specialist Activity or type of Workforce Specialist Activity;
 - (b) a Workforce Specialist Activity must be ceased or varied;
 - (c) a Workforce Specialist Activity must be managed directly by the Workforce Specialist, rather than by a Subcontractor or Host Organisation that is not a Subcontractor;
 - (d) the Workforce Specialist must arrange a Workforce Specialist Activity or type of Workforce Specialist Activity for Participants; or

- (e) the Workforce Specialist must not arrange or undertake a Workforce Specialist Activity or type of Workforce Specialist Activity for Participants,

and, if the Department gives such a direction, the Workforce Specialist must:

- (f) immediately comply with the direction; and
- (g) otherwise continue to perform the Services in accordance with this Deed.

93. Reserved

94. Reserved

95. Work health and safety

95.1 The Workforce Specialist must comply with:

- (a) the obligations set out in ATTACHMENT 4 – WORK HEALTH AND SAFETY REQUIREMENTS in relation to any Specified WfS Activity; and
- (b) the work health and safety requirements, if any, specified in the relevant Contract in relation to a Workforce Specialist Activity.

95.2 The Workforce Specialist must, subject to and in accordance with any Guidelines, ensure that, it or, where relevant, each Host Organisation, provides adequate and appropriate Supervision so that Participants are undertaking appropriate tasks and operating in a healthy and safe environment while participating in Workforce Specialist Activities.

95.3 The Workforce Specialist must ensure that any Workforce Specialist Personnel, any Host Organisation or any Subcontractor engaged in the delivery or Supervision of any Workforce Specialist Activity:

- (a) are fit and proper persons to be involved in the Workforce Specialist Activities; and
- (b) have a high level of skill/knowledge, training and/or experience in:
 - (i) the part of each Workforce Specialist Activity in which they are engaged; and
 - (ii) working with, training and supervising individuals in such activities.

Incidents

95.4 The Workforce Specialist must Notify the Department as soon as possible, and on the same day, of any incident involving a Workforce Specialist Activity, including:

- (a) any accident, injury or death occurring during, or as a result of, the Workforce Specialist Activity, including in relation to a Participant or a member of the public;

- (b) any incident which relates to a work, health and safety issue; and
 - (c) any incident that may negatively impact upon the Department or bring the Workforce Specialist or the Services into disrepute.
- 95.5 Where an incident falls within clause 95.4(a), the Workforce Specialist 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.
- 95.6 The Workforce Specialist 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.

96. Post-placement Support

- 96.1 If the Workforce Specialist provides Post-placement Support as part of a Workforce Specialist Project, the Workforce Specialist must ensure that the Post-placement Support complies with the relevant Contract and any Guidelines.

97. Monitoring and recording Participant participation and attendance

- 97.1 The Workforce Specialist must, in accordance with any Guidelines:
- (a) regularly and actively monitor the participation of each Participant in a Workforce Specialist Project;
 - (b) notify the relevant Participant's Employment Services Provider or the DSCC (in the case of a Workforce Australia Services Online Participant) through the Department's IT Systems or in such other manner Notified by the Department or specified in any Guidelines, of each Participant's commencement in a Workforce Specialist Activity within one Business Day following commencement of the relevant Workforce Specialist Activity or as otherwise directed by the Department; and
 - (c) notify the Participant's Employment Services Provider or the DSCC (in the case of a Workforce Australia Services Online Participant) through the Department's IT System, or in such other manner Notified by the Department or specified in any Guidelines, within no more than one Business Day if:
 - (i) the Participant completes their planned participation in the Workforce Specialist Project or the Workforce Specialist Project ends;
 - (ii) the Participant voluntarily withdraws from the Workforce Specialist Project;
 - (iii) the Workforce Specialist withdraws the Participant from the Workforce Specialist Project because:
 - (A) the Participant starts Employment;
 - (B) the Participant's attendance at a Workforce Specialist Activity is unsatisfactory;

- (C) the Workforce Specialist considers that the Participant is facing Non-vocational Barriers that need to be addressed prior to the Participant participating, or continuing to participate, in the Workforce Specialist Project;
 - (D) the Workforce Specialist considers that the Participant is unsuitable for a subsequent phase, including a subsequent Workforce Specialist Activity, of the Workforce Specialist Project;
 - (E) the Participant is displaying violent, threatening, aggressive or otherwise inappropriate behaviour; or
 - (F) of any other reason specified in any Guidelines; or
- (iv) the Department directs the Workforce Specialist to withdraw the Participant from the Workforce Specialist Project.

98. Excluded activities

- 98.1 The Workforce Specialist must not provide, coordinate or facilitate access to the following as part of a Workforce Specialist Project:
- (a) any activity or Employment involving nudity or in the sex industry, including a retail position;
 - (b) volunteer work;
 - (c) unpaid work (except for Work Trial Placement Activities or a Specified Training Activity);
 - (d) any activity or Employment involving illegal activity;
 - (e) any activity or Employment involving income or funds from gambling deemed to be inappropriate by the Department; or
 - (f) any other activity as specified in any Guidelines.
- 98.2 The Workforce Specialist must ensure that any Employment position that the Workforce Specialist coordinates or facilitates access to as part of any Workforce Specialist Project is not Unsuitable.

99. Workforce Specialist Project Fee

- 99.1 Subject to the Workforce Specialist's delivery of a Workforce Specialist Project in accordance with the requirements of the relevant Contract, the Department will pay the Workforce Specialist the Workforce Specialist Project Fee as specified in the relevant Contract.
- 99.2 If specified in the relevant Contract, the Department will pay part of the Workforce Specialist Project Fee as an Upfront Payment.

- 99.3 Subject to clause 99.4, if specified in the relevant Contract, the Department will pay the Workforce Specialist the Workforce Specialist Project Fee in the form of Milestone Payments payable as specified in the relevant Contract.
- 99.4 If the Workforce Specialist achieves a Milestone in accordance with the relevant Contract and that Milestone is subject to a related KPI, where:
- (a) the Workforce Specialist also fully achieves the related KPI over the relevant Measurement Period, the Department will pay the Workforce Specialist the applicable Milestone Payment in full; or
 - (b) the Workforce Specialist does not fully achieve the related KPI over the relevant Measurement Period, the Department will pay the Workforce Specialist a pro-rated amount of the applicable Milestone Payment in accordance with the Pro-rating of Milestone Payments Table to reflect the extent to which the Workforce Specialist achieved the related KPI over the relevant Measurement Period.
- 99.5 The Department may, at its absolute discretion, determine to pay a Milestone Payment notwithstanding that the Workforce Specialist has not achieved, or fully achieved, a Milestone by the Milestone Date if the Workforce Specialist can demonstrate, to the Department's satisfaction, that its failure to achieve the Milestone by the applicable Milestone Date was due to exceptional circumstances beyond the Workforce Specialist's reasonable control.

100. Reserved

101. Reserved

102. Reserved

103. Reserved

104. Indexation

- 104.1 Subject to any Notice from the Department, the amounts of the rates set out in ATTACHMENT 5 – WORKFORCE SPECIALIST PROJECT FEE METHODOLOGY will be increased by 6.8 per cent at the end of each three year period following 1 July 2022.

105. Assets purchased for the purposes of a Workforce Specialist Project

- 105.1 Subject to any contrary written direction by the Department, the Workforce Specialist owns any Asset.
- 105.2 The Workforce Specialist must, after purchasing an Asset:
- (a) use the Asset only for the purposes of the Workforce Specialist Project and in accordance with this Deed; and
 - (b) retain that Asset, and:

- (i) where appropriate in order to reduce the cost of subsequent Workforce Specialist Projects, continue to use that Asset in other Workforce Specialist Projects; or
- (ii) where directed to do so by the Department, use that Asset in other Workforce Specialist Projects.

105.3 Throughout the Term of this Deed, the Workforce Specialist must, in accordance with any Guidelines:

- (a) not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 105, without the Department's prior written approval;
- (b) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- (c) maintain all Assets in good working order;
- (d) maintain all appropriate insurances for all Assets to their full replacement cost;
- (e) if required by law, maintain registration and licensing of all Assets;
- (f) be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets;
- (g) maintain, during the Term of this Deed, an assets register which records for each Asset, the date of its purchase, its purchase price, its description and its location; and
- (h) when requested by the Department, provide copies of its assets register to the Department.

105.4 The Workforce Specialist must Dispose of each Asset:

- (a) at the Deed Completion Date; or
- (b) with the Department's written approval, at a date prior to the Deed Completion Date,

in accordance with any Guidelines.

105.5 Unless the Department agrees otherwise in writing, if any Asset is lost, damaged or destroyed, the Workforce Specialist must promptly reinstate the Asset at its cost, including from the proceeds of the relevant insurance, and this clause 105 continues to apply to the reinstated Asset.

105.6 The Workforce Specialist must not use any Workforce Specialist Project Fees to purchase any Motor Vehicle or Large Machinery for the purposes of a Workforce Specialist Project.

Note: For the avoidance of doubt, any Motor Vehicle or Large Machinery is not an Asset for the purposes of this Deed.

ATTACHMENT 1 – DEFINITIONS

'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.

'Activity Risk Assessment' means a risk assessment in relation to a potential or actual Specified WfS Activity, 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 Workforce Specialist subject to the Workforce Specialist satisfying any applicable terms and conditions relating to the Ancillary Payment, including those specified in any Guidelines, where relevant.

'Asset' means any item of tangible property, other than any Motor Vehicle or Large Machinery, that is specified to be an 'Asset' in any Contract and/or has a value equal to or greater than \$1,000 inclusive of GST (at the time it is purchased) and is purchased using any Workforce Specialist Project Fees for the purpose or as a result of a Work Specialist Project, including where the Workforce Specialist is acting as the Host Organisation.

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

'Australian Equivalents to International Financial Reporting Standards' 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 in accordance with section 14(1) of the *Australian Information Commissioner Act 2010* (Cth).

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

'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 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 78.2 and 78.7 of this Deed.

'Co-design' means the process through which the Department and the Panel Member collaborate to develop a proposed Workforce Specialist Project.

'Co-design Fee' means the Fee totalling \$3,000 (inclusive of GST) and payable to the Panel Member in accordance with clause 88.

'Co-design Phase' means the phase described in clause 87 in which Co-design occurs.

'Co-design Services' means the services described in clause 85.

'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 Commonwealth Coat of Arms Information and Guidelines (available at <https://www.pmc.gov.au/resources/commonwealth-coat-arms-information-and-guidelines>).

'Commonwealth Material' means any Material:

- (a) provided by the Department to the Workforce Specialist 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 Workforce Specialist 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 Workforce Specialist's policies, procedures, employees or the quality of the Services the Workforce Specialist offers or provides, but does not include:

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

'Concept Discussion' means a discussion that may be initiated by either the Department or the Panel Member in relation to a Project Concept.

'Concept Template' means the document that the Party that initiates a Concept Discussion must prepare prior to a Concept Discussion in accordance with clauses 86.1 or 86.2, as relevant, which must be in the form of the template provided by the Department.

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

'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 Workforce Specialist and the performance of the Workforce Specialist's obligations under this Deed or any Contract, including any interest that may interfere with or restrict the Workforce Specialist 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 the SCHEDULE – DEED AND PANEL MEMBER DETAILS who has authority to receive and sign Notices and written communications for the Workforce Specialist under this Deed and accept any request or direction in relation to the Services.

'Contract' means a contract for the provision of the Services that is formed in accordance with clause 9.1.

'Contract End Date' means the date that is specified to be the 'Contract End Date' in item 2 of Schedule 1 to the relevant Contract.

'Contract Start Date' means the date that is specified to be the 'Contract Start Date' in item 1 of Schedule 1 to the relevant Contract.

'Contract Term' means the period specified in clause 9.3 as extended under clause 9.4 (if applicable).

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

'Core Project Criteria' means the following criteria regarding a proposed Workforce Specialist Project:

- (a) the project responds to industry or occupation priorities identified in the Workforce Connections: Workforce Specialist Project Framework or other emerging priorities as assessed by the Department;
- (b) the project clearly connects business and industry (and associated employment opportunities) with Participants and/or prepares Participants for Employment;
- (c) the project provides value for money; and
- (d) the project can be delivered according to the proposed timeframe and within the scope and budget of the proposed Workforce Specialist Project.

'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.

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

'Cybersafety Policy' means the Department's policy of that name as specified at clauses 37.16 to 37.18.

'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 SCHEDULE – DEED AND PANEL MEMBER DETAILS, any Guidelines, any attachments and any documents incorporated by reference.

'Deed Commencement Date' means 1 February 2023.

'Deed Completion Date' means either:

- (a) 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 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 Employment and Workplace Relations 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 Workforce Specialist as being a Department Employee; and
- (b) any individual authorised by law to undertake acts on behalf of the Department.

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

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

'Department's Security Policies' means policies relating to the use and security of the Department's IT Systems and Records, and includes the policy by the name of 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 > Workforce Specialists > 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.

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

'Documentary Evidence' means those Records of the Workforce Specialist, 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 Workforce Specialist as required under this Deed and/or that the Workforce Specialist is entitled to a Payment.

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

'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 Services Provider' means any entity contracted to the Commonwealth to provide employment services under the Workforce Australia Deed of Standing Offer 2022-2028 or the Workforce Australia – Transition to Work Deed 2022-2027, or any entity specified to be an Employment Services Provider for the purposes of this Deed in any Guidelines.

'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.

'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.

'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 Workforce Specialist or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems. 'External IT System' includes a Workforce Specialist 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 Workforce Specialist IT System accreditation (such as Right Fit For Risk) and Third Party IT accreditation.

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

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

'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 Contract' means, for the purposes of the Indigenous Procurement Policy, a Contract 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 Contract 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 Contract 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 that hosts a Workforce Specialist Activity.

'Host Organisation Agreement' means a written and signed agreement between the Workforce Specialist and a Host Organisation (and, where relevant, the Participant), in accordance with any Guidelines.

'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 Workforce Specialist will comply with the Indigenous Procurement Policy, including how the Workforce Specialist 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 Workforce Specialist reports on its compliance with the Indigenous Participation Plan, including the Workforce Specialist's progress in meeting the Mandatory Minimum Requirements, for the purposes of the Indigenous Procurement Policy.

'Initial Contract Term' means the period defined as the 'Initial Contract Term' in a Contract.

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

'Insolvency Event' means that the Workforce Specialist, any Material Subcontractor, any entity giving the guarantee under clause 32.3(b), and/or any party having or exercising control over the Workforce Specialist 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 Workforce Specialist 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 29.3, 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 58.17, 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 Workforce Specialist'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 Workforce Specialist for a payment from the Department where the Workforce Specialist was not entitled to the payment under this Deed.

'Jobs, Land and Economy Program' means the Commonwealth program administered by the National Indigenous Australians Agency which aims to enhance Indigenous Australians economic rights, improve employment and pathways to jobs, foster Indigenous business and assist Indigenous people to generate economic and social benefits from effective use of their land and waters.

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

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

'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 Workforce Specialist subcontracted to perform a substantial part (as determined by the Department) of the Services.

'Measurement Period' means the measurement period specified in the relevant Contract.

'Milestone' means a key performance obligation for the Workforce Specialist under a Contract.

'Milestone Date' means the date for achievement of a Milestone as set out in a Contract.

'Milestone Payment' means an instalment of the Workforce Specialist Project Fee payable in respect of achievement of a Milestone as set out in a Contract.

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

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

'Motor Vehicle or Large Machinery' means any registered or unregistered large machinery including any motor vehicle, tractor or farm machinery or any other machinery specified in any Guidelines.

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

'Non-Specified Training Activity' means:

- (a) a Training Activity without a work trial component; or
- (b) a Training Activity provided by a Registered Training Organisation.

'Non-vocational Barriers' means the range of barriers that can prevent an individual from obtaining and sustaining Employment or Education or from undertaking further skills development, including homelessness, mental illness, drug or alcohol addiction, sexual abuse or violence and physical or mental abuse.

'Notice' means a notice given in accordance with clause 84.

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

'Objectives' means the objectives for Workforce Specialists as specified in the request for proposal for this Deed.

'Other Government Program Activity' means an Australian, State or Territory or local government program activity that the Workforce Specialist facilitates or coordinates for a Participant in accordance with PART C – WORKFORCE SPECIALIST PROJECTS.

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

'Panel' means the Department's panel for the delivery of Workforce Specialist Services.

'Panel Member' means an entity contracted to provide employment services under the Workforce Australia – Workforce Specialists Deed of Standing Offer 2023-2028. A reference to 'the Panel Member' is a reference to the Workforce Specialist.

'Participant' means any individual, who is identified by the Department (including the DSCC), themselves (in the case of a Workforce Australia Services Online Participant) or an Employment Services Provider as eligible to participate in any Workforce Specialist Project, and includes a Workforce Australia Services Online Participant, a Workforce Australia Services Participant or a Workforce Australia – Transition to Work Participant and any other individual identified in any Guidelines.

'Participant Risk Assessment' means a risk assessment in relation to a Participant's involvement in a Specified WfS Activity, 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.

'Payment' means any Fee, Reimbursement or Ancillary Payment payable under a Contract.

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

'Personnel' means:

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

'Post-placement Support' means support and assistance provided to Participants and/or Employers to help sustain the Employment of a Participant following a relevant job placement and may include the provision of mentoring and coaching, work-related training, work-related equipment and attire, and other relevant support.

'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 Workforce Specialist is meeting its obligations under this Deed, including any Guidelines.

'Project Concept' means an idea for a potential Workforce Specialist Project that addresses an identified labour market opportunity for potential Participants and responds to industry or occupation priorities identified in the Workforce Connections: Workforce Specialist Project Framework or other emerging needs as identified by the Department.

'Pro-rating of Milestone Payments Table' means the table identified as the Pro-rating of Milestone Payments Table in the relevant Contract.

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

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

'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 Workforce Specialist and another party (**Other Party**), but only where the Workforce Specialist is a Reporting Entity and:

- (a) the Subcontract is (wholly or in part) for the provision of goods or services for the purposes of any Contract;
- (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 the Contract 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 Workforce Specialist's response to the relevant 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 Workforce Specialist; 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 9 of the *Data Availability and Transparency Act 2022* (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 Workforce Specialist Records.

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

'Referral' means a referral of a Participant to the Workforce Specialist through the Department's IT Systems by an Employment Services Provider, the DSCC or the Participant themselves where they are a Workforce Australia Services Online Participant.

'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 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 Workforce Specialist other than Own Organisation;
- (b) 'entities connected with a corporation' as defined in section 64B of the Corporations Act with the word 'Workforce Specialist' substituted for every occurrence of the word 'corporation' in that section;
- (c) an entity that:
 - (i) can control, or materially influence, the Workforce Specialist's activities or internal affairs;
 - (ii) has the capacity to determine, or materially influence, the outcome of the Workforce Specialist's financial and operating policies; or
 - (iii) is financially interested in the Workforce Specialist's success or failure or apparent success or failure;
- (d) if the Workforce Specialist is a company, an entity that:
 - (i) is a holding company of the Workforce Specialist;
 - (ii) is a subsidiary of the Workforce Specialist;
 - (iii) is a subsidiary of a holding company of the Workforce Specialist;
 - (iv) has one or more Directors who are also Directors of the Workforce Specialist; or
 - (v) without limiting paragraphs (d)(i) to (d)(iv) of this definition, controls the Workforce Specialist; 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 Workforce Specialist.

'Remediation Plan' means the plan developed by the Panel Member which must be substantially in the form of the template remediation plan provided by the Department, and is approved by the Department in accordance with clause 48.3.

'Remediation Plan Notice' means the notice issued by the Department to the Panel Member in accordance with clause 48.1, requiring the Panel Member to prepare and submit a draft remediation plan.

'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 Workforce Specialist 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 Workforce Specialist for the purposes of any Contract 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 Workforce Specialist 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 Workforce Specialist 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 Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.

'Schedule' means the SCHEDULE – DEED AND PANEL MEMBER DETAILS to this Deed, unless it is specified to be a Schedule to a Contract.

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

- (a) for ensuring the Workforce Specialist'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 Period' means, subject to any contrary stipulation in this Deed, the period from the Deed Commencement Date to 30 June 2028.

'Services' means:

- (a) Workforce Specialist Services;
- (b) any additional services to be provided by the Workforce Specialist under clause 22; and
- (c) any other services reasonably related or required to be provided by the Workforce Specialist 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.

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

'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).

'Special Conditions' means, in relation to a particular Contract, the conditions that are specified to be the 'Special Conditions' at clause 2 in the Contract.

'Specified Training Activity' means a Training Activity with a work trial component, except any Training Activity provided by a Registered Training Organisation.

'Specified Wfs Activity' means any Work Trial Placement Activity or Specified Training Activity, or any other activity identified as a 'Specified Wfs Activity' in any Contract.

'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 Workforce Specialist 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 Workforce Specialist, including a Material Subcontractor, and includes the party's Personnel, successors and assigns as relevant.

'Supervisor' means an individual who has the responsibility for the Supervision of Participants engaged in a Workforce Specialist Activity.

'Supervision' means the action or process of directly monitoring and managing Participants participating in Workforce Specialist Activities.

'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 3.1.

'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 Workforce Specialist 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 Workforce Specialist to provide information technology systems or services to the Workforce Specialist 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 Activity' means a training activity that the Workforce Specialist provides, facilitates or coordinates for a Participant in accordance with PART C – WORKFORCE SPECIALIST PROJECTS. A 'Training Activity' includes any Specified Training Activity or Non-Specified Training Activity.

'Transition Period' means any period of time leading up to the expiry, termination or reduction in scope of this Deed or any Contract, and Notified by the Department to the Workforce Specialist under clause 66.1.

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

'Unsuitable' means that a position is, in accordance with any Guidelines:

- (a) a position, including a retail position, involving nudity or in the sex industry;
- (b) a position in volunteer work, work experience or unpaid work;
- (c) except in relation to wage rates, a position in contravention of Commonwealth, state or territory legislation or which involves terms and of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (d) in relation to wage rates, a position where the wage rate paid is not at least equivalent to (as relevant):
 - (i) the minimum rate prescribed in any Modern Award that covers or applies to the position; or
 - (ii) if no Modern Award covers or applies to the position, the National Minimum Wage;
- (e) a position in a training course;
- (f) a position in a program funded by the Commonwealth or by a state or territory government as advised by the Department;
- (g) in another country, regardless of whether the salary is paid in Australian dollars or by an Australian company;
- (h) a position involving illegal activity;
- (i) a position involving income or funds from gambling deemed to be inappropriate by the Department;
- (j) a position that pays a commission as either the entire remuneration or part of the remuneration, except where the commission being paid to the Participant is in addition to an amount which is paid to the Participant in accordance with any applicable Commonwealth, state or territory legislation and any applicable Modern Award or the National Minimum Wage; or

(k) a position that the Department has advised is not acceptable.

'Upfront Payment' means the upfront payment specified in the relevant Contract.

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

'Vocational Barrier' means a lack of appropriate training, skills or qualifications for employment.

'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 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 Participant' or **'Workforce Australia – TtW Participant'** means a Participant who is participating in Transition to Work.

'Workforce Connections: Workforce Specialist Project Framework' means the document of that name which informs and guides the identification, development and delivery of Workforce Specialist Projects.

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

'Workforce Specialist Activity' means any Training Activity, Work Trial Placement Activity, Other Government Program Activity or other activity that the Workforce Specialist provides, facilitates or coordinates for a Participant in accordance with PART C – WORKFORCE SPECIALIST PROJECTS and any Contract.

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

'Workforce Specialist Profile' means a Report, in the format required by the Department, setting out the Panel Member's experience and specialisation to support its delivery of the Services, including details of:

- (a) the Panel Member's primary geographic areas of operation;
- (b) the key industries and occupations the Panel Member has experience supporting;
- (c) the types of services the Panel Member has experience delivering;
- (d) relevant examples of previous projects the Panel Member has delivered; and
- (e) any other information Notified by the Department or specified in any Guidelines.

'Workforce Specialist Project' means a solution that the Workforce Specialist is contracted to deliver under a Contract and any other services reasonably related or required to be provided by the Workforce Specialist for the proper provision of the Workforce Specialist Project.

'Workforce Specialist Project Fee' means the Fee which is payable to the Workforce Specialist in accordance with clause 99.

'Workforce Specialist Project Plan' means the plan developed by the Panel Member which must be in the form of the template workforce specialist project plan provided by the Department, and is approved by the Department in accordance with clause 87.6.

'Workforce Specialist 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.

'Workforce Specialist Services' means the services described in PART B – CO-DESIGN SERVICES and PART C – WORKFORCE SPECIALIST PROJECTS.

'Working With Children Check' means the process specified in, or pursuant to, relevant Working with Children Laws to screen an individual for fitness to work with Children.

'Working with Children Laws' means the:

- (a) *Child Protection (Working with Children) Act 2012* (NSW);
- (b) *Working with Children (Risk Management and Screening) Act 2000* (Qld);
- (c) *Working with Children (Criminal Record Checking) Act 2004* (WA);
- (d) *Worker Screening Act 2020* (Vic);
- (e) *Child Safety (Prohibited Persons) Act 2016* (SA);
- (f) *Working with Vulnerable People (Background Checking) Act 2011* (ACT);
- (g) *Care and Protection of Children Act 2007* (NT);
- (h) *Registration to Work with Vulnerable People Act 2013* (Tas); and
- (i) any other legislation that provides for the checking and clearance of people who work with Children.

'Work Order' means a written order for the delivery of a Workforce Specialist Project issued by the Department in accordance with clause 8, and substantially in the form of ATTACHMENT 3 – TEMPLATE WORK ORDER.

'Work Trial Placement Activity' means any trial placement activity specified to be a Work Trial Placement Activity in any Contract or any Guidelines, and that the Workforce Specialist provides, facilitates or coordinates for a Participant in accordance with PART C – WORKFORCE SPECIALIST PROJECTS.



Australian Government

Workforce Australia
Workforce Specialists

Joint Charter – Workforce Australia – Workforce Specialists

The department and Workforce Specialists engaged to deliver Workforce Specialist Projects 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 project-based workforce solutions for industry, business and individuals.



Respectful

Workforce Specialists are empowered to deliver innovative and effective project-based workforce solutions that are culturally appropriate and tailored to the needs of business, industry and individuals.

Industry experience and expertise is recognised and harnessed to deliver effective workforce solutions to business and industry.

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, work orders 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 initiative.

Technology is used to deliver quality Workforce Specialist Projects, through connection to individuals and businesses.

Innovative ideas and solutions are encouraged to deliver sustained benefits and workforce solutions to business, industry and individuals.

Decisions are transparent and informed by evidence and data intelligence.

Simple

Project delivery is tailored and outcome focused, considering business and industry workforce needs, and labour market opportunities for individuals.

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

Ongoing automation supports streamlined processes and workflows.

Outcome focused delivery and decisions meet the needs of business, industry and individuals.

Supported

Collaborative partnerships with industry, businesses, state/territory and local governments, employment services, community organisations and support services are leveraged to deliver project-based workforce solutions.

Responsive to stakeholder needs by actively contributing to the resolution of issues and delivery of solutions.

Informed project development and delivery through co-design, regular consultation, engagement and leveraging new and emerging approaches.

Continuous improvement by building organisational capabilities and sharing feedback and ideas to better meet the needs of business, industry and individuals.

ATTACHMENT 3 – TEMPLATE WORK ORDER

1. Overview and operation

- 1.1 This document is a Work Order under the Workforce Australia – Workforce Specialists Deed of Standing Offer 2023-2028 (**Deed**) and relates to the delivery of a Workforce Specialist Project in accordance with PART C – WORKFORCE SPECIALIST PROJECTS of the Deed.
- 1.2 The Department will issue a separate Work Order for each Workforce Specialist Project.
- 1.3 Under clause 9.1(a) of the Deed, a Contract is formed between the Department and the Panel Member when the Department issues a Work Order to the Panel Member and both Parties execute the Work Order.
- 1.4 Subject to clause 2 [Special Conditions] below, the terms and conditions of the Contract are specified in:
 - (a) clause 9.1(b)(i) of the Deed; and
 - (b) Schedule 1 to this Work Order, which will become Schedule 1 to the Contract.
- 1.5 If, during the Contract Term, any aspect of the Contract is varied, including where the Department, in accordance with the Deed, or with the agreement of the Workforce Specialist, varies:
 - (a) a Milestone Payment;
 - (b) a Milestone;
 - (c) a KPI; or
 - (d) any other aspect of any Contract, including any Special Conditions,the Department may issue to the Workforce Specialist an updated Contract document or Schedule 1 to the Contract to reflect that event.

2. Special Conditions

- 2.1 The terms and conditions of the Contract that differ from, or are in addition to, those specified in clause 9.1(b)(i) of the Deed are as follows:
 - (a) **[insert any Special Conditions]**.

SCHEDULE 1 – Contract Details

Item 1 – Contract Start Date (clause 9.3 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)

[Insert Contract Start Date]

Item 2 – Contract End Date (ATTACHMENT 1 – DEFINITIONS to the Deed)

[Insert Contract End Date]

Item 3 – Initial Contract Term (clause 9.3 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)

The period that starts on the Contract Start Date and, unless terminated earlier, expires on the Contract End Date.

Item 4 - Account details for payment (clause 24.1 of the Deed)

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

Item 5 – Workforce Specialist Project (clause 89.1 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)

[Insert detailed description of Workforce Specialist Project]

Item 6 – Subcontractors approved by the Department (clause 58.3 of the Deed)

Item 6.1 Subcontractor(s) (if relevant) (clause 58.3 of the Deed)	Item 6.2 Terms and conditions relating to use of each Subcontractor (clause 58.3 of the Deed)

Item 7 – Specified work health and safety requirements for a Workforce Specialist Activity (clause 95.1(b) of the Deed)

[Insert details of any particular work health and safety requirements for any particular Workforce Specialist Activity that apply in addition to the requirements specified in the Deed of Standing Offer]

Item 8 – Specified WfS Activity (Definition of ‘Specified WfS Activity’ in ATTACHMENT 1 – DEFINITIONS to the Deed)

[Insert a detailed description of any activity to be identified as a Specified WfS Activity for the purposes of this Contract]

Item 9 – Work Trial Placement Activity (Definition of ‘Work Trial Placement Activity’ in ATTACHMENT 1 – DEFINITIONS to the Deed)

[Insert a detailed description of any activity to be identified as a Work Trial Placement Activity for the purposes of this Contract]

Item 10 – Workforce Specialist Project Fee (clauses 87.3, 87.4, 99.2 and 99.3 of the Deed, ATTACHMENT 1 – DEFINITIONS and ATTACHMENT 5 – WORKFORCE SPECIALIST PROJECT FEE METHODOLOGY to the Deed)

[Insert Workforce Specialist Project Fee, and any part of that Fee payable as an Upfront Payment or a Milestone Payment]

Workforce Specialist Project Fee	Part of Workforce Specialist Project Fee payable as Upfront Payment (if any)	Part of Workforce Specialist Project Fee payable as Milestone Payment(s) (if any)
<Workforce Specialist Project Fee>	<Part of Workforce Specialist Project Fee payable as Upfront Payment (if any)>	<Part of Workforce Specialist Project Fee payable as Milestone Payment(s) (if any)>

Item 11 – Milestone Dates, Milestones, KPIs and Milestone Payments (clauses 89.1, 99.3 and 99.4 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)

No.	Milestone Date	Milestone	KPI (if any)	Measurement Period	Milestone Payment if Workforce Specialist achieves any relevant KPI (otherwise see item 12 below where KPI not achieved)
<No.>	<Milestone Date>	<Milestone>	<KPI (if any)>	<Measurement Period>	<Milestone Payment>

Item 12 – Pro-rating of Milestone Payments Table (clause 99.4 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)

[Insert Pro-rating of Milestone Payment Table, if applicable]

Item 13 – Assets (clause 105 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)

[Insert any Assets]

Item 14 - Other requirements

Right Fit for Risk

Upon commencement of the Contract, the Panel Member must, at a minimum, have met the RFFR Milestone 1 requirements as advised by the Department.

The RFFR requirements can be viewed on the Department’s website at <https://www.dewr.gov.au/right-fit-risk-cyber-security-accreditation>.

Appendix B to the Work Order – Additional documents

[To be inserted if applicable]

ATTACHMENT 4 – WORK HEALTH AND SAFETY REQUIREMENTS

1. Interpretation

- 1.1 In this ATTACHMENT 4 – WORK HEALTH AND SAFETY REQUIREMENTS, except as specified otherwise, 'clause' means a clause in this ATTACHMENT 4 – WORK HEALTH AND SAFETY REQUIREMENTS.

2. Work health and safety - General

- 2.1 The Workforce Specialist must, in accordance with any Guidelines, ensure that there is a safe system of work in place for each Specified WfS Activity, both prior to the commencement of and throughout the Specified WfS Activity, including, where a Host Organisation is engaged by the Workforce Specialist, that the relevant Host Organisation is complying with all work health and safety requirements in the jurisdiction in which the Specified WfS Activity occurs.

3. Risk Assessments

- 3.1 To meet its obligations under clauses 3.2 to 3.4, the Workforce Specialist must use a Competent Person.
- 3.2 The Workforce Specialist must, in accordance with any Guidelines:
- (a) undertake an Activity Risk Assessment of every Specified WfS Activity before the start of the Specified WfS Activity;
 - (b) undertake a Participant Risk Assessment for each Participant, with regard to their potential participation in any such Specified WfS Activity, before their commencement in the Specified WfS Activity; and
 - (c) retain Records of each Risk Assessment referred to in clause 3.2(a) and 3.2(b) and any action taken in accordance with the Risk Assessment, and provide the relevant Records to the Department upon request.
- 3.3 If the Workforce Specialist has arranged a Specified WfS Activity, it must, in accordance with any Guidelines:
- (a) ensure that each Host Organisation is obliged to immediately advise the Workforce Specialist 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) when negotiating the relevant Host Organisation Agreement 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 Specified WfS Activity, 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 Assessment; and
 - (ii) if there have been any changes in relation to the relevant Specified WfS Activity, 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 WfS Activity.
- 3.4 Before any Participant starts in a Specified WfS Activity and throughout the Specified WfS Activity, the Workforce Specialist must, in accordance with any Guidelines:
- (a) ensure, with reference to the relevant Risk Assessments, that the Specified WfS Activity 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 WfS Activity safely, and ensure that training of sufficient length and quality is provided to the Participant by the Host Organisation;
 - (c) ensure that appropriate facilities (such as toilets and access to drinking water) will be available to the Participant;
 - (d) ensure that the Participant will be provided with any specific equipment, clothing or materials required to participate safely in the Specified WfS Activity;
 - (e) ensure that the Participant has been advised of the process for reporting any work health and safety issues regarding the Specified WfS Activity; and
 - (f) ensure that the Workforce Specialist, 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 WfS Activity, and purchase or fund additional insurance for the Specified WfS Activity, if required.

4. Supervision

Note: Supervisors may be engaged/employed by the Workforce Specialist or a Subcontractor to supervise Workforce Specialist Activities or may be engaged/employed by Host Organisations to supervise Workforce Specialist Activities that they provide.

- 4.1 The Workforce Specialist must, subject to and in accordance with any Guidelines, ensure that the Supervision provided in accordance with clause 95.2 of this Deed is continuous over the entire duration of any Specified WfS Activity where:
- (a) the Specified WfS Activity involves:
 - (i) people who are elderly, disabled or otherwise vulnerable; or
 - (ii) Children (excluding other Participants); or
 - (b) the Workforce Specialist otherwise considers that Supervision should be continuous having regard to the nature of the tasks to be undertaken, the potential Participants in the Specified WfS Activity and any risks identified in the relevant Risk Assessments.

- 4.2 The Workforce Specialist must ensure that any:
- (a) Workforce Specialist Personnel, Host Organisation or Subcontractor who has direct involvement in (including where they have close contact with Participants); and
 - (b) Supervisor for,
- any Specified WfS Activity:
- (a) is a fit and proper person to be involved in the relevant Specified WfS Activity; and
 - (b) has a high level of skill/knowledge, training and/or experience in:
 - (i) each part of the Specified WfS Activity they are involved in; and
 - (ii) working with, training and supervising individuals in such activities.
- 4.3 The Department may give Notice, on reasonable grounds related to the performance of any Specified WfS Activity, requiring the Workforce Specialist to remove, or arrange for the removal of any:
- (a) Workforce Specialist Personnel, Host Organisation or Subcontractor who has direct involvement in the Specified WfS Activity (including where they have close contact with Participants); and/or
 - (b) Supervisor, whether engaged by the Workforce Specialist, any Subcontractor or any Host Organisation,
- from work on the Specified WfS Activity.
- 4.4 Where the Department gives Notice under clause 4.3, the Workforce Specialist must, at its own cost, promptly arrange for the removal of the relevant Personnel or Supervisor from work on the Specified WfS Activity and their replacement with one or more Personnel or Supervisors acceptable to the Department.
- 4.5 The Workforce Specialist must ensure that each Supervisor, whether engaged by the Workforce Specialist, a Subcontractor or a Host Organisation, is aware of the requirement to notify the Workforce Specialist of:
- (a) the non-attendance at all relevant Activities; and
 - (b) any other non-compliance in connection with the Activities,
- of a Participant as soon as practicable, in accordance with any Guidelines.
- 4.6 All Supervisors who:
- (a) are contracted by the Workforce Specialist to provide Supervision for any Specified WfS Activity that the Workforce Specialist provides itself; and
 - (b) are not employees of the Workforce Specialist,
- are deemed to be approved Subcontractors for the purposes of this Deed.

ATTACHMENT 5 – WORKFORCE SPECIALIST PROJECT FEE METHODOLOGY

In determining the amount of the proposed Workforce Specialist Project Fee and proposed Milestone Payments, the Panel Member must, unless otherwise approved in writing by the Department apply rates up to a maximum of those specified in the table below (see clauses 87.3 and 87.4).

Service category	Maximum hourly rate (including GST)	Maximum daily rate (including GST)
Project management (such as: administration, facilitation, co-ordination of Workforce Specialist Projects or project elements)	[insert]	[insert]
Engagement activities (such as: delivery, management and/or coordination of events, meetings, sessions or workshops)	[insert]	[insert]
Business and industry activities (such as: delivery, management and/or coordination of training, recruitment and placement, or promotion activities)	[insert]	[insert]

SCHEDULE – DEED AND PANEL MEMBER DETAILS

Item 1	Provider Lead (clause 20.2 of the Deed, ATTACHMENT 1 – DEFINITIONS to the Deed)		
Contact	< Provider Lead Title> < Provider Lead First Name> < Provider Lead Surname>		
Telephone	< Provider Lead Phone>	Mobile	< Provider Lead Mobile>
Email	< Provider Lead Email>		
Physical Address	< Provider Lead Physical Address Line1>	Postal Address	< Provider Lead Postal Address Line1>
	< Provider Lead Physical Address Line2>		< Provider Lead Postal Address Line2>
	< Provider Lead Physical Address Line3>		< Provider Lead Postal Address Line3>
	<Suburb> <State> <Postcode>		< Suburb> <State> < Postcode>
Item 2	Contact Person (clause 20.2 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>		<Contact Person Postal Address Line3>
	<Suburb> <State> <Postcode>		< Suburb> <State> < Postcode>

Schedule: Deed and Panel Member Details
<Deed Number ID>

Panel Member Initials

Department's Initials

Deed Variation History

PART A – GENERAL TERMS AND CONDITIONS

Clause	Variation, effective date
6.1(a)(i)-(iii), (b), (i) and (ii)	GDV 1, 1 January 2024
9.1(b)(i)-(iii)	GDV 1, 1 January 2024
9.6(c)-(d)	GDV 1, 1 January 2024
15.1(a)(ii)	GDV 1, 1 January 2024
32.1, (a), (b) and (c)	GDV 1, 1 January 2024
32.2	GDV 1, 1 January 2024
32.3	GDV 1, 1 January 2024
37.8A.1(a)	GDV 1, 1 January 2024
37.8A.2	GDV 1, 1 January 2024
39.3	GDV 1, 1 January 2024
48.1(a)(i)-(ii)	GDV 1, 1 January 2024

PART B – CO-DESIGN SERVICES

Clause	Variation, effective date
Reader's Guide	GDV 1, 1 January 2024
87.7(a)-(b)	GDV 1, 1 January 2024

PART C – WORKFORCE SPECIALIST PROJECTS

Clause	Variation, effective date
Reader's Guide	GDV 1, 1 January 2024
89.1(a)	GDV 1, 1 January 2024
92.1	GDV 1, 1 January 2024
96.1	GDV 1, 1 January 2024
99.3	GDV 1, 1 January 2024
99.4, (a) and (b)	GDV 1, 1 January 2024

ATTACHMENT 1 – DEFINITIONS

Clause	Variation, effective date
'Commonwealth Coat of Arms'	GDV 1, 1 January 2024
'Deed Completion Date'	GDV 1, 1 January 2024
'Key Performance Indicators'	GDV 1, 1 January 2024

ATTACHMENT 3 – TEMPLATE WORK ORDER

Clause	Variation, effective date
1.4(a)-(c)	GDV 1, 1 January 2024

SCHEDULE 1 – Contract Details

Clause	Variation, effective date
Item 11	GDV 1, 1 January 2024

APPENDIX A TO THE WORK ORDER – APPROVED WORKFORCE SPECIALIST PROJECT PLAN

Clause	Variation, effective date
Approved Workforce Specialist Project Plan	GDV 1, 1 January 2024